

Mokomoko (Restoration of Character, Mana, and Reputation) Bill

Government Bill

Explanatory note

General policy statement

In 1866, Te Whakatōhea Rangatira Mokomoko was tried and executed for the murder of Carl Sylvius Volkner. Throughout the trial Mokomoko maintained his innocence. Following his conviction, Mokomoko was hanged and buried at old Auckland Jail and Court-house. He was reinterred at Waiaua Marae at Ōpōtiki in October 1989, 123 years after his execution.

In 1992, the Governor-General issued a free pardon to Mokomoko. The free pardon was provided without consultation with Te whānau a Mokomoko and differed from the pardon granted by section 11 of Te Runanga o Ngati Awa Act 1988 (reproduced in the Schedule of Te Runanga o Ngati Awa Act 2005) to two men of Ngāti Awa for the same event.

Te whānau a Mokomoko are concerned that, unlike section 11 of Te Runanga o Ngati Awa Act 1988, the terms of the pardon for Mokomoko did not expressly restore his character, mana, and reputation, nor the character, mana, and reputation of his uri (descendants). Te whānau a Mokomoko has agreed with the terms and conditions of an agreement, dated 28 September 2011, and signed by the Crown and a whānau representative, providing for the introduction of this

Bill. The agreement provides that the Bill does not preclude Te whānau a Mokomoko from seeking through the Treaty settlement process—

- to further achieve their aspirations in respect of the restoration of the character, mana, and reputation of Mokomoko and his uri; and
- the settlement of their historical Treaty of Waitangi claims, including exploring the possibility of separate settlement negotiations between the Crown and Te whānau a Mokomoko.

The agreement provides that the legislation is intended to assist the Crown's objective of building healthy relationships with Te whānau a Mokomoko.

The *Preamble* to the Bill records the background to the treatment of Mokomoko and the men of Ngāti Awa in relation to the murder of Carl Sylvius Volkner and the Waitangi Tribunal's findings on this matter. The *Preamble* contains an acknowledgement by the Crown that the terms of the pardon granted to Mokomoko in 1992 did not expressly restore his character, mana, and reputation, nor the character, mana, and reputation of his uri. The *Preamble* also contains a statement of regret by the Crown for any ongoing shame or stigma this has caused for his uri.

The Bill contains acknowledgements by the Crown that it—

- regrets that the free pardon did not expressly restore the character, mana, and reputation of Mokomoko, nor the character, mana, and reputation of his uri and that it regrets any ongoing shame or stigma that this has caused for his uri; and
- should have consulted Te whānau a Mokomoko about the wording of the free pardon.

Part 2 of the Bill specifically provides that the character, mana, and reputation of Mokomoko and his uri are restored by the passing of the Bill.

Clause by clause analysis

The *Preamble* sets out the background to the Bill.

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states the purpose of the Bill, which is to give legal effect to the agreement between the Crown and Te whānau a Mokomoko dated 28 September 2011 relating to statutory recognition of the free pardon dated 15 June 1992 granted to Mokomoko by the Governor-General in exercise of the Royal prerogative of mercy. The Bill is intended to achieve this purpose by—

- reproducing the free pardon granted to Mokomoko; and
- acknowledging with regret that the free pardon did not expressly restore the character, mana, and reputation of Mokomoko nor the character, mana, and reputation of his uri and expressing the Crown’s regret for any ongoing shame or stigma this has caused for his uri; and
- acknowledging that the Crown should have consulted Te whānau a Mokomoko about the wording of the free pardon; and
- declaring the character, mana, and reputation of Mokomoko and the character, mana, and reputation of his uri to be restored.

Clause 4 defines terms used in the Bill.

Clause 5 provides that the Bill binds the Crown.

Clause 6 contains acknowledgements by the Crown relating to the free pardon granted to Mokomoko.

Clause 7 declares the character, mana, and reputation of Mokomoko and the character, mana, and reputation of his uri to be restored.

The *Schedule* reproduces the text of the free pardon granted to Mokomoko by the Governor-General dated 15 June 1992.

