

Māori Trustee and Māori Development Amendment Bill

Government Bill

As reported from the Māori Affairs
Committee

Commentary

Recommendation

The Māori Affairs Committee has examined the Māori Trustee and Māori Development Amendment Bill and was unable to reach agreement as to whether or not the bill should proceed. The committee recommends that the House take note of its report.

Appendix

Committee membership

Dave Hereora (Chairperson)

Dr Pita Sharples (Deputy Chairperson)

Christopher Finlayson

Hon Tau Henare

Hon Georgina te Heuheu

Hon Mahara Okeroa

Pita Paraone

Hon Mita Ririnui

Hon Parekura Horomia

Māori Trustee and Māori Development Amendment Bill

Government Bill

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**Māori Trustee and Māori Development
Amendment Bill**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Māori Trustee and Māori Development Amendment Act **2007**.
- 2 Commencement** 5
This Act comes into force on **1 July 2008**.
- 3 Principal Act amended**
This Act amends the Act that was previously called the Maori Trustee Act 1953.
• • • • • 10
- 4 Long Title repealed**
The Long Title is repealed.
- 5 Name of principal Act changed**
- (1) On and from **1 July 2008**,—
- (a) the Maori Trustee Act 1953 is called the Māori Trustee and Māori Development Act 1953: 15
- (b) every reference in any enactment and in any document to the Maori Trustee Act 1953 must, unless the context otherwise requires, be read as a reference to the Māori Trustee and Māori Development Act 1953. 20
- (2) The heading to section 1 is amended by omitting “**Short**”.
- (3) Section 1(1) is repealed and the following subsection substituted:
“(1) This Act is the Māori Trustee and Māori Development Act 1953.” 25
- • • • •

- 15 New Part 2 inserted**
The following Part is inserted after **section 52**:
- “Part 2**
“Māori Business Aotearoa New Zealand
- “53 Interpretation** 5
In **this Part**, unless the context otherwise requires,—
“**board** means the governing body of MBANZ whose members are appointed under **section 61**
“**committee** means a committee appointed under **clause 18 of the Schedule** 10
“**financial year** means a period of 12 months beginning on 1 July and ending on 30 June
“**Māori Business Aotearoa New Zealand** and **MBANZ** mean the statutory corporation established by **section 54**
“**MBANZ Fund** means the fund established under **section 59** 15
“**member** means a member of the board
“**responsible Ministers** means the Minister of Finance and the Minister of Māori Affairs
“**subsidiary** means a subsidiary of MBANZ within the meaning of section 2(1) of the Financial Reporting Act 1993. 20
- “Subpart 1—Key provisions about Māori
Business Aotearoa New Zealand
“*Establishment, functions, and powers*
- “54 Establishment of MBANZ** 25
“(1) This section establishes Māori Business Aotearoa New Zealand (**MBANZ**).
“(2) MBANZ is a body corporate with perpetual succession.
“(3) The governing body of MBANZ is the board whose members are appointed under **section 61**. 30
- “55 Functions of MBANZ**
“(1) The principal function of MBANZ is to administer the MBANZ Fund so as to further the economic development

of Māori by utilising the potential of resources available to Māori.

- “(2) In carrying out its principal function, MBANZ may—
- “(a) provide business advisory and mentoring services for Māori starting up new businesses or consolidating and developing existing businesses: 5
 - “(b) identify opportunities with a significant potential for the economic development of Māori:
 - “(c) make payments and grant loans to assist Māori to start up new businesses, or to consolidate and develop existing businesses as a means of contributing to the success of those businesses: 10
 - “(d) undertake research, monitoring, and evaluation to ensure that the services provided by MBANZ meet, and continue to meet, the business needs of Māori: 15
 - “(e) provide other services that are identified by MBANZ as being likely to contribute to MBANZ fulfilling its principal function.

“56 **Powers of MBANZ**

- “(1) For the purpose of performing its functions under **this Part**, MBANZ— 20
- “(a) has full capacity to carry out or undertake any business or activity, do any act, or enter into any transaction; and
 - “(b) for the purposes of **paragraph (a)**, has full rights, powers, and privileges. 25
- “(2) **Subsection (1)** applies subject to—
- “(a) the provisions of this Act and any other enactment; and
 - “(b) the general law.

“57 **Management fees**

For the purpose of performing its functions under **this Part**, MBANZ may charge or retain a reasonable fee or other remuneration for its services, including, but not limited to, such matters as— 30

- “(a) the provision of mentoring services to Māori in respect of existing businesses or businesses they propose to start up: 35

- “(b) the preparation of research reports for Māori in relation to existing or proposed businesses:
- “(c) the processing of applications for payments or loans that may be granted or made under **section 55(2)(c)**.

