

## **Te Pire Whakatikatika Kaitiaki Māori**

He Pire

Te pūrongo nā te Komiti Whiriwhiri Take  
Māori i whakatakoto

### **Ngā Kōrero**

#### **Tūtohutanga**

Kua ārohitia te Pire Whakatikatika Kaitiaki Māori e te Komiti Whiriwhiri Take Māori, ā, ka tūtohu kia whakamanatia me ngā whakatikatika hoki.

#### **Te whakawehe i te Kaitiaki Māori me te Pire Whakatikatika Whakapakaritanga Māori**

E rua ngā tino kaupapa kei te whāia ake e te pire kua whakaurua. Tuatahi, ko ngā whakahounga mō te whakapūmau i te Kaitiaki Māori hei rōpū whakahaere tū ko ia-anake. I ara ake ngā whakahounga marohi nā tētahi arotakenga o te Maori Trustee (Kaitiaki Māori) me te Maori Trust Office (Tari Kaitiaki Māori). Tuarua, ko whakatū a te pire i tētahi manatōpū ā-ture motuhake hei whakapakari atu i te ōhanga Māori mā te whakamahi rawa kei te wātea ki a ngāi Māori.

Nā te mea kua whakaaroarotia, kua rongohia hoki ngā tāpaetanga mō te pire, ka whakatau mātou ko te koronga tuatahi mā te pire he whakapūmau i te Kaitiaki Māori hei rōpū whakahaere tū ko ia-anake,

ā, he whānui tonu ngā painga me te tautoko mō tēnei. Heoi, ki tō mātou whakapono, he kūrururu ngā ritenga marohi e pā ana ki te manatōpū ā-ture mō te whakapakari atu i te ōhanga Māori, ā, nā reira, me āta whakaaroarotia anōtia ngā ritenga.

Nā runga i te hiahia kia whakaturengia ngā whakahounga whakapūmau i te Kaitiaki Māori hei rōpū whakahaere tū ko ia-anake mua mai i te mutunga o tēnei Pāremata, ka whakatau mātou ko te wehewehe i te pire mā ēnei huarahi te mea whai whakaaro.

Kua whakahoungia te ingoa o te pire hou māna nei te Kaitiaki Māori e whakapūmau hei rōpū whakahaere tū ko ia-anake, ko te Pire Whakatikatika Kaitiaki Māori. Ka mōhiotia tonutia te pire hou whakatū i te manatōpū ā-ture motuhake ki te whakapakari atu i te ōhanga Māori, ko te Pire Whakapakaritanga Māori me te Kaitiaki Māori.

### **Ngā whakatikatika**

Ka tūtohu mātou i ngā whakatikatika ririki e whai ake nei.

#### **Rara 7**

Ka tūtohu mātou kia whakatikaina a rara 7, tērā ka whakauru i tekiona hou 6B kia tino mārama ai me arongia e te Minita te tikanga tūturu i a ia e kawē ana i ngā mana kei roto i te tekiona e takoto ana mō te whakamutu i te whakaingoatanga o te Kaitiaki Māori. Mā tēnei ka tino mārama te herenga ka pā ki tētahi Minita kawē i taua mana.

#### **Rara hou 9A**

Ka tūtohu mātou i te whakaurunga o rara hou 9A, tērā ka whakakore i tekiona 19 o te Maori Trust Act. Ka whakahau a tekiona 19 kia matua whakamahia e te Pūtea Pēke a Te Kaitiaki Māori he haki anake, he tuhinga ā-ture kē ētahi atu rānei mā ngā āpihi whaimana e haina. Ko tā te Kaitiaki Māori kua arotia, ehara tēnei i te tikanga mahi o ēnei rā. I te mea he rōpū whakahaere kua whakaurua ki Kupu Āpiti 4 o te Public Finance Act 1989, ki tekiona 158 o te Crown Entities Act 2004, tae atu ki tētahi ritenga ka pā ki te Kaitiaki Māori kia tika tonu te whakamana tangohanga, utunga rānei mai i ngā pēke pūtea. Nā reira, ko te whakatau kua kore noa iho a Tekione 19 e hiahiatia.

**Rara hou 9B**

Ka tūtohu mātou i te whakaurunga o rara hou 9B, tērā ka whakakore i Tekiona 21 o te Maori Trustee Act. Ka whakatakoto a Tekiona 21 me pēhea te tuku a te Kaitiaki Māori i te mana ki ngā āpiha haina haki, haina rānei i ētahi atu tuinga ā-ture. Nā reira, nā te tauākī whānui mō ngā mana a te Kaitiaki Māori i roto tekiona hou 4, ā, me tōna āhei ki te whakarite tangata kē atu i roto tekiona hou 6E, kua kore noa iho a tekiona 21 e hiahiatia.

**Rara 11 me rara hou 11A**

He huhua ngā whakatikatika marohi ki rara 11, ērā ka whakakore i tekiona 26 o te Ture me te whakauru i ngā tekiona hou 26, 26A, a 26B hoki ki te whakamārama i te koronga o ngā wāhanga nei. Ko te marohi, kia whakakapia te kupu “huamoni” e te kupu “whiwhinga horaina” i te mea, ka whakamārama pai kē ake i te moni ka utua ki te hunga pupuri pēke pūtea. Mā te whakamāramatanga hou ka whiwhi i te Kaitiaki Māori e mārama ai, kei roto i tēnei ngā pupūtanga i whakaritea tikangia, ko te moni hua tērā tango atu i ngā moni hapa. Ko te whakahau a te Maori Trustee Act i te wā nei kia utua te huamoni ki roto i te Pūtea mō ngā Take Whānui i puta ake nā te moni whakangao ki roto i te Pūtea Kotahi. Kei te whakaaro whakatikatika mātou mō te Pire kia noho ai te whiwhinga moni nā te moni whakangao i roto i te Pūtea Kotahi hei wāhanga o te Pūtea Kotahi. Ka tūtohu mātou kia whakatikaina a rara 11 me te whakauru rara hou 11A me āna whakahau, ka eke ana ki te 1 o Hōngongoi me tīmata te utu whiwhinga moni katoa ki roto i te Pūtea Katoa i puta ake i te moni whakangao, ā, me matua haere mai te whiwhinga horaina ka utua i te Pūtea Kotahi. I whakatakotoria te rā 1 o Hōngongoi 2009 kia whai wā ai te Kaitiaki Māori ki te whakatika i ngā pūnaha e hāngai ana.

