Submission on Te Ture Whenua Māori Bill 2016

Submitter details

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- Wakatū Incorporation wishes to be heard by the Select Committee in support of this submission, preferably in Nelson if such a hearing can be accommodated.

A EXECUTIVE SUMMARY

1. Wakatū Incorporation ("**Wakatū**") is a Māori Incorporation established under Te Ture Whenua Māori Act 1993 ("**the 1993 Act**"). We represent approximately 4,000 shareholders who descend from the original Māori land owners of the Nelson, Tasman and Golden Bay Regions.

2. Wakatū grew from a $11 million asset base in 1977 to a current value of over $260 million. Whenua (land) is the foundation of our business with 70% of assets held in land and waterspace. We manage a diverse portfolio from vineyards, orchards to residential properties, large retail developments, office buildings, marine farms and waterspace. As well as rights and responsibilities as the owner of land and other resources, Wakatū has customary rights and responsibilities as kaitiaki.

3. The major growth of Wakatū took place in the 1990s, empowered by the 1993 Act.

4. The Bill will not allow for the emergence of another Wakatū. On this ground Wakatū **opposes** the Bill. Wakatū is also opposed to the Bill because:

    i. It adds limited to no value to existing and successful Māori incorporations;

    ii. More work is required to translate the stated aims and objectives of the law reform,[1] which Wakatū does support, into legislative provisions that are fit for purpose and workable. Key features of the proposed reforms (and in particular the Māori Land Service) are untested, and appear to exist only at a conceptual level. They should be developed and tested in real world settings prior to any change being made to the 1993 Act that is underpinned by them;

    iii. There are many ambiguities in the wording of the Bill that present uncertainty and associated commercial and legal risk, resulting in part from the unnecessary and unjustified haste in the development of the Bill to date; and

[1] Being to empower Māori land owners and to improve the governance and management of Māori land, while at the same time supporting the preservation of Māori land for the use, development and benefit of its owners, both now and for the future generations.

iv. It does not address root causes of the problem of uneconomic Māori land, including rating, resource management law, public works takings, land locked lands, paper roads and access to development finance.

5. Wakatū may be prepared to support the Bill if an opt-out clause was inserted which allowed existing incorporations and trusts to opt-out of the proposed new laws and to continue to operate under the existing laws in the 1993 Act and if sufficient information was also provided about the Māori Land Service and the 'Enablers'.[2] This would mitigate our concerns about the commercial and legal risks and uncertainty associated with the Bill. It would also remove our concerns about the unnecessary costs associated with transitioning to and complying with new laws that are not necessary for and will not benefit Wakatū.

6. An opt-out for existing and well-functioning incorporations and trusts will also accord with what should be the proper focus of any law reform in this area – unmanaged, unoccupied or unused parcels of Māori land, and those owners who are seeking support and education to assist them to govern and manage their land. Existing and well-functioning incorporations and trusts, like Wakatū, will only be harmed by 'blanket' law changes that are designed to address a very different situation to theirs.

B STRUCTURE OF THE SUBMISSION

7. The main body of this submission is comprised of two parts. **Section C** explains in more detail fundamental problems Wakatū sees with the proposed reforms. **Section D** identifies next steps that can and should be taken to fix those problems. Finally, Wakatū has included at **Appendix 1** suggestions for clarifications and changes that will assist the Bill to become more fit for purpose. These suggestions are intended to support the priority work that Wakatū has identified in **Section D** as a necessary first step to any reform of the 1993 Act, including the need for empirical work to determine whether the 1993 Act needs to be repealed and replaced by the Bill, as is proposed, or whether more modest amendments to the 1993 Act, supported by greater education of and funding to the owners of currently

[2] Being the real issues preventing utilisation of Māori land – landlocked land; public works issues; owner empowerment; rating issues; paper roads; access to development finance; and resource management law. The Tribunal at p90 of its Wai 2478 report criticised the Crown for failing to address these matters Māori have identified as real constraints.

uneconomic land, is more likely to meet the overriding policy objectives of the proposed law reforms.

C FUNDAMENTAL PROBLEMS WITH THE BILL

8. Wakatū's opposition to the Bill, summarised in **Section A**, is for the following reasons:

The Bill adds no value for successful Māori incorporations like Wakatū

i. It does not meet the test of removing barriers to decision-making in respect of the utilisation of Māori land, a reform objective. On the contrary, the Bill:

- Creates commercial and legal uncertainty through creating new and untested entities (governance bodies and rangatopu);
- Creates commercial and legal risk by way of unclear clauses which may have unintended and adverse consequences; and
- Creates unnecessary cost associated with transition and compliance. The cost of transition is expensive, regardless of whether existing incorporations choose to transition to a rangatopu or not.

ii. These costs associated with the Bill come with no clear benefits to existing incorporations and trusts that are functioning well under the 1993 Act.

The repeal of the 1993 Act is not supported by any empirical evidence

iii. The repeal of the 1993 Act has not been the subject of adequate consultation and there is insufficient evidence of broad based Māori support for it.[3] Quoting the findings of the Waitangi Tribunal at p355 of its Wai 2478 report:

> …Māori landowners, and Māori whānau, hapū, and iwi generally, will be prejudiced if the 1993 Act is repealed against their wishes, and without ensuring adequate and appropriate arrangements for all the matters governed by the Act.

[3] Refer to the findings of the Waitangi Tribunal in its Wai 2478 report, which included that the review panel's consultation process was not fully representative (see p352) and that consultation hui were deficient (see p354).

> Empirical research on the Act and the barriers to utilisation will be an essential component in obtaining properly informed support.

iv. And at p90 of the same report:

> … There has been no investigation of what actually works and does not work in the present Act. Further, if the reforms truly reflected Māori aspirations for land retention and development, they would have included what Māori had identified as the real constraints, which lie outside the 1993 Act: rating, resource management law, public works takings, land-locked lands, paper roads, and access to development finance.

The reform process has been rushed unnecessarily, compromising the Bill

v. The rushed processes to date have failed to allow for meaningful reflection and input by Māori land owners. This has in turn led to a confusingly worded Bill, which compromises the objectives of the reform and the need for clear and certain legal rules for Māori land owners to be truly empowered.

vi. There is no reason to rush law change in this important area. It is critical to take time for proper consultation on and design of the infrastructure necessary to the success of law reform (the Māori Land Service and the Enablers).

vii. Related to the problem of unnecessary haste is that, to our knowledge, the Crown has not carried out any cost benefit analysis of the reform proposals. According to the Departmental Disclosure Statement of 8 April 2016 by Te Puni Kōkiri ("**TPK**"):[4]

- A more detailed business case is required for implementing some proposals and is contingent on future Cabinet decisions about funding; and
- TPK's regulatory impact statement did not analyse the cost implications or net benefits of the law reforms that are proposed.