“Names protected” 5

“58 Protection of names

- “(1) No person may be incorporated or registered under any other enactment or in any other manner using—
 - “(a) the names Māori Business Aotearoa New Zealand or MBANZ; or 10
 - “(b) any other name that so resembles either of those names as to be likely to mislead a person.
- “(2) No person other than MBANZ may, either alone or with another person, trade or carry on business—
 - “(a) under a name listed in **subsection (1)**; or 15
 - “(b) under a name, knowing that it so resembles a name listed in **subsection (1)** as to be likely to mislead a person.
- “(3) A person who breaches **subsection (2)** commits an offence and is liable, on summary conviction, to a fine not exceeding 20 \$2,500.

“MBANZ Fund

“59 MBANZ Fund established

- “(1) On and from **1 July 2008**, the MBANZ Fund is established.
- “(2) As soon as practicable after **1 July 2008**, the Māori Trustee 25 must transfer, as a contribution to the MBANZ Fund, the sum of \$35,000,000 to that fund from the General Purposes Fund.
- “(3) **Subsection (2)** is complied with if the Māori Trustee transfers, as may be agreed between the Māori Trustee and MBANZ, a proportion of the sum of \$35,000,000 in cash and 30 a proportion of that sum as other assets.
- “(4) In relation to other assets that may be transferred under **subsection (3)**, the Māori Trustee and MBANZ must agree as to what assets or class of assets are to be transferred and their fair market value as independently valued. 35

- “(5) If an agreement is not reached under **subsections (3) and (4)** on or before **1 August 2008**, the responsible Ministers must direct the Māori Trustee and MBANZ as to—
- “(a) the proportion of cash and assets to be transferred; and
 - “(b) the assets or class of assets to be transferred and their fair market value. 5
- “(6) For the purposes of this section and **section 60**, **assets** means any assets of the General Purposes Fund owned, controlled, or held, wholly or in part, by the Maori Trustee immediately before **1 July 2008**. 10
- “**60 Effect of agreement to transfer assets under section 59**
- “(1) An asset may be transferred to MBANZ by the Māori Trustee, whether or not any enactment or agreement relating to the asset permits a transfer or requires any consent to the transfer.
- “(2) A transfer under **section 59** does not entitle any person to terminate or in any way affect the rights of the Māori Trustee or MBANZ under any enactment or agreement relating to the asset. 15
- “Subpart 2—Governing body of MBANZ
- “*Board* 20
- “**61 Board of MBANZ**
- “(1) The board of MBANZ must consist of not more than 7 members, including the chairperson, appointed jointly by the responsible Ministers as soon as is reasonably practicable after **1 July 2008**. 25
- “(2) The Māori Trustee is the chairperson of the board.
- “(3) In appointing the members of the board, the responsible Ministers may name 1 of the members to be the deputy chairperson of the board.
- “**62 Powers of board** 30
- “(1) The board has all the powers necessary for performing its functions and duties under this Act.
- “(2) The **Schedule** applies to the board, its members, and the administration of MBANZ.

“63 Duties of members of board

A member of the board, when acting as a member, and the board acting collectively, must—

- “(a) act in good faith, honestly, and with integrity; and
- “(b) not contravene, or cause MBANZ to contravene, **this Part**; and 5
- “(c) act with the care, diligence, and skill that a reasonable board member would exercise in the same circumstances, taking into account, without limitation,—
 - “(i) the nature of the activities of MBANZ; and 10
 - “(ii) the nature of the action or decision taken by the board member; and
 - “(iii) the position of the board member and the nature of the responsibilities undertaken by him or her; and 15
- “(d) act in accordance with **clauses 5 to 11 of the Schedule** (which governs members’ conflicts of interest); and
- “(e) not act as a representative of, or promote the views of, any particular person, organisation, business, or political party; and 20
- “(f) ensure that MBANZ—
 - “(i) acts within its statutory functions; and
 - “(ii) performs its functions and conducts its activities effectively and efficiently by—
 - “(A) prudently managing the assets and liabilities of MBANZ; 25
 - “(B) maintaining the long-term financial viability of MBANZ;
 - “(C) covering the annual costs of MBANZ from the annual income. 30

*“Related entities and subsidiaries***“64 Shares or interests in related entities**

For the purpose of performing its functions under **this Part**, MBANZ may—

- “(a) form, or hold any shares or interests in, any body corporate or partnership, joint venture, or other association of persons; or 35
- “(b) settle, or be or appoint a trustee of, a trust.

“65 Limits to functions and powers of subsidiary

“(1) MBANZ and any subsidiary of MBANZ must ensure that the subsidiary—

“(a) does not carry on or undertake any business or activity, do any act, or enter into any transaction that MBANZ itself has no capacity or power to carry on, undertake, do, or enter into; and 5

“(b) exercises its powers only for the purpose of performing, or assisting MBANZ to perform, its functions; and

“(c) in carrying on or undertaking a business or activity, doing an act, or entering into a transaction, is subject to the same obligations and restrictions that would apply to MBANZ in relation to that matter; and 10

“(d) does not authorise remuneration or allowances for its directors that could not be authorised for the members of the board of MBANZ; and 15

“(e) complies with the terms of the strategic plan of MBANZ; and

“(f) conducts its affairs in accordance with **this Part**, any other enactment, and with the general law. 20

“(2) **Clause 30 of the Schedule** applies to the directors of a subsidiary.