**Rara 12**

Ka tūtohu mātou kia whakakorea a rara 12, tērā ka whakatika i tekiona 41 o te Maori Trustee Act me te whakauru i rara hou 12 hei whakakaore i Tekiona 41. Ko Tekiona 41 o te Ture tērā hei whakamana i te Minita mō ngā Take Whakahaere Pūtea ki te whakahoki mai i ngā moni whakapaunga utu a Te Kaitiaki Māori. Ka pā tēnei ki ngā moni anake i utua mua mai i te 1 o Hōngongoi 2008. Kua puta te whakahau a te Kāwanatanga kia whakakorea te nama whakaemi

a te Kaitiaki Māori ki te Karauna i te wā ka mana ana te Pire. Na reira, kua kore a Tekiona 41 e hiahiatia.

### **Rara 13**

Ka tūtohu whakatikatika mātou mō rara 13 ki te whakakapi i te kupu “huamoni” mā te kupu “whiwhinga horaina”. Ka whakaatu tēnei i ngā whakahounga marohi ki rara 11.

### **Rara hou 29A**

Ka tūtohu mātou kia whakaurua a rara hou 29A kia pērātia tonutia te Kaitiaki Māori i ngā wā o mua, ā, mō tētahi umanga, ture rānei a te Kaitiaki Māori e pā ana ki te tāketanga me ōna momo,

### **Kupu Āpiti 2 Ngā whakatikatika ka pā ki ētahi atu Ture**

Ka tūtohu whakatikatika mātou ki tekiona 2 o te Crown Proceedings Act 1950. He tekiona whakamāramatanga tēnei e whakaatu ana i te whakatūnga o te Kaitiaki Māori hei rōpū whakahaere tū ko ia-anake. Ka whakauru wāhanga whakawā te whakatikatika. Ka noho tonu te Kaitiaki Māori ki raro i te marumaru o te Crown Proceedings Act, pērā anō ki te wā nei.

I te wā nei, kei runga te Kaitiaki Māori i Kupu Āpiti 2 o te Public Audit Act 2001. Mā te pire te Kaitiaki Māori e tāpiri atu ki Kupu Āpiti 4 o te Public Finance Act 1989, otirā, e whakamana kia pā ai ki tekiona 156 o te Crown Entities Act 2004 me te whakauru hoki i te Kaitiaki Māori ki runga i Kupu Āpiti 1 o te Public Audit Act. Kāore hoki i tika, i pai kia whakaurua te Kaitiaki Māori ki runga tahi i Kupu Āpiti 1 me Kupu Āpiti 2 o te Public Audit Act. Nā reira, ka tūhohu mātou kia whakatikaina te pire hei tango atu i te Kaitiaki Māori i Kupu Āpiti 2.

## **Tāpiritanga**

### **Hātepe komiti**

I tonoa te Pire Whakatikatika Whakapakaritanga Māori me te Pire Kaitiaki Māori ki te komiti i te 4 o Poutū-te-rangi 2008. Ko te 14 o Haratua 2008 te rā i kati ai ngā tāpaetanga E 15 ngā tāpaetanga i whiwhi, i whakaaroarohia e mātou. Nā ngā kohinga whai pānga me te hunga takitahi ēnei. E ono ngā tāpaetanga ā-waha i rongohia e mātou. Ka wehea te pire kia noho rua ai, arā, ko te Pire Whakatikatika Kaitiaki Māori me te Pire Whakatikatika Whakapakaritanga Māori i te 3 o Mahuru 2008.

### **Ngā mema o te komiti, ko**

Dave Hereora (Heamana)

Tākuta Pita Sharples (Heamana Tuarua)

Christopher Finlayson

Hōnore Tau Henare

Hōnore Mahara Okeroa

Pita Paraone

Hōnore Mita Ririnui

Hōnore Georgina te Heuheu

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# **Māori Trustee Amendment Bill**

Government Bill

As reported from the Māori Affairs  
Committee

## **Commentary**

### **Recommendation**

The Māori Affairs Committee has examined the Māori Trustee Amendment Bill and recommends that it be passed with the amendments shown.

### **Division of the Māori Trustee and Māori Development Amendment Bills**

The bill as introduced addresses two distinct subjects. First, it would introduce changes to establish the Māori Trustee as a stand-alone organisation. These proposed changes arose out of a review of the Maori Trustee and Maori Trust Office. Secondly, the bill sets up a new independent statutory corporation to further Māori economic development by utilising the resources available to Māori.

Having considered and heard submissions on the bill, we concluded that the first intention of the bill, to establish the Māori Trustee as a stand-alone organisation, has considerable merit and support. We believe, however, that the arrangements proposed for the statutory corporation to further Māori economic development are contentious and deserve further consideration.

Because it is desirable that changes to establish the Māori Trustee as a stand-alone organisation be passed into legislation before the close of this Parliament, we resolved that splitting the bill along these lines was prudent.

The new bill, which would establish the Māori Trustee as a stand-alone organisation, has been renamed the Māori Trustee Amendment Bill. The new bill to set up the independent statutory corporation to further Māori economic development will continue to be known as the Māori Trustee and Māori Development Amendment Bill.

### **Amendments**

We recommend the following minor amendments.