The reform package is incomplete, and flawed accordingly

[4] See p18, under the heading "Regulatory impact analysis".

viii. As noted, no clear commitments or timeframes have been given for addressing the Enablers. As these are root causes of the problems that the Bill seeks to address, any reforms of the 1993 Act need to be developed in the knowledge of and alongside clear plans to address the Enablers.

ix. The Bill to succeed must also be supported by an effective Māori Land Service, which has the support of Māori land owners.

x. Despite its centrality to the Bill, the Māori Land Service appears to exist only at a conceptual level, and is planned to be phased in over a 3 to 5 year period.[5] This begs the following important questions, which the principles of the Treaty of Waitangi (identified by the Tribunal), and regulatory good practice, suggest should be answered before, not after, the 1993 Act is significantly changed:

- **Where will the Māori Land Service be located, and why there?** The location is important, because many of the relevant relationships with land will be at a local level, where community knowledge of the whakapapa and the history, and owner engagement with the communally owned land, is at its strongest. Many Māori land owners may not be able to get the face-to-face assistance they presently enjoy access to through the Māori Land Court. Websites, emails or phone calls are less appropriate for, or just not available to, some Māori.
- **Who will staff the Māori Land Service, and what internal systems and structures will there be to support them to do that?** The success of any Māori Land Service will depend on staff having appropriate knowledge and expertise. But it will also depend on good organisational structures, systems and cultures being in place from the beginning. These are not issues that can or should be 'parked' until after the law has been changed, nor are the problems that will come from not addressing and resolving such issues merely 'theoretical'. TPK – which is proposed to be responsible for many aspects of the Māori Land Service – has previously been criticised (in 2007) for inadequately servicing programmes, including through a

[5] This was the evidence for the Crown to the Tribunal in the Wai 2478 inquiry. Refer to the affidavit of Lillian Anderson of 4 November 2015 to the Tribunal, particularly at paras 8, 39 and 41-42.

failure to undertake proper conflict of interests checks,[6] errors in the administration of contracts and associated payments,[7] and inadequate management of contracts for contractors who TPK has appointed to assist TPK in the delivery of services.[8] TPK has also previously been criticised (in 2003) for a lack of ownership of systems for which it was responsible,[9] and for not well resourcing those systems in qualitative terms,[10] leading to problems in service delivery where there was rapid growth, not all of which was under TPK's direct or sole control.[11] More recently, TPK has been criticised (in 2014) for failing to appoint persons lawfully notified to it for appointment.[12] These past criticisms highlight the need to ensure fitness for purpose before implementation.

- **Who will the Māori Land Service be accountable to, and what mechanisms will ensure that it is accountable and transparent in its service delivery?** If unskilled, under-staffed or otherwise under-resourced Māori Land Service officials make errors that cost Māori land owners in time, money or in other ways, then remedies should be available for that – to correct for the losses, to incentivise officials and the responsible "chief executive(s)" to act fairly, reasonably and lawfully, and to incentivise the government of the day to ensure that the Māori Land Service is properly resourced to undertake the functions it needs to perform.

xi. Without answers to these questions, Wakatū cannot support the proposed reduction in the role of the Māori Land Court in determining succession applications. There is too much risk involved with transferring responsibilities for succession to the Māori Land Service. Based on our experience as land and estate administrators, succession applications are as a rule complex and time consuming. It is rare to encounter a straightforward application. Successions are not merely an administrative

6 Office of Auditor-General "Performance Audit Report – Te Puni Kōkiri: Administration of grant programmes" (11 May 2007), at p20, [2.16], p33, [3.26] and pp39-40, [3.56].
7 Office of Auditor-General "Performance Audit Report – Te Puni Kōkiri: Administration of grant programmes" (11 May 2007), at p25, [2.38].
8 Office of Auditor-General "Performance Audit Report – Te Puni Kōkiri: Administration of grant programmes" (11 May 2007), at p26, [2.41].
9 State Services Commission "Report of The Review of Te Puni Kōkiri" (15 October 2003), at p7, [38].
10 State Services Commission "Report of The Review of Te Puni Kōkiri" (15 October 2003), at p9, [53], p18, [102].
11 State Services Commission "Report of The Review of Te Puni Kōkiri" (15 October 2003), at p16, [86].
12 Waitangi Tribunal "Whaia Te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim" (Wai-2417, 5 December 2014), at pp500-2.

process that will be able easily to be taken up by an untested Māori Land Service, as the Bill is proposing.

Other key proposals in the Bill are conceptually/substantively flawed

xii. There are a number of other components of the proposed law reforms that the Tribunal criticised at pp357-358 of its Wai 2478 report as tending to nullify or weaken the intended protection mechanisms. Many of those features are still to be addressed, include the following:

- The jurisdiction of the Māori Land Court has been too heavily reduced, creating risks for owners. For example, under the Bill minorities of owners will be able to hold second-chance meetings if the first meeting of participating owners fails to reach a quorum. There will be no quorum requirements at all for the second meeting, but also no other form of substantive protection against a manifest injustice being done to the rights and interests of absent or dissentient owners. This is a breach of the Crown's Treaty duty of active protection, and of the property and Treaty rights of the absent or dissentient owners.
- Owners under some form of incapacity (minors or sick persons without kaiwhakamarumaru) or putative owners who have not succeeded will have no voting rights in the participating owners system. Since voting and quorum thresholds are the main protection for owners, and the Māori Land Court will no longer ensure that non-participating owners' interests are protected, these persons are left with no protection at all. This is a breach of the Crown's Treaty duty of active protection.
- The Bill proposes a purely administrative system for successions which would provide Māori with less protection than that afforded to land owners under general law. This is a breach of the Treaty principle of equity.
- The opting out that is proposed for the otherwise automatic creation of whānau trusts will likely form a practical barrier to those who wish to exercise this right. Hence, the Crown has not fully removed the element of compulsion in the formation of whānau trusts.