“Subpart 3—Accountability requirements
for MBANZ

“66 Overview of accountability responsibilities of MBANZ 25

“(1) The board must prepare the following documents relevant to the accountability of MBANZ:

“(a) a strategic plan in accordance with **section 67**; and

“(b) the annual report and financial statements in accordance with **section 68**. 30

“(2) As part of its accountability responsibilities, the board must also—

“(a) supply information to the responsible Ministers in accordance with **section 71**; and

“(b) provide an opportunity for members of the public to consider the documents prepared under **subsection (1)** 35

and to discuss them with the board of MBANZ, as required by **section 72**; and

- “(c) commission an independent review of the performance of MBANZ at 5-yearly intervals in accordance with **section 73**.

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“Key accountability documents

“67 Strategic plan

The board must, not later than the end of each financial year, prepare and approve, by resolution, a strategic plan that must specify, for the next 3 financial years, the following matters: 10

- “(a) the strategic vision of MBANZ, including details of how the Board will further the principal function of MBANZ; and

- “(b) performance targets for MBANZ; and

- “(c) how the performance of the board will be measured in relation to its functions; and 15

- “(d) the nature and scope of the activities to be undertaken by the board, including any investments that are proposed; and

- “(e) the ratio of the capital of the MBANZ Fund to its total assets, with definitions of the terms ‘capital’ and ‘total assets’; and 20

- “(f) the accounting practices followed by the board; and

- “(g) procedures that the board follows before it enters into any material contract or agreement or subscribes for, purchases, or otherwise acquires shares in any company or organisation; and 25

- “(h) details of the board’s budget for the relevant period, setting out its estimated income and expenditure; and

- “(i) details of proposed payments, applications, or appropriations of income or capital for, or towards, 1 or more of the board’s functions. 30

“68 Annual report and financial statements

“(1) In respect of each financial year, the board must prepare—

- “(a) a report dealing with the affairs of MBANZ and any subsidiaries of MBANZ; and 35

- “(b) the financial statements in relation to MBANZ.

- “(2) The report required under **subsection (1)(a)** must include—
- “(a) an assessment of—
 - “(i) how MBANZ has performed in furthering its principal and other functions; and
 - “(ii) the progress made by MBANZ in relation to the strategic plan for that financial year; and 5
 - “(b) statements of—
 - “(i) the income and expenditure of MBANZ for the financial year; and
 - “(ii) the assets and liabilities of MBANZ at the end of the financial year; and 10
 - “(iii) the value of remuneration and other benefits received during the financial year by each member in respect of his or her appointment to the board and by each committee member (if any) who is not also a member of the board; and 15
 - “(c) details of any indemnity provided, or insurance cover effected, by MBANZ in respect of any member or committee member, office holder, or employee in the financial year. 20
- “(3) The financial statements required under **subsection (1)(b)** must—
- “(a) comply with generally accepted accounting practice; and
 - “(b) include any other information or explanations needed to fairly reflect the financial operations and financial position of MBANZ; and 25
 - “(c) include the forecast financial statements prepared at the start of the financial year, for comparison with the actual financial statements. 30
- “**69 Financial report**
- “(1) Not later than 90 days after the end of each financial year, the board must prepare and send to the Auditor-General a financial report—
- “(a) containing the financial statements required by **section 68(1)(b)**; and 35
 - “(b) signed and dated by the chairperson on behalf of the board.

“(2) The Auditor-General must, within 30 days of receiving the financial report, return it to MBANZ, together with the audit report.

“**70 Annual report presented to House of Representatives**

“(1) The board must, as soon as is reasonably practicable after receiving the financial report and audit report from the Auditor-General, forward the annual report to the responsible Ministers. 5

“(2) The responsible Ministers must, as soon as is reasonably practicable, present the annual report to the House of Representatives. 10

“Responsible Ministers’ right to request information

“**71 Responsible Ministers may request information**

“(1) The board must supply to the responsible Ministers any information relating to the operations and performance of MBANZ that those Ministers may reasonably request. 15

“(2) However, a request for information under **subsection (1)** may be declined by the board if—

“(a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person), but only if that reason is not outweighed by the need of the responsible Ministers to have that information in order to discharge their ministerial duties; or 20

“(b) the supply of the information would limit the ability of MBANZ, the board or its members, or employees of MBANZ to act judicially or perform the functions of MBANZ in relation to a particular matter. 25

“(3) Information cannot be withheld— 30

“(a) other than for the reasons set out in **subsection (2)**; or

“(b) if it could not properly be withheld by a body subject to the Official Information Act 1982.