#### **Clause 7**

We recommend amending clause 7, which inserts new section 6B, to provide explicitly that the Minister must observe natural justice in exercising the powers set out in the section regarding the termination of the appointment of the Māori Trustee. This makes explicit an obligation that would apply to any Minister exercising such a power.

#### **New clause 9A**

We recommend the insertion of new clause 9A, which would repeal Section 19 of the Maori Trustee Act. Section 19 provides that the Māori Trustee's Account must be operated only by cheques or other instruments signed by authorised officers. The Māori Trustee has noted that this does not reflect contemporary practice. As an organisation included on Schedule 4 of the Public Finance Act 1989, section 158 of the Crown Entities Act 2004, including a requirement to properly authorise the withdrawal or payment from bank accounts will apply to the Māori Trustee. Section 19 is therefore not considered necessary.

#### **New clause 9B**

We recommend the insertion of new clause 9B, which repeals Section 21 of the Maori Trustee Act. Section 21 sets out how the Māori Trustee would give authority to officers to sign cheques or other instruments. The general statement of the Māori Trustee's powers in



new section 4 and the ability to delegate in new section 6E make section 21 unnecessary.

### **Clause 11 and new clause 11A**

A number of amendments are proposed to clause 11, which repeals section 26 of the Act and inserts new sections 26, 26A, and 26B, to clarify the intention of these provisions. The term “distributable income” is proposed to replace the term “interest”, as it describes better the money to be paid to account-holders. The amended definition of income received by the Māori Trustee would make it clear that this includes amounts properly determined to be capital gains less capital losses.

The Māori Trustee Act currently requires that interest earned from the investment of money in the Common Fund be paid into the General Purposes Fund, and payments to account holders are then made out of the General Purposes Fund. We propose amendments to the bill to provide that income from the investment of money in the Common Fund forms part of the Common Fund. We recommend that clause 11 be amended and new clause 11A be inserted to provide that on and from 1 July 2009 all income from the investment of money in the Common Fund must be paid into the Common Fund, and distributable income must be paid out of the Common Fund. The date of 1 July 2009 is proposed to allow the Māori Trustee time to adjust the relevant systems.

### **Clause 12**

We recommend that clause 12, which amends section 41 of the Maori Trustee Act, be deleted and a new clause 12 repealing Section 41 be inserted. Section 41 of the Act, which allows the Minister of Finance to recover amounts paid for the expenses of the Māori Trust Office, applies only to money paid before 1 July 2008. The Government has authorised the writing off of the Māori Trustee’s accumulated debt to the Crown, once the Bill has been passed. There will therefore be no further need for section 41.

**Clause 13**

We recommend amendments to clause 13 to replace the term “interest” with the term “distributable income”. This reflects the changes proposed to clause 11.

**New clause 29A**

We recommend that new clause 29A be inserted to ensure continuity of treatment for the Māori Trustee and for any transactions or acts of the Māori Trustee in respect of taxation and other duties.

**Schedule 2—Consequential amendments to other Acts**

We recommend an amendment to section 2 of the Crown Proceedings Act 1950, which is an interpretation section, to reflect the establishment of the Māori Trustee as a stand-alone organisation. The amendment inserts a deeming provision. The Māori Trustee would continue to be covered by the Crown Proceedings Act, as it is at present.

The Māori Trustee is currently listed on Schedule 2 of the Public Audit Act 2001. The bill would add the Māori Trustee to Schedule 4 of the Public Finance Act 1989, which would have the effect of applying section 156 of the Crown Entities Act 2004 and including the Māori Trustee on Schedule 1 of the Public Audit Act. It is unnecessary and undesirable to include the Māori Trustee on both Schedules 1 and 2 of the Public Audit Act. We therefore recommend that the bill be amended to remove the Māori Trustee from Schedule 2.

## **Appendix**

### **Committee process**

The Māori Trustee and Māori Development Amendment Bill was referred to the committee on 4 March 2008. The closing date for submissions was 14 May 2008. We received and considered 15 submissions from interested groups and individuals. We heard six submissions. The bill was split into two bills, the Māori Trustee Amendment Bill and the Māori Trustee and Māori Development Amendment Bill, on 3 September 2008.

### **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

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**Māori Trustee Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Parekura Horomia*

## **Māori Trustee Amendment Bill**

Government Bill

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#### **Part 1**

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**Māori Trustee Amendment Bill**

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Māori Trustee Amendment Act **2008**.
  
- 2 Commencement**  
This Act comes into force 6 weeks after the date on which it receives the Royal assent. 5
  
- 3 Principal Act amended**  
This Act amends the Maori Trustee Act 1953.

<b>Part 1</b>	10
<b>Amendments to principal Act</b>	

- |          |   |    |
|----------|---|----|
| <b>6</b> | <b>This Act to be read with Te Ture Whenua Maori Act 1993</b>   |    |
| (1)      | Section 2 is amended by omitting the heading and substituting the following heading: “ <b>Interpretation</b> ”.   | 15 |
| (2)      | Section 2 is amended by adding the following subsections:   |    |
| “(3)     | Without limiting subsection (1), in this Act, unless the context otherwise requires,—<br>“ <b>Appropriation Account</b> means the account provided for under section 23 | 20 |