Hon Dr Pita Sharples

**Mokomoko (Restoration of
Character, Mana, and Reputation)
Bill**

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Preamble

- (1) In 1866, Te Whakatōhea Rangatira Mokomoko was tried and executed for the murder of Carl Sylvius Volkner. Following conviction, two of the co-accused of Mokomoko admitted their guilt. Those persons have since been pardoned. Throughout the trial Mokomoko maintained his innocence: 5
- (2) Following his conviction and before execution, Mokomoko composed the following waiata:

Tangohia te taura i taku kakī, kia waiata au i taku waiata
 Kore te tākiri e tute nei ki te moenga
 Kei te hori te tangata tēnei au ki te raweke
 He pono te kī nei taku rauhia ki te moenga
 Koia kei te tangata mate kau au ki a te Uira
 Whakarewha te titiro te hukinga ia hau utiti
 He wareware noa te eke noa i te kaupuke
 He ahi mumura te pānga mai o te whakamā
 Me kawe ki tāwhiti hei homai mō te mekameka
 Te rerenga o te rā, ko te Kāwana kei Ūropi
 Māna e kī mai me tau au ki te tauwati
 Hei tūtaki ake mō te kuaha o te pouaka
 Haere mai nei au ka turaki mate ki te moenga eeee

Take the rope from my throat so I am able to sing my song
 Violent shaking will not rouse me from my sleep
 They treat me like a common thief
 It is true that I embrace eternal sleep
 For that is the lot of a man condemned to die
 Shielded from harsh light
 With confused view I reflect on the vengeance taken
 And question the reason why
 Remember how I was taken on board ship
 Chained and shackled
 The memory of the shame burns within me so deep
 That to be taken to a place afar
 Right or wrong I am to die
 With the passing of time and the Governor of Europe
 They decided that I must hang
 With the closing of the lid on my box
 Only then will I get peace and eternal rest eeee

- (3) Today Te whānau a Mokomoko use the opening line of the waiata as a whakatauākī with the following interpretation: 10

Tangohia te taura i taku kakī, kia waiata au i taku waiata
 Have the strength to speak up and the truth will not be silenced

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- (4) Mokomoko was hanged and buried at the old Auckland Jail and Courthouse. He was reinterred at Waiaua Marae at Ōpōtiki in October 1989, 123 years after his execution:
- (5) Reinterring Mokomoko in 1989 was the first step for Te whānau a Mokomoko towards obtaining justice for their tūpuna. The next step for Te whānau a Mokomoko was to seek to have the Crown recognise their view that he was innocent: 5
- (6) In 1988, those persons of Ngāti Awa descent who were arrested, tried, and labelled as rebels in or around 1865 were given a statutory pardon and their character, mana and reputation were restored to them, their whānau, and Ngāti Awa as a whole. This was given effect through section 11 of Te Runanga o Ngati Awa Act 1988 and that section is set out in the Schedule of Te Runanga o Ngati Awa Act 2005: 10 15
- (7) On 15 June 1992, the Governor-General issued a free pardon to Mokomoko. The wording of the free pardon was prepared without consultation with Te whānau a Mokomoko:
- (8) Te whānau a Mokomoko were concerned that, unlike section 11 of the Te Runanga o Ngati Awa Act 1988, the terms of the pardon for Mokomoko did not expressly restore his character, mana, and reputation, nor the character, mana, and reputation of his uri: 20
- (9) In its Te Urewera (Part 1) Inquiry Report (April 2009), the Waitangi Tribunal found the following in relation to Te whānau a Mokomoko claim (Wai 203): 25
- (a) by pardoning Mokomoko in 1992, the Crown acknowledged that its treatment of him had not been consistent with the Treaty of Waitangi; and
 - (b) the form and wording of that pardon had not redressed the original Treaty grievance; and 30
 - (c) a statutory pardon should be granted to Mokomoko following consultation with the claimants about the wording of the pardon; and
 - (d) in addition, the Crown should consult with the claimants about the nature of an appropriate tribute to mark the wrong done by perpetuating the false view that Mokomoko was largely responsible for the raupatu: 35

- (10) The Crown acknowledges with regret that the terms of the pardon granted to Mokomoko in 1992 did not expressly restore his character, mana, and reputation nor the character, mana, and reputation of his uri. The Crown regrets any ongoing shame or stigma this has caused for his uri: 5
- (11) The Crown and Te whānau a Mokomoko have negotiated in good faith the terms on which the free pardon granted to Mokomoko in 1992 may now be given statutory recognition and the character, mana, and reputation of Mokomoko and his uri are to be restored: 10

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Mokomoko (Restoration of Character, Mana, and Reputation) Act **2011**.