“Information to be publicly available

“72 Public information on MBANZ performance

- “(1)** The board must make its annual report and financial statements publicly available as soon as is reasonably practicable after the annual report has been presented to the House of Representatives under **section 70(2)**. 5
- “(2)** The information referred to in **subsection (1)** must be available for inspection at the office of MBANZ and may be made available on a website maintained by MBANZ.
- “(3)** Not later than 6 months after the presentation of the annual report to the House of Representatives under **section 70(2)**, the board must, in each year (except in **2008**), convene a public meeting to report on,— 10
- “(a)** in relation to the preceding financial year,—
- “(i)** the operation of MBANZ; and 15
- “(ii)** how MBANZ has performed in furthering its principal function; and
- “(iii)** the financial statements of MBANZ; and
- “(b)** the board’s strategic vision for MBANZ for the next 3 financial years. 20
- “(4)** The board must—
- “(a)** determine the date, time, and place for the public meeting required by **subsection (3)**; and
- “(b)** give not less than 14 days’ public notice of that meeting by any means that it considers appropriate, as by advertising— 25
- “(i)** in major newspapers circulating in metropolitan areas in New Zealand:
- “(ii)** by any other means, including electronic media.

“Review 30

“73 Requirement for review of performance of MBANZ

- “(1)** The board must commission an independent review of the performance of MBANZ in accordance with the terms of reference prepared by the board and approved by the responsible Ministers. 35
- “(2)** In the case of the first review,—
- “(a)** it must commence not later than 31 July 2013; and

- “(b) it must relate to the period from the date of the establishment of MBANZ to 30 June 2013; and
- “(c) the board must provide a report to the responsible Ministers not later than 1 December 2013.
- “(3) Further reviews must be commissioned by 31 July in every fifth year after 2013, with a report provided to the responsible Ministers not later than 1 December in each case. 5
- “(4) To avoid doubt, a review must not be undertaken by any board member or any person who held office as a board member, or who was an employee of MBANZ during the period of the review. 10

“74 **Substance of review**

Reviews required by **section 73** must—

- “(a) assess the performance of MBANZ against its statutory functions; and 15
- “(b) assess whether MBANZ is operating efficiently and effectively; and
- “(c) identify any changes that are or may be required to improve the operation and performance of MBANZ.”

16 **New Schedule substituted** 20

The Schedule is repealed and the **Schedule** set out in **Schedule 1** of this Act is substituted.

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Schedule 1

s 16

**New Schedule of Māori Trustee and
Māori Development Act 1953**

Schedule

ss 62, 63, 65 5

Operation of board of MBANZ

Appointment of members of board

1 Criteria for appointment

The criteria that must be taken into account for the governance experience and key competencies required for the board as a whole include, but are not limited to,—

Governance experience

(a) practical or professional commercial or business experience:

(b) investment or banking experience: 15

Key competencies

(c) understanding of the issues relevant to Māori economic development:

(d) expertise and experience in the management of the Māori asset base: 20

(e) entrepreneurial expertise and experience:

(f) competency in te reo Māori and knowledge of tikanga Māori.

2 Qualification for appointment to board

(1) A natural person who is not disqualified under **subclause (2)** may be appointed to be a member of the board. 25

(2) The following persons are disqualified from being a member:

(a) a person who is an undischarged bankrupt:

(b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993: 30

(c) a person who is subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988, or whose property 35

- is managed by a trustee corporation under section 32 of that Act:
- (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person: 5
 - (e) a person who has failed to disclose all interests in accordance with **clause 4(4)(a)**. 10
- 3 Term of appointment of board members**
- (1) A member—
 - (a) holds office for a term not exceeding 3 years, or any shorter term stated in the notice of appointment given under **clause 4(1)**; and 15
 - (b) may be reappointed for 1 further term; but
 - (c) must not hold office for more than 2 continuous terms.
 - (2) Subject to **clause 19 or 20**, on the expiry of a term of office, a member continues in office until—
 - (a) the member is reappointed; or 20
 - (b) the member's successor is appointed; or
 - (c) the member is notified in writing by the responsible Ministers that the member is not to be reappointed and that no successor is to be appointed.
 - (3) A copy of any notice given under this clause must be provided to MBANZ. 25
- 4 Method of appointment of members of board**
- (1) Members are appointed by written notice given by the responsible Ministers.
 - (2) A copy of every notice of appointment must be provided to MBANZ by the responsible Ministers. 30
 - (3) A person must not be appointed until the following matters are agreed:
 - (a) the date on which the appointment takes effect; and
 - (b) the term of the appointment if for less than 3 years; and 35
 - (c) the conditions of the appointment.

- (4) Before a person may be appointed, he or she must—
- (a) disclose to the responsible Ministers—
 - (i) the interests the person would have to disclose under **clause 6** if he or she were a member; and
 - (ii) any other interests or relationships that might give rise to those interests; and
 - (iii) any other matters that, if they were known or occurred while he or she were a member, would be likely to result in that person's removal from office under **clause 19**; and
 - (b) certify in writing to the responsible Ministers that he or she is not disqualified from being a member under **clause 2(2)**; and
 - (c) give written notice to the responsible Ministers that he or she accepts appointment.
- (5) The acts of a person as a member are valid, even if—
- (a) the person's appointment was defective; or
 - (b) the person was not qualified for appointment.