	“ <b>Common Fund</b> means the separate fund authorised by section 23(1)(b)	
	“ <b>General Purposes Fund</b> means the separate fund authorised by section 23(1)(c)	
	“ <b>Māori Trustee</b> —	5
	“(a) means the Māori Trustee established by <b>section 3</b> ; and	
	“(b) includes, as the context requires, the Māori Trustee who—	
	“(i) is appointed under <b>section 6</b> ; or	
	“(ii) continues to hold office under <b>section 6A.</b> ”	10
<b>7</b>	<b>New headings and sections 3 to 6E substituted</b>	
	The headings above sections 3 and 4 and sections 3 to 6 are repealed and the following headings and sections substituted:	
	“ <b>Part 1</b>	
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	“ <i>Māori Trustee established</i>	
	“ <b>3 Māori Trustee established</b>	
	“(1) This section establishes the Māori Trustee.	
	“(2) The Māori Trustee is a corporation sole with perpetual succession and a seal of office.	20
	“ <i>Capacity, powers, and status of Māori Trustee</i>	
	“ <b>4 Capacity and powers of Māori Trustee</b>	
	“(1) For the purpose of exercising the powers and performing the functions and duties of the Māori Trustee conferred by or under this Part or any other enactment, the Māori Trustee has—	25
	“(a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and	
	“(b) for the purpose of <b>paragraph (a)</b> , full rights, powers, and privileges.	30
	“(2) <b>Subsection (1)</b> applies subject to—	
	“(a) the provisions of this Act and any other enactment; and	
	“(b) the general law.	

**“5 Independence of Māori Trustee**

In exercising the powers and performing the functions and duties of the Māori Trustee in his or her fiduciary capacity under **this Part** or any other enactment, the Māori Trustee must act independently, free from any direction or instruction from the Crown. 5

*“Provisions relating to appointment of Māori Trustee*

**“6 Appointment of Māori Trustee**

**“(1)** The Māori Trustee is appointed by the Minister. 10

**“(2)** An appointment made under **subsection (1)** must be made by written notice to the person appointed.

**“(3)** The notice must—

**“(a)** state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and 15

**“(b)** state the period for which the appointment is made, which must not exceed a period of 5 years; and

**“(c)** be published by the Minister in the *Gazette* as soon as practicable after being given. 20

**“(4)** The person appointed under this section—

**“(a)** may be reappointed; and

**“(b)** continues in office, despite the expiry of his or her term of office, until—

**“(i)** the person is reappointed; or 25

**“(ii)** the person’s successor is appointed; or

**“(iii)** the person ceases to be the Māori Trustee in a circumstance provided for in **section 6B**.

**“6A Continuation of appointment**

Despite **section 6**, the person holding office as the Maori Trustee immediately before **4 July 2008** the commencement of this Act is the Māori Trustee within the meaning of this Act and may hold that office for a period of up to 5 years from **4 July 2008** the commencement of this Act, as may be determined by the Minister and notified in accordance with **section 6(3)**. 30 35

**“6B Termination of appointment of Māori Trustee**

- “(1) The Māori Trustee ceases to hold office if he or she—
- “(a) resigns from office by written notice to the Minister; or
  - “(b) is removed or suspended from office under **subsection (2)**; or 5
  - “(c) ceases to hold office as the Māori Trustee under **this Part**.
- “(2) The Minister may, if the Minister is satisfied that there is just cause, remove or suspend the Māori Trustee from office by written notice to the Māori Trustee, stating— 10
- “(a) the date on which the removal or suspension takes effect, which must not be earlier than the date on which the notice is received; and
  - “(b) the reasons for the removal or suspension; and
  - “(c) in the case of a suspension from office,— 15
    - “(i) the date on which the person’s appointment will be reinstated; or
    - “(ii) the event upon which his or her reinstatement depends.
- “(3) The Minister must notify the removal or suspension in the *Gazette* as soon as practicable after notice is given to the Māori Trustee. 20
- “(4) The Māori Trustee is not entitled to receive compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as the Māori Trustee. 25
- “(4A) In exercising his or her powers under this section, the Minister must observe the rules of natural justice.
- “(5) In **subsection (2)**, **just cause** means—
- “(a) undischarged bankruptcy, misconduct, or neglect of duty; or 30
  - “(b) inability to perform the functions and duties of the Māori Trustee.

*“Appointments by Māori Trustee***“6C Deputy Māori Trustee**

- “(1) The Māori Trustee may appoint a Deputy Māori Trustee to be 35  
an employee of the Māori Trustee.

- “(2) In the case of a vacancy in the office of the Māori Trustee, or if the Māori Trustee is unable to perform the functions and duties of the Māori Trustee under **this Part** or any enactment (other than **Part 2**), or is for any reason prevented from doing so, the Deputy Māori Trustee (if any) has and may exercise the powers and perform the functions and duties of the Māori Trustee for as long as the vacancy or absence continues. 5
- “(3) The powers exercised, and functions and duties performed by the Deputy Māori Trustee under **subsection (2)** may not be questioned in any proceeding on the ground that the occasion for the Deputy Māori Trustee to act had not arisen or had ceased. 10
- “**6D Other employees**
- “(1) The Māori Trustee may appoint the employees that the Māori Trustee considers appropriate to enable the Māori Trustee to exercise the powers and perform the functions and duties of office under this Act effectively and efficiently. 15
- “(2) The Governor-General may, by Order in Council, provide that the Māori Trustee must not, in relation to any or all employees (including the Deputy Māori Trustee, if any), agree to terms and conditions of employment in a collective employment agreement, or an amendment to those terms and conditions, without— 20
- “(a) consulting the State Services Commissioner; and
- “(b) having regard to the recommendations that the State Services Commissioner may make to the Māori Trustee within a reasonable time of being consulted. 25

*“Delegation*

- “**6E Delegation by Māori Trustee**
- “(1) The Māori Trustee may delegate to the Deputy Māori Trustee (if any) any of the powers, functions, or duties conferred on the Māori Trustee by or under this Act or any other enactment. 30
- “(2) Subject to any general or express directions of the Māori Trustee, the Deputy Māori Trustee has, and may exercise all the powers, or perform the functions and duties delegated by the Māori Trustee in the same manner and with the same 35

effect as if they had been conferred on the Deputy Māori Trustee directly by or under this Act or other enactment.