- For compulsory dispute resolution, it is difficult to understand why the Māori Land Court would not administer the alternative dispute resolution ("**ADR**") system. It has the legal experience and expertise to decide when cases will benefit from mediation or require hearing. The Bill inconsistently proposes two different mediation processes – one involves Māori Land Court control for aquaculture and fisheries matters, and the other excludes Māori Land Court control for land matters. We accept that Māori have expressed a general preference for mediation, and we expect the system to reflect that, but in a reasonable and consistent manner that provides for disputes to be directed into the appropriate path by the Māori Land Court, and which takes some account of the wishes of the disputants. Otherwise, the system will not be consistent with the Crown's Treaty duty of active protection or the tino rangatiratanga of Māori land owners. Māori land owners, like non-Māori land owners, should have the ability to choose which type of dispute resolution they wish to undertake and this should include the right to go to Court in the first instance if this is the preferred and most practical option.

xiii. Finally, the Bill is problematic in failing to include any legal compulsion or other practical incentive for stakeholders in Māori land (including participating owners) to find and upskill unengaged owners. Without such measures the objectives of the proposed law reforms will not be adequately realised.

D RECOMMENDATIONS TO FIX PROBLEMS WITH THE BILL

9. The problems identified in **Section C** can all be fixed. Wakatū's position is that:

i. The Bill should not progress further until a comprehensive review of the 1993 Act has been undertaken.[13] Drawing on empirical evidence and research is the preferable course of action to determine whether wholesale repeal of the 1993 Act is required, or whether more modest amendments to the 1993 Act are sufficient. The Law Commission is well placed to

[13] As Tribunal recognised in its Wai 2478 report, a repealing of the 1993 Act is no small matter (p85). Nor has there been, to date, a proper review of the 1993 Act to assess its strengths and weaknesses or opportunities to improve it.

contribute to this exercise, including by looking into whether the Māori Land Court remains 'fit for purpose' as it is.

ii. There should be a pilot testing of the feasibility of the Māori Land Service, initially through regional scoping and pilot projects. That will give time to address and answer the important practical questions noted above; questions that need to be answered for Māori land owners to know whether the Māori Land Service is likely to be able to offer improvements to the current system and, in that knowledge, to give or withhold informed consent to any proposed law reform that has the Māori Land Service at its heart.[14]

iii. Pending answers being provided to those questions the Māori Land Court should be resourced to provide ADR services to Māori. In doing that the Māori Land Court could follow the Environment Court reforms that have led to more constitutionally legitimate (because it is the Judiciary rather than an Executive body, providing the 'judicial' services[15]) and more cost effective (because it is an existing and tested institution, rather than a new and untested one) ADR.

iv. In parallel with the steps above being undertaken, work should be progressed on the Enablers, and complementary changes proposed to the inter-related laws, policies and practices that presently inhibit the utilisation of Māori land.

D CONCLUDING COMMENTS

10. The 1993 Act had its genesis in the early 1970s under the Third Labour Government. It took years of work and consultation before it was finally ready to be enacted. For the most part, the 1993 Act has stood the test of time. It requires amendment to strengthen, update and clarify some aspects of the Act, but Wakatū has not seen any compelling justification to abandon the 1993 Act altogether and replace it with the Bill.

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14 In accordance with Article 19 of the UN Declaration on the Rights of Indigenous Peoples, and with associated Treaty principles recognised by the Tribunal in its Wai 2478 report.

15 The Controller and Auditor-General has encouraged proposals to formalise the use of mediation by the Māori Land Court as a measure to improve access to justice. See Controller and Auditor-General, "Māori Land Administration: Client Service Performance of the Māori Land Court Unit and the Māori Trustee" (18 March 2004), p52.

APPENDIX: TE TURE WHENUA MĀORI BILL 2016 – PROBLEMATIC PROVISIONS AND GAPS IN THE BILL

A. PROBLEMATIC PROVISIONS IN THE BILL

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
3(1)/(3)	Tino rangatiratanga rights are only acknowledged in respect of "land, resources and taonga"	All rights in Article 2 of the Treaty should be recognised using the words of Article 2 – for the integrity of the Treaty	The Select Committee should amend these sub-clauses to mirror the wording of the Māori and English text of Article 2 of the Treaty
3(2)(c)/(4)(c)	The Treaty is incorporated into the Bill through a statutory principle that it is "central to the application of laws affecting Māori land"	This is not a strong enough incorporation of the Treaty	The Select Committee should amend these sub-clauses to provide that the Treaty "… is the starting point for and central to the interpretation and application of laws affecting Māori land"
5	Introduces (and defines) the concept of "kaitiaki", in relation to a governance body or proposed governance body	The term "kaitiaki" has a commonly understood meaning outside of the Bill. It sits uncomfortably with that meaning to use this term for (in effect) directors and trustees of governance bodies, as it wrongly implies that persons who are not elected into that role are not kaitiaki. Potential investors, including banks, particularly in different jurisdictions are also likely to be confused by this term.	The Select Committee should recommend that a different term be used than "kaitiaki" in relation to a governance body or proposed governance body
9	Any question as to tikanga in a legal proceeding must be determined on the basis of evidence	If such evidence requires expert witnesses, there may be costs involved in getting appropriately qualified and independent witnesses to give that evidence. Those costs might serve as a barrier to access to justice for some	The Select Committee should recognise in its report that there may be access to justice issues associated with this provision, but that they could be met, at least in part, out of the Māori Land Court Special Aid Fund that is provided for in clause 446

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
51(8)	Allows for 'second chance' meetings in which binding decisions can be made by the required majority of the participating owners who attend the meeting, irrespective of how many owners attend and participate in making the decision	Practically this allows potentially very small numbers of engaged owners to make significant and long-lasting decisions in relation to parcels of Māori freehold land. The possibility for outcomes of that nature was criticised at pp295-297 of the Waitangi Tribunal's Wai 2478 report, and the Tribunal recommended at p361 that the Māori Land Court's ("**MLC**") discretionary powers should be restored in respect of any second-chance provision, to protect all owners' interests. For example, the decision to enter into a long term lease may be made by very few participating owners, using the second chance provisions. In practice this can amount to an alienation for two generations of owners (up to 52 years) which cannot be undone under the current Bill if owners later "re-engage" and object to the long-term lease. The MLC is proposed to have a jurisdiction under clause 300(1)(e) to review a 'second chance' meeting "decision", but its powers are very limited. In particular, the MLC is not empowered to substitute its decision for the decision of the participating owners (see clause 300(3)(d)). This limits the protection available to owners who do not participate in the 'second chance' meeting and in practice means there is no real and substantial protection to owners of land provided the procedural rules for meetings are followed.	The Select Committee should amend clause 300(3)(d) to give the MLC a limited jurisdiction to review participating owners' decisions on substantive grounds and to substitute the MLC's decision for the decision of the participating owners (at a 'second chance' meeting) where the MLC determines that there would otherwise be "manifest injustice". The amended clause 300(3)(d) should read: "except where manifest injustice would result, must not make the decision itself" Alternatively, a different test could be applied provided the principle of preserving the ability of the MLC to intervene in cases where there is serious injustice or prejudice for owners is recognised. For example, the MLC could intervene on application from a certain number of owners (e.g. 10%) to review a decision on specified grounds.
52(2)	Allows minors to participate in meetings of owners about decisions relating to their land but not to vote on any decision (See to the same effect Schedule 2, clause 13(2)(a))	As the Tribunal said at p321 of its Wai 2478 report, the ability to 'participate' is somewhat illusory if one cannot vote. It may also be inconsistent with tikanga to exclude persons who are under 18 years old and who lack (an equivalent to) kaiwhakamarumaru support, from voting in decisions that have the potential to affect their land for decades (eg, with decisions to enter long term leases)	The Select Committee should amend clause 52(2)(d) to give minors a right to vote where that is consistent with tikanga. The amended clause 52(2)(d) should read: "can only vote on the decision if it accords with tikanga for them to do so"

