

POUTŪ-TE-RANGI

*Tui tui tuia ki te ora. Hui hui huia ki te marama.
Gather together for our collective wellbeing.*



New Staff

The Māori Legal Team welcomes two new law clerks - Huia Harding and Cassandra-Jane Macleod.

Huia is of Ngāpuhi, Ngāti Wai descent. She is a current member of the Waikato Women's Rugby Team. Huia completed her studies at Te Piringa (School of Law) at the University of Waikato and will be working primarily on Waitangi Tribunal and Māori Land matters.

Cassandra-Jane is of Ngāi Tahu, Te Atiawa (Taranaki) and Ngāti Pōrou descent. She will be working primarily with Treaty Settlement negotiations matters and other Māori dispute work. Cassandra-Jane is a Member of AAMINZ and is with the firm part time while completing her studies at Te Piringa in 2016.

Te Ture Whenua Māori

Understanding the changes

Over the next few issues of Kāhui we will examine some of the key changes proposed by the new Bill and attempt to explain them in simple terms. We do not propose to look at the merits of the changes but rather help explain them in an attempt to make them user friendly.

Decision Making Processes

The Bill now provides for "participation thresholds" and the concept of "specified majority requirements" which set the minimum standards required for certain decision making by owners about their land. However any piece of Māori land governed by a governance agreement can set its own participation thresholds, however the decision making thresholds cannot be lower than those set out in the Bill.

As an example of participation thresholds (i.e. quorum at owners' meetings) the Bill provides that where land is owned by 10 or fewer owners, all must participate in the decision making. Where there are between 10-100 owners, 10 owners whose interests total 25% or more must participate. Where there are over 500 owners, 50 owners whose interests total 10% or more must participate.

Controversially the Bill allows for a "second chance", within 20 days, at making the decision if the quorum is not met at the meeting. If the correct notice provisions are followed, there is no participation threshold required. This means that potentially a piece of land owned by 980 people could have a major decision made about it by three people at a second chance meeting. For land governed by a governance agreement, the governance agreement can remove the second chance option.

The Bill also allows some decisions to be made by a percentage of "participating owners". Participating owners are the owners that attend owners' meetings and vote. This includes nominated representatives attending on behalf of an owner(s), or owners attending via telephone or internet based communication technology.

To illustrate the participating owners regime - a decision to lease land (not managed under a governance agreement) for a term of 52 years or less, must be agreed to by the owners that hold 75% or more of the participating owners interests in the land. It is important to be aware that the 75% required is only 75% of the participating owners' interests, not all owners.

The explanation above is based on the latest publicly available Bill, which may change prior to or after it is introduced into Parliament.

Takutai Moana Deadline

The Marine and Coastal Area (Takutai Moana) Act 2011 ("the Act") allows applicant groups - whānau, hapū, or iwi - to have their protected customary rights or customary marine title recognised by the Crown. This can happen via a Crown Engagement process or High Court application.

An applicant group must give notice to the responsible Minister, depending on which process the applicant group chooses to use, of its intention to seek an agreement recognising either a protected customary right or a customary marine title before **3 April 2017**.

Our next newsletter will provide further information about this process ahead of the fast approaching deadline. For advice, contact Aidan Warren at aidan.warren@mccawlewis.co.nz

Health & Safety

Following on from our earlier Kāhui updates, the Health and Safety at Work Act 2015 comes into force on 4 April 2016.

For advice on the new law and how it may affect you and your business, contact Renika Siciliano at renika.siciliano@mccawlewis.co.nz

Trans-Pacific Partnership Inquiry

In June 2015, Māori applied to the Waitangi Tribunal for an urgent inquiry into the Crown's conduct in regards to the negotiation of the Trans-Pacific Partnership Agreement (TPPA).

Māori claim that the Crown has failed to uphold its Treaty obligation to actively protect Māori interests in terms of the TPPA. Māori claim that they were suffering, and/or are likely to suffer imminent significant and irreversible prejudice if New Zealand becomes a party to the TPPA.

The Tribunal granted the applications and determined that an urgent hearing should take place on two key issues:

- Whether or not the Treaty of Waitangi exception clause is indeed the effective protection of Māori interests it is said to be; and
- What Māori engagement and input is now required over steps needed to ratify the TPPA (including by way of legislation and/or changes to Government policies that may affect Māori).

Parties to the TPPA Inquiry agreed to undertake a rapid inquiry process in order for the Tribunal to release a report for the Government to consider, prior to Parliamentary processes and ratification of the TPPA taking place.

Parties also agreed that expert evidence would be required. Professor Kelsey has been working for the claimants, Dr Ridings represents the Crown and Amakura Kawharu is a witness for the Tribunal. Case studies are being developed to assist the Tribunal in assessing whether the protections the Crown says it has put into the TPPA will work for Māori, and whether the regime that the Crown has put in place breaches the Treaty and its principles.

Submissions on the TPPA must be made to the Select Committee by **11 March 2016**. Hui have been organised by the Ministry of Foreign Affairs and Trade to discuss the Trans-Pacific Partnership (TPP) with Iwi and Māori groups. The hui will be held in the following locations:

- Christchurch on 9 March at the Commodore Airport Hotel;
- Wellington on 10 March at the Westpac Trust Stadium;
- Rotorua on 6 April at the Millennium Hotel;
- Auckland on 13 April at the Stamford Hotel; and
- Whangarei on 20 April at the Distinction Hotel

The Waitangi Tribunal's TPPA Inquiry has been set down to be heard from **14-18 March 2016** at the Waitangi Tribunal in Wellington.

UPDATE: The information contained in this update is intended as a guide only. Professional advice should be sought before applying any of the information to particular circumstances. While every care has been taken in the preparation of this update, McCaw Lewis does not accept liability for any errors it may contain