- “(3) A delegation under this section—
- “(a) must be in writing; and
  - “(b) is revocable in writing at any time; and 5
  - “(c) may be made subject to any restrictions or conditions that the Māori Trustee thinks fit; and
  - “(d) does not prevent the exercise of a power or performance of a function or duty by the Māori Trustee; but
  - “(e) does not include a power of delegation. 10
- “(4) In the absence of proof to the contrary, the Deputy Māori Trustee, when purporting to act under a delegation, is presumed to be acting in accordance with the terms of the delegation.
- “(5) Powers exercised, functions or duties performed, and decisions made by the Deputy Māori Trustee, acting as the delegate of the Māori Trustee, may not be questioned in any proceeding on the ground that the occasion for the Deputy Māori Trustee to act had not arisen or had ceased.” 15
- 8 New heading inserted 20**  
The following heading is inserted above section 7: “*Further provisions relating to powers and functions of Māori Trustee*”.
- 9 Māori Trustee’s Account**  
Section 17 is amended by adding the following subsection:
- “(4) Money may be paid out of the Appropriation Account in the Māori Trustee’s Account for the purposes that are agreed to from time to time between the Māori Trustee and the Crown.” 25
- 9A Section 19 repealed**  
Section 19 is repealed.
- 9B Section 21 repealed 30**  
Section 21 is repealed.
- 10 Accounts within Māori Trustee’s Account**  
(1) Section 23(1) is amended by adding the following paragraph:

“(h) the Appropriation Account.”

(2) Section 23 is amended by inserting the following subsection after subsection (5):

“(5A) All money received by way of Crown appropriation must be credited to the Appropriation Account in the Māori Trustee’s Account.” 5

#### 11 New sections 26 to 26B substituted

Section 26 is repealed and the following sections are substituted:

“**26 Money held in Common Fund invested in Fund** 10

“(1) All money held in trust in the Common Fund is invested in that fund, and any income derived from investment of the money forms part of the Common Fund.

“(2) Unless an exception is provided for in regulations made under **section 52(a)(i)**, the Māori Trustee must pay interest distributable income at least annually on that money, in accordance with **subsection (3)** and as provided for in regulations made under **section 52(a)(ii)**. 15

“(3) ~~The interest~~ Distributable income payable under **subsection (2)** must be calculated in accordance with the following formula: 20

$$a - b = c$$

where—

a is the total amount of money received by the Māori Trustee as income, including amounts properly determined to be realised capital gains less capital losses, from the money held by the Māori Trustee in trust in the Common Fund 25

b is the total amount of the management fees that the Māori Trustee is entitled to charge or retain under **section 26A** 30

c is the amount of interest distributable income that must be paid annually under **subsection ~~(1)(b)~~ (2)**, which must be apportioned in accordance with regulations made under **section 52(b)**. 35

“(4) The Māori Trustee must review, on a quarterly basis, the extent to which the interest distributable income payable under **sub-**

- section (1)(b) (2)** is commensurate with fair market ~~interest~~ distributable income paid for the relevant quarter, relative to funds that are—
- “(a) comparable in size to those held in trust in the Common Fund; and 5
  - “(b) subject to conditions comparable to the conditions applying to the Common Fund.
- “(5) ~~Interest On and from 1 July 2009, distributable income on investments in the Common Fund must be paid out of the General Purposes~~ Common Fund. 10
- “**26A Management fees**  
The Māori Trustee may charge or retain a management fee, calculated in accordance with regulations made under **section 52(c)**, for the management of money held in trust in the Common Fund. 15
- “**26B Disclosure requirements**
- “(1) The Māori Trustee must report to account holders on the matters and in the manner prescribed by regulations made under **section 52(d)**, including—
- “(a) the amount of ~~interest~~ distributable income payable in respect of each account; and 20
  - “(b) the management fee charged or retained under **section 26A**; and
  - “(c) the net amount of ~~interest~~ distributable income to be paid; and 25
  - “(d) such other matters that the Māori Trustee considers necessary or desirable.
- “(2) The annual report of the Māori Trustee must include a report on the total amount of ~~interest~~ distributable income, less management fees charged or retained, paid on money held in trust in the Common Fund.” 30
- 11A Investment of Common Fund**  
Section 28 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) On and from 1 July 2009, all income (including realised capital gains and capital losses) received from the investment of 35



money in the Common Fund must be paid into the Common Fund.”

**12 New heading and section 41 substituted**

Section 41 is repealed and the following heading and section are substituted:

5

*“Recovery from Māori Trustee*

**“41 Minister may recover certain money paid by Crown**

The Māori Trustee must, out of the General Purposes Fund, pay into a Crown Bank Account any sum that the Minister of Finance may, by written notice, require to be paid in respect of money paid to the Maori Trust Office for salaries and other expenses of that Office incurred before the dissolution of that Office on **4 July 2008**.<sup>22</sup>

10

**12 Section 41 repealed**

Section 41 is repealed.

15

**13 New section 52 substituted**

Section 52 is repealed and the following section substituted:

**“52 Regulations**

The Governor-General may, by Order in Council, on the recommendation of the Minister of Māori Affairs, make regulations—

20

“(a) for the purpose of **section 26(2)**,—

“(i) defining any special circumstances or cases in which the Māori Trustee, though required to credit interest distributable income to an account, is not required to pay interest distributable income under that section, including, without limitation, prescribing the sum of money below which the Maori Trustee is not required to make an interest distributable income payment:

25

30

“(ii) setting out how and to whom interest distributable income is to be paid:

“(b) for the purpose of **section 26(3)**, providing for the apportionment of interest distributable income:

- “(c) for the purpose of **section 26A**, prescribing the basis on which the management fee must be calculated and charged or retained:
- “(d) for the purpose of **section 26B(1)**, prescribing how, when, and to whom, in each financial year, the Māori Trustee must make the required disclosures: 5
- “(e) for other purposes expressly provided for in this **Part**:
- “(f) prescribing any other matters contemplated by this **Part** or necessary for its administration or to give it full effect.” 10

**14 Section 53 repealed**  
Section 53 is repealed.

. . . . .