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
83(1)-(2)	Allows the expenses of kaiwhakamarumaru to be charged against and payable from the income generated by the land being managed	It would be unfair to the owner(s) whose interests are being managed for their land to be charged with expenses equal to or greater than the income from the land. Accordingly there should be a proportionality limit to the quantum of expenses that can be charged against the land.	The Select Committee should amend clause 83(2) by inserting the following proviso at the end of it: "… provided that the annual debt may not exceed 75% of the annual income from the land"
92(1)	Provides for "periodic" MLC reviews of orders appointing kaiwhakamarumaru	To ensure transparency and accountability of the actions of kaiwhakamarumaru minimum times should be set for MLC reviews of kaiwhakamarumaru. This will help ensure that any problems do not go unaddressed for too long.	The Select Committee should insert into clause 92 a new sub-clause (1A) as follows: "A periodic review must be undertaken at least once every 2 years"
140(2)/(4)	Individual freehold interests in Māori freehold land may be sold under a power expressed **or implied** in a mortgage	The special importance of Māori freehold land is such that a power of sale in a mortgage should be required to be express, not merely implied. In practice this will only create difficulties for unscrupulous lenders, whose interests should not be of any concern to the Select Committee.	The Select Committee should amend sub-clauses (2) and (4) of clause 140 by deleting "or implied" from it. For consistency, it should also delete "or implied" from clauses 97(3)(c) and 99(1)(c)

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
155	Governance bodies will hold their asset bases, which will comprise or include Māori freehold land, on trust for the owners of the Māori freehold land that is within the asset base, in proportion to the owners' relative interests in that land	Read literally this suggests that it will be ownership shares in the parcel(s) of Māori freehold land that will determine ownership rights in the asset base as a whole. (But note the ability to choose not to include certain pre-existing assets in the asset base (see clauses 155(1)(a)(ii) and 169).) This is unworkable and does not reflect the practice for Wakatū. The difficulty with this clause in relation to Wakatū is that the proportionate interests in the asset base are determined with reference to the 1977 Order in Council that established Wakatū as an Incorporation and the proportion that Order vested in owners at the date of the establishment of Wakatū. That proportion was based on an individual's ownership shares in Māori freehold land (the 10ths and Occupation Reserves) that existed at that 1977 date – some of this land has since been removed from the asset base and replaced with new land and assets which is not Māori freehold land. It does not appear to be the intention of the Bill to upset long settled and accepted shareholdings in Māori Incorporations like Wakatū. Reflecting that, the Explanatory Note at p8 records that "[e]xisting ownership interests in Māori freehold land are preserved". This should be clarified by the Select Committee in its report, and in the text of clause 155 of the Bill.	The Select Committee should insert into clause 155 a new sub-clause (1A) as follows: "For the avoidance of doubt subsection (1) is not intended to effect any adjustment in the existing shareholdings of any existing Māori Incorporation"
156(3)	States for clarity that governance agreements and governance bodies are entitled to provide for grants/scholarships	Query whether there are other distributions that wouldn't come within the natural meaning of "grant" or "scholarship" but which it would be helpful to also explicitly note as legitimate in this sub-clause?	

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
157	States generally that a governance body may be appointed by the owners of any parcel of Māori freehold land	The interface between this provision and the provisions in Schedule 1 relating to Māori incorporations is not clear. The intention appears to be that existing Māori incorporations that hold parcels of Māori freehold land in their asset base will be transitioned into complying with the new Act in accordance with the timeframes and processes included in clauses 2 to 11 of Schedule 1. However, this is not clear, and should be clarified by the Select Committee in its report, and in the text of clause 157 of the Bill	The Select Committee should insert into clause 157 a new sub-clause (2) as follows: "For the avoidance of doubt subsection (1) is subject to the provisions in Schedule 1 relating to existing Māori incorporations"
168(2)	Stipulates that a provision of a governance agreement has no effect if the provision is inconsistent with "any other enactment"	This provision raises important wider questions: Is a governance body that has a broad asset base also regulated by (so far as applicable) statutory requirements under the Companies Act 1993, the Limited Partnership Act 2008 and/or the Incorporated Societies Act 1908? Assuming that it is (as the Explanatory Note at p12 seems to suggest in its statement that Māori freehold land may be governed by "an entity registered under another Act (such as a company, a limited partnership, or an incorporated society)"), how are any inconsistencies between obligations contained in those (and other) statutes and obligations of the governance body under the Bill, to be reconciled? Clause 168(2) is not directed at these wider questions, although its wording does suggest that other statutory requirements will trump governance agreement provisions in the event of any inconsistency. These issues are not clarified elsewhere in the Bill. To the contrary, the Bill can be noted for incorporating into it, by cross-reference, some provisions of the Companies Act (see clauses 39(2)(a), 184(2)(b) and (f), and 224(2)), and for excluding the application of other Companies Act provisions (see clauses 224(3), 295(1) and 296(1)). It is, however, unclear whether and if so how Companies Act requirements that have not been explicitly addressed in this way in the Bill, will operate on governance bodies.	The Select Committee should clarify in its report how the Bill is intended to operate alongside enactments like the Companies Act, the Limited Partnership Act and the Incorporated Societies Act, where a governance body is also registered under (and must therefore observe the requirements of) one of those other Acts