Conflict of interest of members

- 5 When conflict of interest arises for board members**
- (1) A member is **interested** in a matter relating to MBANZ if he or she—
- (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
 - (e) is otherwise directly or indirectly interested in the matter.
- (2) The matters relevant to **subclause (1)** include—
- (a) the performance of a function or exercise of a power by MBANZ:

- (b) a negotiation, arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by MBANZ.
- (3) However, a member is not interested in a matter—
 - (a) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under **Part 2**; or
 - (b) because he or she was provided with any indemnity, insurance cover, remuneration, or other benefits in the course of performing his or her functions or duties under **Part 2**.

- 6 Obligation to disclose interest**
 - (1) A member who is interested in a matter relating to MBANZ must, as soon as practicable after the member becomes aware that he or she is interested, disclose details of the interest—
 - (a) to the chairperson; or
 - (b) if the chairperson is unavailable or interested in the same matter, to the responsible Ministers.
 - (2) If the chairperson is interested in a matter, he or she must, as soon as practicable after he or she becomes aware of that interest, disclose details of the interest to—
 - (a) the deputy chairperson (if any); and
 - (b) if the deputy chairperson is unavailable or interested in the same matter, to the responsible Ministers.
 - (3) All interests must be fully disclosed in an interests register maintained by MBANZ.

- 7 Standing disclosure**
 - (1) A general notice of an interest in a matter relating to MBANZ, or in a matter that may in future relate to MBANZ, that is disclosed under **clause 6** is a standing disclosure of that interest for the purposes of that clause.
 - (2) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.

8 What must be disclosed

The details that must be disclosed under **clause 6** are—

- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified). 5

9 Consequences of being interested in matter

A member who is interested in a matter relating to MBANZ—

- (a) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board or committee during which a discussion or decision relating to the matter occurs or is made; and 10
- (b) must not vote or take part in any discussion or decision of the board or any committee relating to the matter, or otherwise participate in any activity of the entity that relates to the matter; and 15
- (c) must not sign any document relating to entering into a transaction or initiating the matter.

10 Consequences of failing to disclose interest

- (1) The board must notify the responsible Ministers of the failure of a member to comply with **clause 6, 8, or 9** and of the acts affected, as soon as practicable after becoming aware of the failure. 20
- (2) A failure of a member to comply with **clause 6, 8, or 9** does not affect the validity of an act or matter. 25
- (3) However, **subclause (2)** does not limit the right of any person to apply, in accordance with law, for judicial review.

11 Permission to act despite being interested in matter

- (1) The chairperson may, by prior written notice to the board, permit 1 or more members, or members with a specified class of interest, to do anything otherwise prohibited by **clause 9**, if the chairperson is satisfied that it is in the public interest to do so. 30
- (2) The permission may state any conditions that the member must comply with. 35

- (3) If the chairperson is unavailable or interested, the responsible Ministers may give the permission.
- (4) A permission given under this clause may be amended or revoked in the same way as it may be given.
- (5) The board must disclose an interest to which a permission relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission. 5

Chairperson

- 12 Material interest of chairperson** 10
- (1) In addition to any interest arising for the chairperson under **clause 5**, the chairperson has a **material interest** in a matter before the board if the matter is one that is, or relates to a matter, within the jurisdiction of the Māori Trustee under **Part 1** or any other enactment other than **Part 2**. 15
- (2) If the chairperson has a material interest in a matter, the chairperson must—
- (a) disclose details of that interest to the board and to the responsible Ministers; and
- (b) withdraw from the proceedings of the board in relation to that matter. 20
- (3) The chairperson may make standing disclosures in accordance with **clause 7**.
- (4) The details of that must be disclosed under **subclause (2)(a)** are— 25
- (a) the nature of the material interest; and
- (b) the person or entity in relation to whom or which the Māori Trustee’s jurisdiction applies.
- 13 Consequences of chairperson failing to disclose**
- (1) If, for any reason, the chairperson fails to disclose a material interest under **clause 12**, the board must, as soon as practicable after becoming aware of the chairperson’s material interest, notify the responsible Ministers of—
- (a) the failure of the chairperson to make disclosure and withdraw from the proceedings of the board; and 35

- (b) the matters required to be disclosed under **clause 12(4)**.
- (2) However, a failure of the chairperson to comply with **sub-clause (1)**—
 - (a) invalidates decisions made by the board in relation to the matter in which the chairperson has a material interest; but
 - (b) does not limit the right of any person to apply, in accordance with the law, for judicial review.

Delegation 10

14 Ability to delegate

- (1) The board may delegate its functions or powers, either generally or specifically, by resolution and written notice to—
 - (a) a member or members of the board;
 - (b) the chief executive or other employee or office holder of MBANZ;
 - (c) a committee established in accordance with **clause 18**;
 - (d) any other person approved by the responsible Ministers;
 - (e) a subsidiary of MBANZ.
- (2) **Subclause (1)** does not apply to any functions or powers specified in this Act as not being capable of delegation. 20
- (3) The board must not delegate—
 - (a) this general power of delegation; or
 - (b) the power to borrow.