**Part 2**  
**Transitional provisions and consequential amendments** 15

*Transitional matters*

- 17 Interpretation**  
In this section and **sections 18 to 29**, unless the context otherwise requires,— 20
- document** has the meaning given to it by section 4(1) of the Evidence Act 2006
- existing undertaking**—
- (a) means—
- (i) all property and estates administered, held, managed, or controlled by the Maori Trustee or the Maori Trust Office before **4 July 2008** the commencement of this Act, including the funds and accounts within the Māori Trustee’s Account, as provided for in section 23, before **4 July 2008** the commencement of this Act; and 25 30
- (ii) all rights and liabilities of the Maori Trustee and the Maori Trust Office before **4 July 2008** the commencement of this Act; and

- (b) includes any reserves of the Maori Trustee or Maori Trust Office in existence before **4 July 2008** the commencement of this Act

**fiduciary rights and liabilities** includes all rights, capacities, authorities, discretions, duties, and liabilities of the Maori Trustee as a fiduciary 5

**liabilities** means liabilities, debts, charges, duties, and obligations (whether present or future, actual or contingent, or payable or to be observed or performed in New Zealand or elsewhere) 10

**Maori Trust Office** has the meaning it had immediately before **4 July 2008** the commencement of this Act

**new Māori Trustee** means the office established by **section 3** of the principal Act

**old Maori Trustee** means the Maori Trustee within the meaning of the principal Act immediately before **4 July 2008** the commencement of this Act. 15

**18 New Māori Trustee succeeds to existing undertaking**

On and from **4 July 2008** the commencement of this Act, the new Māori Trustee succeeds to— 20

- (a) the existing undertaking, which is binding on the new Māori Trustee; and  
 (b) the fiduciary rights and liabilities, which bind the new Māori Trustee.

**19 Dissolution of Maori Trust Office** 25

On and from **4 July 2008** the commencement of this Act, the Maori Trust Office is dissolved.

**20 Contracts and other instruments**

- (1) A reference (express or implied) to the old Maori Trustee or the Maori Trust Office in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on **4 July 2008** the commencement of this Act must be read as a reference to the new Māori Trustee. 30
- (2) A reference (express or implied) to an officer of the Maori Trust Office in any instrument, register, record, notice, secur- 35

ity, document, or communication made, given, passed, or executed before or on **4 July 2008** the commencement of this Act must be read as a reference to the corresponding employee of the new Māori Trustee, or if there is no corresponding employee, to another appropriate employee of the new Māori Trustee. 5

(3) Contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to the old Maori Trustee or the Maori Trust Office (whether alone or with another person) before **4 July 2008** the commencement of this Act and having effect immediately before that date (**contracts and other instruments**) are subject to **subsection (4)**. 10

(4) The contracts and other instruments referred to in **subsection (3)** are binding on, and enforceable by, against, or in favour of, the new Māori Trustee as if the new Māori Trustee, rather than the old Maori Trustee, the Maori Trust Office, or the chief executive of Te Puni Kōkiri had been the person or entity by whom they were entered into, with whom they were made, or to or by whom they were given or addressed. 20

## **21 Status of existing securities**

(1) A security held by the old Maori Trustee or the Maori Trust Office as security for a debt or other liability to the old Maori Trustee or the Maori Trust Office incurred before **4 July 2008** the commencement of this Act— 25

(a) is available to the new Māori Trustee as security for the discharge of that debt or liability; and

(b) if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to the new Māori Trustee incurred on or after **4 July 2008** the commencement of this Act. 30

(2) The new Māori Trustee is entitled to the same rights and priorities, and is subject to the same liabilities, in relation to the security as the old Maori Trustee or the Maori Trust Office would be if this Act had not been passed. 35

**22 Continuation of proceedings**

- (1) An action, arbitration, proceeding, or cause of action that was pending or that existed by, against, or in favour of the old Maori Trustee or the Maori Trust Office, or to which the old Maori Trustee or the Maori Trust Office was a party, before **4 July 2008** the commencement of this Act may be continued and enforced by, against, or in favour of the new Māori Trustee. 5
- (2) It is not necessary to amend a pleading, writ, or other document to continue the action, arbitration, proceeding, or other cause of action. 10

**23 Effect of Act**

- (1) Nothing done or authorised by this Act—
- (a) places the old Maori Trustee, the Maori Trust Office, the new Māori Trustee, or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or 15
- (b) entitles a person to terminate or cancel a contract or arrangement, or to accelerate the performance of an obligation, or to impose a penalty or increased charge; or 20
- (c) places the old Maori Trustee, the Maori Trust Office, the new Māori Trustee, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or 25
- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or surety.
- (2) A document, matter, or thing that would have been admissible in evidence for or against the old Maori Trustee or the Maori Trust Office is, on and after **4 July 2008** the commencement of this Act, admissible in evidence for or against the new Māori Trustee. 30

**24 Registers**

- (1) A Registrar of Deeds, the Registrar-General of Land, or any other person charged with keeping books or registers is not required to change the name of the old Maori Trustee or the Maori Trust Office to the new Māori Trustee in the books or 35

registers, or in a document, solely because of the provisions of this Act.