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
174(2)-(3)	The appointment of a governance body can be revoked, and the process commenced for cancelling a governance agreement, if 75% of the **participating** owners at a meeting vote to do that	This regime creates commercial and legal uncertainty for governance bodies and may undermine their ability to operate effectively. Practically it may pose a significant risk for governance bodies where there are fractious minorities who may be able to swing votes by attendance at a meeting. Those risks are exacerbated by the potential operation of the 'second chance' meeting provisions (see the comments on clause 51(8) above), and the proxy/electronic voting provisions in Schedule 2, clauses 13(2)(d) and 13(3)(b). The MLC has a limited supervisory jurisdiction in this area, pursuant to clause 188. However, its role is limited to process-based remedies, with the MLC being excluded from having any power in even the most exceptional circumstances to make the decision itself. That will not in all cases be fair. For instance, if the MLC determines that as a matter of law there is 'only one right answer', and that it was not the answer reflected in the set aside decision, it would not be fair, just or reasonable to remit the decision to be re-made, with the associated delay and costs.	The Select Committee should amend clause 188(6) by inserting a new sub-clause (6)(c) as follows: "except where manifest injustice would result, must not make the decision itself"
185(5)	Provides that the acts of a governance body are valid even if a person's appointment as a kaitiaki was defective	A practical effect of this provision is that owners will be stuck with contracts (for instance) entered into through or under the influence of an improperly appointed kaitiaki. In some cases that may not be fair to the owners. Accordingly, the MLC should be given a power to determine that acts of a governance body were invalid. Such an approach accords with general principles of the law relating to the invalidity of legal decisions. Refer for instance to *Love v Porirua City Council* [1984] 2 NZLR 308 at p311, where the Court of Appeal relevantly decided that an invalid decision "has at least a de facto operation unless and until it is declared to be void or a nullity by a competent body or Court. In that sense and during that period it continues to have some effect or existence in law".	The Select Committee should amend sub-clause (5) as follows: "Subject to any order by the court to the contrary, the acts of a person as a kaitiaki, and the acts of a governance body of which the person is a kaitiaki, are valid even if – ..."

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
188(3)	Any application asking the MLC to review certain decisions relating to governance bodies must be made within 20 working days after the date on which the decision in question was made	Query whether practically this will provide enough time to analyse the situation and file an application in the MLC?	Consideration should be given to extending this time limit in the interests of justice
188(4)-(6)	Sets out the remedies available to the MLC when it is reviewing certain owner decisions relating to governance bodies	Limiting the MLC to process-based remedies, and excluding any ability in exceptional circumstances for the MLC to make the decision, will not in all cases be fair. For instance, if the MLC determines that as a matter of law there is 'only one right answer' and that it was not the answer reflected in the set aside decision, it would not be fair, just or reasonable to remit the decision to the owners to re-make it, with the associated delay and costs.	The Select Committee should amend clause 188(6) by inserting a new sub-clause (6)(c) as follows: "except where manifest injustice would result, must not make the decision itself"
191(2)	Sets out the mandatory responsibilities of kaiwhakahaere	The stated responsibilities do not include seeking to locate and upskill the owners for whom the kaiwhakahaere is appointed so that the owners can have control of their land returned to them. There should be an incentive to locate and upskill owners. That is consistent with the stated aims of the Bill – tino rangatiratanga and utilisation of land by and for the owners. It also accords with the overriding policy of "more clearly support[ing] land utilisation as determined by the owners themselves" (quoting from the Explanatory Note, p3).	The Select Committee should amend sub-clause (2) by adding a new sub-clause (d) as follows: "(d) where appropriate and using all practicable means, seek to locate and upskill the owners and to encourage and assist the owners to develop and exercise their competence to manage their own affairs"
191(2)(c)	Sets out the interactions that kaiwhakahaere must have with the owners who kaiwhakahaere act for	Query whether it is a sufficient protection for owners to require that kaiwhakahaere comply with owners' directions only where such directions are given through MLC-ordered owners meetings?	
193(2)(c)	One criteria to appoint kaiwhakahaere for Māori freehold land that is not managed under a governance agreement is that the MLC must be satisfied that the appointment is "necessary or desirable" in the interests of the owners	The test should be a conjunctive one of "necessary **and** desirable". Otherwise kaiwhakahaere could be appointed where that was considered desirable (which has a wide dictionary meaning of "wished for as being an attractive, useful, or necessary course of action") even though it was not objectively necessary.	The Select Committee should amend sub-clause (2)(c) by replacing "… necessary or desirable ..." with "… necessary and desirable ..."

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
195(c)	Kaiwhakahaere may be directed through their order of appointment to report (periodically) to the MLC or to the owners	To ensure transparency and accountability of the actions of kaiwhakahaere minimum times should be set for MLC reviews of kaiwhakahaere. This will help ensure that any problems do not go unaddressed for too long.	The Select Committee should indicate in its report that while the matter will be in the discretion of the MLC, it would be desirable for kaiwhakahaere to report regularly on their activities to the MLC and to the owners, to ensure transparency and accountability of kaiwhakahaere actions This should be mandatory in the legislation rather than dealt with as a matter of policy
195(e)	Information relating to the appointment of kaiwhakahaere and that is "commercially sensitive" may be withheld (See to the same effect clause 272(3)(a))	The MLC should not readily if at all suppress charge out rates and other significant terms of the remuneration of kaiwhakahaere. Refer on this point to the Regulatory Impact Statement by TPK dated 25 June 2014, which indicates in para [45] that the policy intent for the Bill relevantly includes to "create competition (in both cost and quality of service)" for external managers "which is expected to provide further benefits to unengaged owners". A pre-requisite to competition of this nature, is access to (comparative and benchmarking) information on kaiwhakahaere cost and quality of service. There are significant risks that this clause will be relied on to prevent transparency and undermine choice for owners. Accordingly, this power should be used sparingly.	The Select Committee should indicate in its report that while the matter will be in the discretion of the MLC, it would not be desirable to suppress information on the cost and quality of service of kaiwhakahaere, which would impede competition in those areas to the detriment of Māori land owners.
200	Kaiwhakahaere at the termination of their appointment must deliver to the MLC anything held by them as kaiwhakahaere	This provision should be supported by an associated obligation to maintain written records of all acts and decisions. That will ensure transparency and accountability to the owners the kaiwhakahaere acts for. It will also ensure that appropriate written records will be kept and therefore can be provided under clause 200.	The Select Committee should amend clause 191 by adding the following new sub-clause (2)(d): "(d) maintain a written record of the decisions and actions that have been taken by the kaiwhakahaere on the owners' behalf, which shall include the reasons for any decision that results in the alienation of an interest in Māori freehold land"