15 Powers of delegate 25

- (1) A delegate to whom any functions or powers of MBANZ or the board are delegated may,—
 - (a) unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions and with the same effect as if the delegate were MBANZ or the board; or 30
 - (b) delegate the function or power, but only—
 - (i) with the prior written consent of the board; and
 - (ii) subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate. 35

- (2) A delegate who purports to perform a function or exercise a power under a delegation—
- (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
 - (b) must produce evidence of his or her authority to do so, if reasonably requested to do so.
- 5
- 16 Effect of delegation**
No delegation in accordance with this Act—
- (a) affects or prevents the performance of any function or the exercise of any power by MBANZ or the board; or
 - (b) affects the responsibility of the board for the actions of any delegate acting under the delegation; or
 - (c) is affected by any change in the membership of the board or of any committee, or by any change in the chief executive or an employee.
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- 17 Revocation of delegations**
- (1) A delegation given under **clause 14** may be revoked at will by—
- (a) a resolution of the board and written notice to the delegate; or
 - (b) any other method provided for in the delegation.
- (2) A delegation given under **clause 15(1)(b)** may be revoked at will by written notice of the delegate to the subdelegate.
- 20
- Committees* 25
- 18 Board may appoint committees**
- (1) The board may, by resolution, appoint 1 or more committees for the purposes of **clause 14(1)**.
- (2) A committee—
- (a) must consist of at least 1 member of the board; and
 - (b) may include any other person that the board thinks fit.
- (3) However, no person may be appointed to be a member of a committee unless, before appointment, that person discloses to the board the details of any interest that he or she may have if a member of the committee.
- 30
35

- (4) **Clauses 5 to 11, 21, 23, 29, and 31 to 33** apply, with the necessary modifications, to each member of a committee who is not a member of the board, as if the committee member were a member of the board and, in the case of the disclosure obligations, as if the disclosure must be made to both the committee and the board. 5
- (5) If the board appoints a committee, it must include the remuneration and other benefits paid to committee members in the annual report, in accordance with **section 68(2)(b)(iii)**.
- (6) Unless otherwise provided for in this Schedule, a committee may regulate its own procedure. 10

Removal and resignation of board members

19 Removal from office

- (1) A member may, at any time, be removed from office for any reason by written notice to the member by the responsible Ministers. 15
- (2) The reasons include (without limitation)—
- (a) the factors relevant to disqualification under **clause 2**; or
 - (b) in 1 or more of the following circumstances, if the member: 20
 - (i) has brought MBANZ into disrepute:
 - (ii) has failed to comply with the duties under **section 63**: 25
 - (iii) has become a bankrupt: 25
 - (iv) has acted with financial impropriety:
 - (v) has been unable to perform his or her functions of office:
 - (vi) has performed the functions of office inadequately: 30
 - (vii) has failed to attend 3 consecutive meetings of the board, without obtaining the prior consent of the board:
 - (viii) has failed to disclose, without reasonable excuse and as soon as possible after the relevant facts become known to the member, an interest in a 35

matter being considered or about to be considered
by the board.

- (3) Before removing a member from office, the responsible Ministers must give the member a reasonable opportunity to make submissions or be heard on the proposal to remove him or her. 5
- (4) The notice of removal must state the reasons for removal.

20 Resignation

- (1) A member of the board may resign from office by giving written notice to the responsible Ministers.
- (2) The member must provide a copy of the notice to MBANZ. 10
- (3) A resignation is effective on receipt of the notice by the responsible Ministers, or at a later time as specified in the notice, but in any case, not later than 3 months after the date of the notice.

21 No entitlement to compensation

A member of the board is not entitled to compensation or other payment or benefit if he or she ceases for any reason to hold office as a member. 15

Vacancies in board's membership

22 Member of board ceasing to hold office

A member ceases to hold office if that person— 20

(a) resigns in accordance with this Act; or

(b) is removed from office in accordance with this Act; or

(c) becomes disqualified from being a member under this Act; or

(d) otherwise ceases to hold office as a member in accordance with any enactment. 25

23 Vacancy in membership of board

- (1) If a member, for any reason, ceases to hold office, the responsible Ministers may appoint another person to be a member.
- (2) A member appointed under **subclause (1)**— 30
- (a) must be appointed in accordance with this Act; and
- (b) may be appointed either—

- (i) for the balance of the term for which the vacating member was appointed; or
- (ii) for a new term, as provided for under **clause 3(1)**.

Procedure for meetings of board 5

24 Procedure generally

Unless otherwise provided in this Act, the board may regulate its own procedures.