- (2) If the new Māori Trustee presents an instrument referred to in **subsection (3)** to a registrar or other person, the presentation of that instrument by the new Māori Trustee is, in the absence of proof to the contrary, sufficient evidence that the property is vested in the new Māori Trustee. 5
- (3) For the purposes of this section, the instrument need not be an instrument of transfer, but must—
- (a) be executed, or purport to be executed, by the new Māori Trustee; and 10
  - (b) relate to property held by the old Maori Trustee or the Maori Trust Office immediately before **4 July 2008** the commencement of this Act; and
  - (c) be accompanied by a certificate by the new Māori Trustee that the property became vested in the new Māori Trustee by virtue of the provisions of this Act. 15

## 25 Transfer of employees

- (1) On and from **4 July 2008** the commencement of this Act, every person employed in the Maori Trust Office immediately before that date ceases to be employed in the Maori Trust Office and becomes an employee of the new Māori Trustee (**transferred employee**). 20
- (2) However, **subsection (1)** does not apply to the old Maori Trustee in his capacity as the general manager of the Maori Trust Office immediately before **4 July 2008** the commencement of this Act and the old Maori Trustee is not entitled to compensation or other payment or benefit relating to his ceasing to be the general manager of the Maori Trust Office. 25

## 26 Protection of employment conditions

- (1) In the case of a transferred employee who, immediately before **4 July 2008** the commencement of this Act, is employed on an individual employment agreement, the transferred employee must be employed by the new Māori Trustee on terms and conditions no less favourable than those applying to that employee immediately before **4 July 2008** the commencement of this Act. 30 35

- (2) Transferred employees who, immediately before **4 July 2008** the commencement of this Act, are employed under a collective employment agreement are, on and after **4 July 2008** the commencement of this Act, employed by the new Māori Trustee on a collective employment agreement with terms and conditions no less favourable than those on which those employees were employed immediately before **4 July 2008** the commencement of this Act. 5
- (3) **Subsections (1) and (2)**—
- (a) continue to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee (or his or her representative) and the new Māori Trustee; but 10
- (b) do not apply to a transferred employee who receives any subsequent appointment with the new Māori Trustee. 15

## 27 Continuity of employment

For the purposes of every enactment, law, contract, and agreement relating to the employment of a transferred employee,—

- (a) the contract of employment of that person applying immediately before **4 July 2008** the commencement of this Act in respect of that person's employment in the Maori Trust Office is to be treated as having been unbroken; and 20
- (b) a reference to the chief executive of Te Puni Kōkiri in the contract of employment of a transferred employee must be read as a reference to the new Māori Trustee; and 25
- (c) the person's period of service in the Maori Trust Office is to be treated as a period of service with the new Māori Trustee under this Act. 30

## 28 No compensation for redundancy

A transferred employee is not entitled to compensation for redundancy by reason only of the person ceasing to be an employee in the Maori Trust Office. 35

**29 Membership of Government Superannuation Fund**

- (1) If a transferred employee was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956 immediately before ~~4 July 2008~~ the commencement of this Act,— 5
- (a) that person is to be regarded, for the purposes of the Government Superannuation Fund Act 1956, as being employed in the Government service for so long as the person continues to be employed by the new Māori Trustee under **Part 1** of the principal Act; and 10
- (b) the Government Superannuation Fund Act 1956 is deemed to apply to the person in all respects as if the person's service with the Government service were continuous.
- (2) For the purposes of this section, **subsection (1)** applies to 15  
the new Māori Trustee as if the new Māori Trustee were a transferred employee.

*Taxation and other duties***29A Taxes and duties**

- (1) This section applies for the purposes of the Inland Revenue Acts and any other enactment that imposes or provides for the collection of any tax, duty, levy, rate, or other charge. 20
- (2) On and from the commencement of this Act,—
- (a) the old Maori Trustee and the new Māori Trustee are to be treated as the same person; and 25
- (b) all transactions entered into by, and all acts of, the old Maori Trustee before the commencement of this Act are to be treated as having been entered into or performed by the new Māori Trustee on the date on which they were entered into or performed by the old Maori Trustee. 30
- (3) In this section, **Inland Revenue Acts** has the same meaning as in section 31(1) of the Tax Administration Act 1994.



*Consequential and other amendments*

**30 Enactments amended**

- (1) The enactments listed in **Schedule 2** are amended in the manner set out in that schedule.
- (2) On and from ~~1 July 2008~~ the commencement of this Act, 5  
except as expressly provided or unless the context otherwise requires, every reference in any enactment or document to—
  - (a) the Maori Trustee Act 1953 must be read as a reference to the Māori Trustee and Māori Development Act 1953; 10  
and
  - (b) the Maori Trustee must be read as a reference to the Māori Trustee, as defined in **section 2(3)** of the principal Act; and
  - (c) the Maori Trust Office must be read as a reference to the Māori Trustee, as defined in **section 2(3)** of the 15  
principal Act.

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**Schedule 2****s 30****Consequential amendments to other Acts****Administration Act 1969 (1969 No 52)**

Heading to section 20: omit “Maori” and substitute “Māori”. 5

Section 20(1)(a) and (b): omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”.

Section 20(1)(a): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

Section 84(5): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 10

**Crown Proceedings Act 1950 (1950 No 54)**

Section 2: omit the definition of **Government Department or department** and substitute the following definition:

“**Government Department or department**— 15

“(a) means Public Trust and every other department or instrument of the Executive Government of New Zealand; and

“(b) includes the Māori Trustee”.

Section 35(2)(j): omit “Maori Trustee” and substitute “Māori Trustee”. 20

Section 35(2)(j): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

**Family Benefits (Home Ownership) Act 1964 (1964 No 32)**

Section 13(2)(a): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 25

**Income Tax Act 2007 (2007 No 97)**

Paragraph (b) of the definition of **public authority** in section YA 1: omit and substitute:

“(b) includes Public Trust, the Maori Trustee (as defined in section 2(3) of the Māori Trustee and Māori Development Act **2008**), and Maori Business Aotearoa New Zealand; and”.

**Insolvency Act 2006 (2006 No 55)**

Heading to section 386: omit “**Maori**” and substitute “**Māori**”.

Section 386: omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”.