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
203(a)	Kaitiaki on governance bodies must "act honestly and in good faith"	The closely analogous provision in the Companies Act 1993 (section 131(1)) requires a director to act in good faith and – importantly – "in what the director believes to be the best interests of the company". It would be helpful to similarly provide for kaitiaki, to underscore, first, that there needs to be a hybrid subjective/objective nature of the duty and, second, that the duty is tied to the best interests of all of the owners of the land in question.	The Select Committee should amend sub-clause (a) by adding after "… in good faith": "and in what the kaitiaki believes to be the best interests of the owners"
206	Sets out the obligations that arise if a governance body chooses to acquire further land as part of its asset base	Clause 206 requires a governance body to take certain prescribed steps where (among other things) it acquires "land" that it intends to hold as Māori freehold land. The definition of "land" in clause 5 is very broad (it "includes… (b) buildings and other fixtures attached to the land: (c) all things growing on land: (d) land covered with water"). TPK (John Grant) has indicated in correspondence to Wakatū that it is not the intention that the obligations in clause 206 will apply where a governance body acquires new land that is not, and is not intended to be, Māori freehold land. Nor is it the intention that clause 206 will apply whenever improvements are made to the land or buildings are erected or crops are planted on the land. These points would be helpful to clarify in the Bill (or at least in the report of the Select Committee). In particular, it should be clarified that land purchased by a governance body after the commencement of the Act should hold the status it has on acquisition. That is, if the land is classed as non-Māori freehold land (eg, General Land) on acquisition, it continues to have that status. The provisions in clause 206(3) (updating and reporting requirements relating to the governance agreement) are also unclear – presumably the governance agreement only requires amendment when Māori freehold land is bought and sold or otherwise exchanged. This too needs to be clarified by the Select Committee in its report.	The Select Committee should amend sub-clause (4) as follows: "(4) To avoid doubt, this section does not apply: (a) to an acquisition of land— (i) if the acquisition is not intended to be held as Māori freehold land; or (ii) if the acquisition is by way of exchange (that situation is dealt with by section 207); or (iii) if, before the acquisition, the land is Māori freehold land, the governance body is a rangatōpū, and the owners authorise the rangatōpū to manage the land on their behalf (that situation is dealt with by section 159 and clauses 10 to 11 of Schedule 3); or (b) on the making of improvements (such as the erection of buildings or the planting of crops) to parcels of Māori freehold land that are covered by an existing governance agreement."

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
214	Provides for access to information held by governance bodies and requests for information by owners	This clause may be problematic and onerous for smaller or poorly resourced governance bodies. It is likely to impose compliance costs for some entities and consistent with the advice of the Crown, this cost should be met by the Crown.	The Select Committee should recognise in its report the compliance costs associated with clause 214, particularly for smaller entities that will be required to design and build information management systems. The Select Committee report should also recognise the Crown's commitment to zero compliance costs for owners and the undertaking by the Crown to provide for these costs
216(4)(b)	Where the MLC investigates a governance body, identifies a matter in dispute, and determines that an attempt should be made to resolve that matter through dispute resolution, then any dispute resolution not provided for in the governance agreement should be determined and controlled by the chief executive, rather than the MLC	In this situation it is likely to be more efficient and effective for the MLC to maintain control over all aspects of the dispute resolution process, in recognition of the familiarity the MLC will have with the file from the work it has done to get to the point where it has determined that a dispute resolution mechanism should be tried. If the MLC, rather than the chief executive, is to retain control of the dispute resolution process, then that process should be as determined by the MLC. In determining what that process will involve, the MLC might draw on the dispute resolution processes that are provided for in Schedules 6 and 7 of the Bill in relation to the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004.	The Select Committee should replace sub-clause (4)(b) with the following text: "(b) order the parties to engage in a dispute resolution process on terms the court prescribes unless it believes, for specified reasons, that a dispute resolution process is inappropriate"
233(2)(b)	A Māori Incorporation that maintains a share register must notify the chief executive of a change in its share register within 5 working days after the change is entered (See to the same effect clause 267(4))	In contrast the chief executive under clause 234 is given 20 working days to notify a Māori incorporation of matters affecting its share register. There should be consistency.	The Select Committee should amend sub-clause (2)(b) by replacing "5 working days" with "20 working days"

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
247(3)-(4)	In situations of intestacy where there is more than 1 eligible beneficiary a whanau trust must be established unless 1 or more of the eligible beneficiaries seeks and obtains from the MLC an order that provides otherwise	This imposes legal costs on eligible beneficiaries who do not want their interest in Māori freehold land to be held through a whanau trust. It would be fair to recognise that reality, and the policy choice this provision reflects, by giving a discretion to the MLC to order that the costs associated with an application to the MLC under clause 247(4) should be paid out of the estate or in cases where there are no funds available from the estate, the court fees (if applicable) should be waived.	The Select Committee should amend clause 247 by adding a new sub-clause (5) as follows: "(5) The court has a discretion to order that: (a) the costs associated with an application to the court under subsection (3)(a) may be paid for from the estate; and (b) any court fees may be waived as appropriate"
250(3)(c)	In situations of intestacy where an application is made to succeed to an interest in land, the chief executive has a discretion to publish through the Internet a notice of the application and to invite submissions within 20 working days	20 working days is not sufficient time. A minimum of 40 working days is more effective and fair. Furthermore, the Internet should not be used as the only means to publish a notice, particularly as some Māori owners in rural areas do not have access to the internet. Notices should be published in print media and online. For the same reasons, the discretion to publish through media other than the Internet should be removed and replaced with a mandatory requirement.	The Select Committee should amend clause 250(3)(c) to invite submissions within 40 working days; and also to remove the discretion and require publication via online and print means
276(2)	Any person to whom sensitive personal information from the Māori land register is disclosed, must not disclose that information or any information obtained from it to anyone else except for the purpose for which it was required	There should be a sanction for breaching this prohibition. See by analogy section 64 of the Children, Young Persons, and Their Families Act 1989, which provides that every person commits an offence and is liable on conviction to a fine not exceeding $2,000 who contravenes a statutory prohibition on the use or disclosure of a document other than for the purposes for which the document was provided to them.	The Select Committee should insert into clause 276 a new sub-clause (2A) as follows: "Every person commits an offence and is liable on conviction to a fine not exceeding $2,000 who discloses information in contravention of subsection (2)"
300(3)(d)	Sets out the remedies available to the MLC where it is exercising its jurisdiction to determine whether a decision of the owners of Māori freehold land is lawful. Those remedies are to uphold the challenged decision, to set it aside and to direct how any reconsideration should be carried out, but **not** for the MLC to make the decision	Refer to the entries above in relation to clause 51(8) and clauses 188(4)-(6)	The Select Committee should amend clause 300(3)(d) to give the MLC a limited jurisdiction to substitute its decision for the decision of the participating owners where the MLC determines that there would otherwise be "manifest injustice". The amended clause 300(3)(d) could read: "except where manifest injustice would result, must not make the decision itself"