25 Quorum for board meetings

A quorum for a meeting of the board is more than half of the members of the board. 10

26 Ordinary and special meetings

(1) The board must meet as often as it considers necessary for the efficient and proper conduct of the affairs of MBANZ, but in any event, the board must hold ordinary meetings at least 4 times a year. 15

(2) The board or the chairperson must appoint the dates, times, and places for ordinary meetings of the board, and give not less than 5 working days' written notice to members of—

- (a) the date, time, and place of each meeting; and 20
- (b) the agenda for the meeting.

(3) The chairperson must convene a special meeting of the board if requested to do so in writing by more than half of the members.

(4) The notice requirements of **subclause (2)** apply to a special meeting. 25

27 Conduct of meetings of board

(1) The chairperson must preside at all meetings of the board if he or she is present.

(2) If the chairperson is absent or for any other reason is unavailable,— 30

- (a) the deputy chairperson (if 1 was named under **section 61(3)**) must preside; or
- (b) if there is no deputy chairperson or the deputy chairperson is absent or unavailable for any reason,—

- (i) and another member has been given delegated authority to act as the chairperson, that member must preside; and
 - (ii) in any other case, the members present must elect 1 of their number to be the chairperson for the meeting. 5
- (3) The person acting or elected under **subclause (2)** has and may exercise all the powers and carry out all the duties and functions of the chairperson for the purposes of the meeting.
- (4) The chairperson may permit members to participate in meetings, or in a particular meeting, by any means of communication that allows the members reasonably to engage in the proceedings of the meeting. 10

28 Voting at meetings

- (1) Each member of the board has 1 vote, unless **subclause (3)** applies. 15
- (2) All questions arising at a meeting of the board must be decided by a majority of the members present and voting.
- (3) The chairperson or member presiding at the meeting has a deliberative vote and, in the case of an equality of votes, also has a casting vote. 20
- (4) A written resolution signed by all the members of the board is as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the board, and a resolution may comprise more than 1 duplicated document, each signed by 1 or more of the members. 25

Remuneration and allowances

29 Remuneration and allowances for members of board

- (1) A member of the board may not receive payments or fees as an employee of, or consultant for,— 30
- (a) MBANZ; or
 - (b) any subsidiary or related entity of MBANZ.
- (2) A member is entitled to receive, from the funds of MBANZ, remuneration for services as a member, at a rate and of a kind determined by the responsible Ministers in accordance with 35

the appropriate fees framework determined by the Government.

- (3) A member is entitled to be reimbursed, from the funds of MBANZ, for actual and reasonable travelling and other expenses incurred in the performance of his or her office as a member. 5

30 Remuneration and allowances for directors of subsidiaries

- (1) A director of a subsidiary is entitled to receive, from the funds of the subsidiary,—

(a) remuneration and other benefits at a rate and of a kind determined by the responsible Ministers in accordance with the appropriate fees framework determined by the Government; and 10

(b) payment of reimbursing allowances or actual and reasonable expenses incurred in undertaking his or her duties as a member of the governing body of the subsidiary. 15

- (2) The remuneration and other benefits referred to in **subclause (1)(a)** must be determined before MBANZ forms or acquires shares in a subsidiary. 20

Protection from liability for members and employees

31 Immunity of members and employees

- (1) A member of the board or an employee of MBANZ is not personally liable— 25

(a) for any liability of MBANZ by reason only of being a member or an employee; or

(b) to any person (other than MBANZ) for any act or omission by him or her in performing, or the intended performance of, the functions or duties or the exercise or intended exercise of the powers of MBANZ, unless done in bad faith. 30

- (2) MBANZ is liable for any act or omission for which, but for this clause, the member or employee would have been liable in person. 35

- (3) In this clause and **clause 32**,—

employee includes a former employee

indemnify includes to relieve or excuse from liability, whether before or after the liability arises

member includes a former member.

- 32 Indemnity and insurance for members and employees** 5
- (1) MBANZ may indemnify a member of the board or employee of MBANZ for—
- (a) acts or omissions done or omitted by him or her in good faith in performing, or the intended performance of, the functions of MBANZ; and 10
- (b) costs incurred in defending or settling a claim or proceedings relating to that liability.
- (2) MBANZ may effect insurance cover for a member of the board or employee of MBANZ in relation to acts or omissions described in **subclause (1)(a)**, except if the act or omission is done or omitted— 15
- (a) in bad faith:
- (b) otherwise than in performing, or the intended performance of, MBANZ's functions.
- (3) A member or employee who is indemnified or insured by MBANZ in breach of this clause must repay to MBANZ the cost of providing indemnity or effecting insurance cover, to the extent that the indemnity or insurance cover exceeds what is permitted by this clause. 20
- (4) MBANZ may recover the amount as a debt due in a court of competent jurisdiction. 25

Information held by or provided to MBANZ

- 33 Confidentiality, disclosure, and use of information**
- (1) A member of the board who, in his or her capacity as a member, has confidential information that would not otherwise be available to the member must not disclose the information to any person or use or act on it except— 30
- (a) for the purposes of MBANZ; or
- (b) as required or permitted by law; or
- (c) in complying with the requirement for members to disclose interests. 35