Section 386(3)(b)(ii) and (4): omit “Maori Trustee Act 1953” in each place where it appears and substitute in each case “Māori Trustee and Māori Development Act 1953”. 5

**Maori Affairs Restructuring Act 1989 (1989 No 68)**

Section 43(1): omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”. 10

Section 43(1): omit “Maori Trustee’s Account” and substitute “Māori Trustee’s Account”.

Section 43(1): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

**Maori Community Development Act 1962 (1962 No 133)** 15

Section 24: omit “Maori Trustee” and substitute “Māori Trustee”.

**Maori Housing Act 1935 (1935 No 34)**

Heading to section 27: omit “**Maori**” and substitute “**Māori**”.

Section 27: omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 20

Section 27: omit “Maori Trustee” and substitute “the Māori Trustee”.

**Maori Purposes Act 1954 (1954 No 59)**

Section 5(2) and (7): omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”.

Section 5(7): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 25

**Maori Reserved Land Act 1955 (1955 No 38)**

Heading to section 8: omit “**Maori**” and substitute “**Māori**”.

Section 8(1) and (2): omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”. 30

Section 8(2): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

**Maori Soldiers Trust Act 1957 (1957 No 29)**

Section 5: omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”.

Section 5(5): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 5

Heading to section 5A: omit “**Maori**” and substitute “**Māori**”.

Section 5A: omit “Maori Trustee” in each both place where it appears and substitute in each case “Māori Trustee”.

Section 5A: omit “Maori Trustee Act 1953” in each place where it appears and substitute in each case “Māori Trustee and Māori Development Act 1953”. 10

**Maori Vested Lands Administration Act 1954 (1954 No 60)**

Section 4A(1)(b): omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”.

Section 4A(1)(b): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 15

Section 31(1): omit “Maori Trustee” and substitute “Māori Trustee”.

Heading to section 55: omit “**Maori**” and substitute “**Māori**”.

Section 55: omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”. 20

Section 55(2): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

Section 56: omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”.

Section 56(3): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 25

Heading to section 64: omit “**Maori**” and substitute “**Māori**”.

Section 64: omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”.

Section 64(6): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 30

**Mining Tenures Registration Act 1962 (1962 No 48)**

Section 15(2)(b): omit “Maori Trustee” and substitute “Māori Trustee”.

**Mining Tenures Registration Act 1962 (1962 No 48)**—*continued*

Section 15(2)(b): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

**Official Information Act 1982 (1982 No 156)**

Paragraph (g) of the definition of **official information** in section 2(1) is amended by omitting “Maori” and substituting “Māori”. 5

**Ombudsmen Act 1975 (1975 No 9)**

Part 2 of Schedule 1: omit “Maori Trustee” and substitute “Māori Trustee”.

Part 2 of Schedule 1: insert Māori Business Aotearoa New Zealand in its appropriate alphabetical order. 10

**Protection of Personal and Property Rights Act 1988 (1988 No 4)**

Heading to section 41: omit “**Maori Trustee Act 1953**” and substitute “**Māori Trustee and Māori Development Act 1953**”.

Section 41: omit “Maori Trustee” in each place where it appears and in each case substitute “Māori Trustee”. 15

Section 41: omit “Maori Trustee Act 1953” in each place where it appears and substitute in each case “Māori Trustee and Māori Development Act 1953”.

Section 41(1): omit “the Maori Trust Office” and substitute “the Māori Trustee”. 20

**Public Audit Act 2001 (2001 No 10)**

Schedule 2: insert “Māori Business Aotearoa New Zealand” in its appropriate alphabetical order.

Schedule 2: omit “Maori Trustee”.

**Public Finance Act 1989 (1989 No 44)**

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Column 1 of Schedule 4: insert “the Māori Trustee” in its appropriate alphabetical order.

The item relating to the Māori Trustee in Schedule 4: insert a tick in each of the third and fourth columns.

**Queen Elizabeth the Second Postgraduate Fellowship of New Zealand Act 1963 (1963 No 2)**

Heading to section 3: omit “**Maori**” and substitute “**Māori**”.

Section 3: omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”. 5

Section 3: omit “Maori Trustee Act 1953” in each place where it appears and substitute in each case “Māori Trustee and Māori Development Act 1953”.

**Remuneration Authority Act 1977 (1977 No 110)**

Schedule 4: insert “Māori Trustee” in its appropriate alphabetical order. 10

**Te Ture Whenua Maori Act 1993 (1993 No 4)**

Definition of **Maori Trustee** in section 4: omit “**Maori Trustee**” and substitute “**Māori Trustee**”.

Definition of **Maori Trustee** in section 4: omit “Maori Trustee” and substitute “Māori Trustee”. 15

Definition of **Maori Trustee** in section 4: omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Development Act 1953”.

Heading to section 159: omit “**Maori**” and substitute “**Māori**”.

Section 159: omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”. 20

Section 159(6): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

Section 193(2) and (3): omit “Maori Trustee” in each place where it appears and substitute in each case “Māori Trustee”. 25

Section 193(4): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

Section 224(h)(i): omit “Maori Trustee” and substitute “Māori Trustee”.

Section 224(h)(i): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 30

Section 225(k)(i): omit “Maori Trustee” and substitute “Māori Trustee”.

Section 225(k)(i): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 35

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**Māori Trustee Amendment Bill**

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**Trustee Act 1956 (1956 No 61)**

Section 49(5)(a): omit “Maori Trustee” and substitute “Māori Trustee”.

Section 49(5)(a): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”. 5

Section 50(4)(a): omit “Maori Trustee” and substitute “Māori Trustee”.

Section 49(5)(a): omit “Maori Trustee Act 1953” and substitute “Māori Trustee and Māori Development Act 1953”.

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**Legislative history**

4 September 2008

Divided from Māori Trustee and Māori  
Development Bill (Bill 181–2) as Bill 181–2A

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