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
325	Any periods of time for responding to notices received on behalf of the owner(s) of Māori customary land or Māori freehold land will automatically include a 15 working days extension of time to respond	This has the potential to play an important role in giving Māori land owners time to receive and consider (for instance) resource management documents that give them limited time to respond to planning proposals, including notified resource consent applications. Query however whether the mandatory 15 working days extension of time in sub-clause (3) will be sufficient in the case of remote and highly fragmented parcels of land?	
330(2)	Parties are not prevented by the Bill from using dispute resolution services that are not provided under Parts 1 to 9	This appears to allow parties to engage in their own dispute resolution processes, separate from those provided by the chief executive, where the parties elect for that. Such a provision is consistent with the principle of autonomy, and is desirable as such. However, the wording of clause 330(2) is not entirely clear that this is the effect of the provision, so this should be clarified.	The Select Committee should clarify in its report that the intention of clause 330(2) is to allow parties to engage in their own dispute resolution processes, separate from those provided by the chief executive, where the parties elect to do that
338(1)	No challenges can be made to dispute resolution services on the grounds that the nature, content or manner of provision of the services was inappropriate	While there might well be sound reasons to limit the ability of parties to reopen mediated or arbitrated settlements, mechanisms are needed to ensure the quality and accountability of dispute resolution service providers, including the individuals who act as (paid) kaitakawaenga. By analogy, AMINZ (the Arbitrators and Mediators Institute of NZ) has a code of ethics and disciplinary procedures for dealing with complaints about its members. Similar mechanisms should be established for kaitakawaenga, for quality control and accountability purposes.	The Select Committee should recommend in its report that the chief executive should establish a code of ethics and disciplinary procedures for dealing with complaints about kaitakawaenga, to ensure quality control and accountability

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
342	Parties to a MLC proceedings must engage in dispute resolution before the MLC can determine the proceeding, if there is a dispute between any party over an issue not involving a point of law	Read literally sub-clause (1) would operate so that, in a MLC proceeding raising 10 issues 9 of which were points of law, the 1 point that was not one of law would need to go to dispute resolution. Its resolution through processes overseen by the chief executive could then hold up the MLC's determination of the majority of the points (ie, the 9 out of 10) pending the outcome of dispute resolution. Such a situation would be undesirable, in terms of the delay and costs to the parties of being required to use external dispute resolution services instead of the MLC, which in the example above would be seized of the majority of the issues requiring resolution as points of law. In complex cases it is likely that there will be a mix of issues which are points of law and fact which will lead to undue delay and unfairness. This may be an unintended consequence of the Bill or a result of unclear drafting. Query too how clause 342 works alongside clause 425, which permits the MLC to convene judicial settlement conferences. In the hypothetical situation above, the cheapest and most cost effective dispute resolution mechanism may be a judicial settlement conference addressing all 10 points, rather than the bifurcated process that would be required by clause 342(1). Finally, there is the problem with clause 342 that in some cases dispute resolution will be inappropriate, and forcing parties to use it will cost them unnecessary time and money. Dispute resolution and in particular mediation will not be appropriate in every case. Similarly, there is an element of choice and willingness associated with mediation which is undermined when dispute resolution is compulsory and parties are unwilling to mediate.	The Select Committee should amend sub-clause (3) as follows: "(3) If this section applies: (a) the parties must refer the issue in dispute to the chief executive for dispute resolution under this Part; unless (b) the court believes, for specified reasons, that a dispute resolution process is inappropriate"

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
		For all of these reasons, it is only sensible that the MLC has a residual discretion to decide "that a dispute resolution process is inappropriate" (a power the MLC is given in respect of its jurisdiction under the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004; see Schedule 6, clause 2(3) and Schedule 7, clause 2(2) respectively).	
Schedule 1, clause 4	Provides for investment land held by a Māori Incorporation before the commencement of the Act to continue to be held as such after commencement	This provision is not clearly drafted. The intent appears to be that a Māori Incorporation which has bought general (ie, not "Māori land" as defined in clause 5) land for commercial reasons, and which intends to but has not yet obtained an order from the MLC (under section 256(4) of the 1993 Act) authorising the retention of the land as an investment, may obtain an order from the MLC authorising the Incorporation to retain the land as an investment. In these respects Schedule 1 clause 4 substantially re-enacts section 256 of the 1993 Act. This intention should be clearly explained by the Select Committee in its report, so that no unnecessary confusion arises in the interpretation or application of this provision.	The Select Committee should amend Schedule 1, clause 4 as follows: "**4 Land that is not Māori Freehold Land held by Māori Incorporation before commencement date** (1) This clause applies if a Māori incorporation holds any land on the commencement date: (a) That it acquired on or after 1 July 1993; or (b) That before the commencement date, it had determined to retain as investment rather than as part of the corpus of the incorporation (see section 256 of Te Ture Whenua Māori Act 1993); or (c) That before the commencement date it had purchased and that was not Māori Freehold Land at the time of that purchase, nor intended to become Māori freehold land upon the purchase."

Clause in Bill	Summary of the clause	Problematic features of the proposal	Suggested response by Select Committee
Schedule 3, clause 6(3)	A decision of the owners of a parcel of Māori freehold land to approve a governance agreement that applies to the parcel of land, requires the agreement of the owners who together hold more than 50% of the participating owners' total share in that land	Contrast this voting threshold with Schedule 4, clause 11(3)(a)(ii) – which requires the agreement of the owners who together hold 75% or more of the participating owners' total share in the land to effect any amendment to the governance agreement. Query whether it is justifiable to make it harder to amend the governance agreement than it was to establish it? As the Tribunal said at p291 of its Wai 2478 report, the reason for this difference in approach is not readily apparent in the Bill. Similarly, this clause is problematic as the participating owners in the case of Wakatū hold a percentage of interests in the current asset base as opposed to "that land" as defined in Schedule 3, clause 6(3).	
Schedule 4, clause 13 (3)	Summarises the decision thresholds for stipulated owner agreements	Under "matter for decision by governance body" it states that governance bodies must achieve the agreement of owners who hold a 75% or more share in the land. This is not accurate as there are some circumstances when the governance body can circumvent this threshold provided certain criteria are met regarding the sale, exchange and replacement of sold Māori freehold land in accordance with an approved land plan. This needs to be clearly stated in the Bill and in particular in Schedule 4 so that owners are clear that governance bodies may sell land in certain circumstances even when the 75% threshold is not met.	The Select Committee should clarify in its report all relevant qualifications and limitations to the decision thresholds that are summarised in clause 13(3) of Schedule 4, to assist a fuller understanding of them