2 Commencement 15

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1
Preliminary provisions**

3 Purpose 20

- (1) The purpose of this Act is to give legal effect to the agreement between the Crown and Te whānau a Mokomoko dated 28 September 2011 relating to statutory recognition of the free pardon dated 15 June 1992 granted to Mokomoko by the Governor-General in exercise of the Royal prerogative of mercy. 25
- (2) To that end, this Act—
- (a) reproduces the text of the free pardon granted to Mokomoko; and
 - (b) acknowledges with regret that the free pardon did not expressly restore the character, mana, and reputation of Mokomoko nor the character, mana, and reputation of his uri and expresses the Crown's regret for any ongoing shame or stigma this has caused for his uri; and 30

- (c) acknowledges that the Crown should have consulted Te whānau a Mokomoko about the wording of the free pardon; and
- (d) restores the character, mana, and reputation of Mokomoko and the character, mana, and reputation of his uri; and 5
- (e) does not prevent Te whānau a Mokomoko from seeking through the Treaty settlement process the settlement of their historical Treaty of Waitangi claims.

4 Interpretation 10

In this Act, unless the context otherwise requires,—

agreement means the Agreement to Introduce Legislation to Give Statutory Recognition to the Mokomoko Pardon between the Crown and Te whānau a Mokomoko dated 28 September 2011 and signed by— 15

- (a) the Minister of Māori Affairs, the Honourable Dr Pita Sharples, for the Crown; and
- (b) Tuiringa Mokomoko for Te whānau a Mokomoko

Crown has the meaning given by section 2(1) of the Public Finance Act 1989 20

free pardon means the free pardon dated 15 June 1992 granted to Mokomoko by the Governor-General, Dame Catherine Tizard, in exercise of the Royal prerogative of mercy and reproduced in the **Schedule**

uri, in relation to Mokomoko, means those persons who descend from Mokomoko by any of the following: 25

- (a) birth:
- (b) legal adoption:
- (c) whāngai (Māori customary adoption) in accordance with tikanga. 30

5 Act binds the Crown

This Act binds the Crown.

Part 2**Crown acknowledgements and restoration
of character, mana, and reputation****6 Crown acknowledgements**

- (1) The Crown— 5
- (a) acknowledges with regret that the free pardon granted to Mokomoko did not expressly restore his character, mana, and reputation, nor the character, mana, and reputation of his uri; and
- (b) expresses its regret for any ongoing shame or stigma that this has caused for his uri. 10
- (2) The Crown acknowledges with regret that it should have consulted Te whānau a Mokomoko about the wording of the free pardon.
- (3) The Crown acknowledges that nothing in this Act prevents Te whānau a Mokomoko from seeking through the Treaty settlement process the settlement of their historical Treaty of Waitangi claims. 15

7 Character, mana, and reputation of Mokomoko and his uri restored 20

It is declared that on and after the passing of this Act, the character, mana, and reputation of Mokomoko are restored and the character, mana, and reputation of his uri are restored.

Schedule

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**Text of free pardon granted to Mokomoko
dated 15 June 1992**

The text of the free pardon granted to Mokomoko dated 15 June 1992 is as follows:

Free Pardon

5

Governor-General

To all whom these presents shall come:

WHEREAS on the 4th day of April 1866 Mokomoko was convicted in the Supreme Court at Auckland of the murder of Carl Sylvius Volkner and sentenced to death, and was subsequently executed:

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And whereas the said Mokomoko was of Whakatohea descent:

And whereas three other persons were also convicted with Mokomoko on the 4th day of April 1866 of the murder of Carl Sylvius Volkner, those three persons being of Ngati Awa descent:

And whereas section 11 of the Te Runanga o Ngati Awa Act 1988 restores the character, mana and reputation of the persons of Ngati Awa descent who were arrested, tried and labelled as rebels in or about 1865 and grants to them a full pardon in respect of all matters arising out of the land wars of 1865:

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And whereas it appears that one of the incidents of section 11 of the Te Runanga o Ngati Awa Act 1988 is to pardon the three persons convicted with Mokomoko of the murder of Carl Sylvius Volkner:

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And whereas it appears to me just and expedient that a pardon should also be granted to Mokomoko:

Now therefore I, Catherine Anne Tizard, Governor-General of New Zealand, acting upon the advice of the Minister of Justice, do hereby in the name and on behalf of Her Majesty, grant to the said Mokomoko a free pardon in respect of the said crime.

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