- (2) **Subclause (1)** does not apply if the member is first authorised to disclose, use, or act on information by the board.
- (3) In this clause, **confidential information** means information that the board determines must be treated in confidence.
- 34 Provision of information for purpose of review** 5
For the purpose of a review conducted under **section 73**,—
- (a) the reviewer commissioned under that section may make a written request to MBANZ for information relating to the operation and activities of MBANZ; and
- (b) MBANZ must, as soon as is reasonably practicable, supply to the reviewer any information that is reasonably required for the review. 10
- 35 Reliance on information and advice**
- (1) A member of the board, when acting as a member, may rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons: 15
- (a) an employee of MBANZ whom the member believes on reasonable grounds is reliable and competent in relation to the matters concerned; or 20
- (b) a professional adviser or expert in relation to matters that the member believes on reasonable grounds are within the person’s professional or expert competence; or
- (c) any other member, or a committee, of the board on which the director did not serve in relation to matters within the member’s or committee’s designated authority; or 25
- (d) the Crown.
- (2) **Subclause (1)** applies to a member only if the member— 30
- (a) acts in good faith; and
- (b) makes proper inquiry, if the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that the reliance is unwarranted.

*Bank accounts***36 MBANZ must have bank accounts**

- (1) MBANZ must have 1 or more bank accounts, as necessary for carrying out its functions and duties and exercising its powers, at any registered bank (within the meaning of the Reserve Bank of New Zealand Act 1989). 5
- (2) All money received by MBANZ, or for or on its behalf by a member of the board or an employee, must be paid into a bank account of MBANZ as soon as practicable after the money has been received. 10
- (3) MBANZ must properly authorise the withdrawal or payment of money from or into its bank accounts.

*Contracting***37 Method of contracting**

- (1) A contract or other enforceable obligation may be entered into by MBANZ as provided in this clause. 15
- (2) An obligation that, if entered into by an individual, is required to be by deed, may be entered into on behalf of MBANZ in writing, signed under the name of MBANZ by— 20
- (a) 2 or more of the members of the board; or
- (b) 1 or more attorneys appointed by MBANZ under **clause 38**.
- (3) An obligation that, if entered into by an individual, is required to be in writing, may be entered into on behalf of MBANZ in writing by a person acting under the express or implied authority of MBANZ. 25
- (4) An obligation that, if entered into by an individual, is not required to be in writing, may be entered into on behalf of MBANZ in writing or orally by a person acting under the express or implied authority of MBANZ. 30
- (5) MBANZ may, in addition to complying with **subclauses (1) to (4)**, affix its common seal (if it has one) to the instrument.
- (6) This clause and **clause 38** apply to a contract or other obligation— 35
- (a) whether or not that obligation was entered into in New Zealand; and

- (b) whether or not the law governing that obligation is the law of New Zealand.

38 Appointment of attorneys

- (1) MBANZ may, by an instrument in writing executed as a deed, appoint a person as its attorney, either generally or in relation to a specified matter. 5
- (2) An act of the attorney in accordance with the instrument binds MBANZ.

Chief executive of MBANZ

39 Appointment of chief executive

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- (1) The board must appoint a chief executive of MBANZ.
- (2) The chief executive must not be a member of the board.
- (3) In appointing a chief executive, the board must—
- (a) act independently; and
- (b) be satisfied that the proposed appointee has disclosed the interests that he or she would, if he or she were a member, have to disclose at that time under **clauses 6 and 7**; and 15
- (c) determine the terms and conditions of employment for the chief executive, including remuneration and allowances. 20

40 Role of chief executive

The chief executive is responsible to the board for the efficient and effective administration of the day-to-day operations of MBANZ and must act in accordance with the lawful policies and directions of the board. 25

41 Method of appointment

- (1) The board must appoint the chief executive by written notice to the person to be appointed.
- (2) The notice must— 30
- (a) state—
- (i) the date when the appointment begins; and
- (ii) the term of the appointment; and
- (iii) the terms and conditions of employment; and

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- (b) be given only after the person to be appointed has disclosed any interests to the board, as provided for in **clauses 5 and 6**.

42 Terms and conditions of employment

- (1) The chief executive holds office on a full-time basis. 5
- (2) The appointment of the chief executive is for a term of not more than 5 years.
- (3) The chief executive is eligible for reappointment, but for no longer than 1 further term of not more than 5 years.
- (4) The chief executive performs his or her functions subject to the control and direction of the board. 10

43 Delegation by chief executive

- (1) The chief executive may, either specifically or generally, delegate in writing to an employee—
- (a) his or her functions, duties, or powers; and 15
- (b) any functions, duties, or powers delegated to the chief executive by the board, subject to the consent of the board.
- (2) The chief executive must not delegate this power to delegate.
- (3) **Clause 16** applies to a delegation by the chief executive. 20

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Legislative history

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Committee