B. PROBLEMATIC GAPS IN THE BILL[16]

Matter not addressed in the Bill but which should be	Justification for addressing the matter in the Bill	Suggested text for a new provision addressing it
The significant changes the Bill proposes, and the conceptual nature of the critical delivery mechanisms (and in particular the Māori Land Service) warrant including in the Bill a formal review process to investigate and report on the implementation and operation of the Bill, a minimum of three years after its enactment.	TPK has recognised the need for such a review in papers it has prepared for Cabinet. This can be seen in particular in the Regulatory Impact Statement by TPK dated 25 June 2014, which includes: "[103] … Te Puni Kōkiri will engage with owners of Māori land by way of written or online survey two and four years following full commencement. This will be followed with broader engagement (including regional hui) five years following full commencement." "[104] The monitoring and evaluation will inform a review of the changes to be undertaken five years following implementation. This review will be undertaken by Te Puni Kōkiri (or on behalf of Te Puni Kōkiri). Full terms of reference will be developed at the appropriate time, but the review will in general aim to assess how effective the legislative changes have been in supporting Māori land owners to achieve their aspirations and increase the utilisation of Māori land. The review will also consider the relationships between the policy and operational agencies (that is, Te Puni Kōkiri, Ministry of Justice and Land Information New Zealand) and identify any areas for improved governance, effectiveness or efficiency." The formalisation of a statutory review process would ensure that a formal review took place. This would not be novel in the statute book. See by analogy section 157AA of the Telecommunications Act 2001, section 357 of the Search and Surveillance Act 2012 and section 282 of the Veterans' Support Act 2014.	The Select Committee should incorporate into the Bill a statutory review mechanism of this nature: "**Minister must review regulatory framework** (1) The Minister must, not later than 30 June 2020, commence a review of the operation of the Act. (2) The review must consider — (a) the operation and effectiveness of the participation thresholds for decision-making by owners; (b) the operation and effectiveness of kaiwhakahaere and kaiwhakamarumaru, including their success in helping to empower owners to take control of decisions; (c) the operation and effectiveness of the dispute resolution services operated by the chief executive; (d) the operation and effectiveness of the Māori Land Service; and (e) any further matters related to the operation of the Act that are identified in consultation. (3) In carrying out the review, the Minister must— (a) consult with interested parties, including Māori; and (b) take into account— (i) submissions received in consultation; and (ii) the purpose and principles of the Act; and (iii) any other matters the Minister considers relevant. (4) The Minister must use his or her best endeavours to ensure that the review is completed and publicly reported no later than 31 March 2021."

16 These points should be read alongside and in light of the main submission, which identifies fundamental problems Wakatū sees with the Bill as it is drafted (refer to **Section C** of the main submission), and which makes a number of consequential recommendations to fix those problems (refer to **Section D** of the main submission).

Matter not addressed in the Bill but which should be	Justification for addressing the matter in the Bill	Suggested text for a new provision addressing it
	As noted in the body of the main submission, Wakatū has serious concerns about the establishment of the Māori Land Service and the transfer of responsibility from the MLC to an administrative office, which will be influenced by political agendas and the government of the day. These concerns could have been allayed by providing more detail about the operation of the Māori Land Service in tandem with the introduction of the Bill.	
Crown created problems (of so called crowded titles, alienation, under-utilisation and so on) are not adequately acknowledged in the explanatory note to the Bill. There is a need to acknowledge the title barriers to using land for development; the strengths and not weaknesses of multiple ownership should be acknowledged (as per p61 of the Tribunal's Wai 2478 report) along with the need to identify, locate and upskill owners. Addressing the problem of unengaged owners is also not dealt with in the Bill. The above problems need to be acknowledged, and the proposed legislative solutions for them need to be supported by associated initiatives and funding, including initiatives and funding that are directed to locating, engaging and upskilling all owners of Māori land. This is fundamental to the success of the Bill as has been pointed out by multiple submitters throughout the consultation on the exposure draft of the Bill.	See the Regulatory Impact Statement by TPK dated 25 June 2014: "[33] Legislation empowering Māori land owners is a necessary but not a sufficient condition to achieve the step change in Māori land utilisation that the Government is seeking. Allied to this is the need for a more proactive approach to the channelling of resources to support increased utilisation. … There is also a need to separately address other long standing issues such as building capability, improving access to finance, reducing debt (including rates arrears) and providing robust information and data. …" "[89] … legislative change alone will not be sufficient to achieve the step change in Māori land utilisation the government Government is seeking. Other issues will also need to be addressed (such as access to finance, building capability and the provision of robust data)…" To similar effect the Tribunal recommended at p360 of its Wai 2478 report that access to finance be made a matter of urgent attention, and that work on the 'enablers' keep step with the wider reform package.	The Select Committee should acknowledge in its report that many of the contemporary problems with Māori land are Crown-created, and that this history underscores the importance of getting any reform of the law right and ensuring that it is fit for purpose at the outset. The Select Committee should also recommend in its report that the Bill to be effective will need to be accompanied by initiatives to locate and identify currently unengaged owners of Māori land and the reasons for their lack of engagement, and also by the development of training programmes and initiatives to assist Māori to make decisions for themselves about their land. Funding will be required for those purposes, as will further detailed work and consultation with Māori to design the process to achieve these outcomes. In some cases, it will not be appropriate or possible for the Crown to lead these initiatives and the initiatives may differ by region and rohe. This processes must be Māori-led in order to achieve support and successful outcomes.
The impact of the Bill on the existing legal regime relating to leases of Māori Reserved Lands (e.g. removal of Part 7 of the 1993 Act).	Neither the explanatory note, nor any particular provision in the Bill, clarifies how, if at all, the proposed law reforms will impact on Māori Reserved Lands, including land of that nature currently subject to perpetual leases that are governed by the Māori Reserved Land Amendment Act 1997. This needs to be clarified by the Select Committee in its report.	The Select Committee should clarify in its report how the Bill impacts on Māori Reserved Lands and related legislation as this is not clear.