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COMMENTARY: A case for reform of Te Ture Whenua Māori Act

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- RAW DATA: Te Ture Whenua Māori Act

The Government is expected to shortly announce reforms to Te Ture Whenua Māori Act.

Such reform is much needed to unlock the potential of significant amounts of under-utilised land and to create thousands of jobs.

About 1.466 million hectares, or 5.5 per cent of New Zealand's total land mass, is comprised of multiply-owned Māori land.

Much of this land is situated in the north, centre and east of the North Island. Research in 2011 by the then Ministry of Agriculture and Forestry estimated 40% of this land is under-performing and a further 40% is under-utilised.

The potential of this land is enormous.

Lifting productivity just to average industry benchmarks could result in an additional $8 billion in gross output and 3,600 new jobs for the primary sector alone.

Yet the ability to make productive use of this land is impacted by ownership and decision-making rules which are no longer fit for purpose.

Māori Land Court records indicate that Māori freehold land is held in 27,308 titles with over 2.7 million individual ownership interests. The average title is just 54 hectares and has around 100 owners. Less than half of all titles have any governance structure.

With historical and continuing urbanisation of the Māori population, interactions and connections with the land are very different from what was envisaged when the Maori land tenure system was established.

Today, many Māori with an interest in multiply-owned land are not actively engaged in the use and development of their land, and the Māori Land Court plays a significant role in decision-making on how to use, manage and develop this land.

To realise the potential of this land the law needs to be changed to enable a majority of engaged owners to make effective and binding governance and utilisation decisions without the involvement of the Māori Land Court or other supervisory body. This will significantly reduce compliance and transaction costs, encouraging greater decision-making and utilisation of Māori land.

The role of the Court should be confined to retention (i.e. sale) decisions, complex disputes and existing specialised areas. Given the complexities of title and ownership, where disputes do arise mediation should be preferred over intervention by the Court in the first instance.

Governance of some Māori land would be improved, and the potential of such land unlocked, by providing clear mechanisms allowing for external managers to be appointed to administer under-utilised land where the existing owners cannot be identified or where there is no active engagement by the owners.

Flexibility as to who can be a potential external manager should be increased to include Māori trusts and incorporations, post-Treaty settlement governance entities, and professional management companies.

Forestry management is already performed by specialised companies and Maori landowners should have the same opportunities to access similar specialists in agriculture, horticulture and other sectors.

The law should also be changed to allow Māori land owners themselves to establish governance entities through administrative processes rather than through the Maori Land Court – a basic right general land owners already enjoy.

There is significant scope to take advantage of well developed short- to medium-term leasing and sharefarming practises, which can be constructed to ensure the land is not alienated from its owners. The opportunities here are significant especially where the individual owners cannot be found or are not actively engaged in operating the land.

Finally, Māori land owners should have a legislative option to transition land into collective ownership without individual shares and without requiring formal succession.

Land transferred through Treaty of Waitangi settlements is collectively owned in this way. Collective ownership serves to mitigate fragmentation issues, empower effective decision-making, and reduce transaction and compliance costs.

Legislative change as outlined above is but one aspect of unlocking the potential of Māori freehold land. Other changes, such as improving access to finance, are also needed.

These changes do not get away from difficult trade-offs owners will face in the future between efficient value maximising use of land and collective decision-making by multiple individual owners. Collective decision-making of this sort is a recipe for preserving the status quo and resistance to risk taking.

In order to skew the balance away from historically inefficient use and in some cases neglect, and more towards maximising the potential use of the land, reforms need to reduce the paternalistic role of the Māori land Court and the Māori Trustee.

However, this will inevitably increase the scope for individuals and elites to abuse the fiduciary duties of stewardship they owe to absent landowners.

Care will be needed in drafting new arrangements in the future to manage and reduce this risk where possible.

But amending legislation which is no longer fit-for-purpose is an important and long overdue step.

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