

Te Ture Whenua Maori Amendment Bill

(Divided from the Judicature Modernisation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Judicature Modernisation Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Senior Courts Bill comprising clauses 1 and 2, Part 1, and Schedules 1A to 4
- District Court Bill comprising Part 2 and Schedules 5 to 7
- Judicial Review Procedure Bill comprising Part 3 and Schedule 8
- Interest on Money Claims Bill comprising Part 4 and Schedules 9AAA, 9AA, and 9
- Electronic Courts and Tribunals Bill comprising Part 5
- Arbitration Amendment Bill comprising subpart 1 of Part 6
- Bills of Exchange Amendment Bill comprising subpart 2 of Part 6
- Building Societies Amendment Bill comprising subpart 3 of Part 6
- Children, Young Persons, and Their Families Amendment Bill comprising subpart 4 of Part 6
- Companies Amendment Bill (No 2) comprising subpart 5 of Part 6 and Schedule 10
- Contractual Remedies Amendment Bill comprising subpart 6 of Part 6
- Copyright Amendment Bill (No 2) comprising subpart 7 of Part 6
- Courts (Remote Participation) Amendment Bill comprising subpart 8 of Part 6
- Criminal Procedure Amendment Bill comprising subpart 9 of Part 6
- Employment Relations Amendment Bill (No 4) comprising subpart 10 of Part 6
- Family Courts Amendment Bill comprising subpart 11 of Part 6

- Insolvency Amendment Bill comprising subpart 12 of Part 6
- Local Government (Rating) Amendment Bill comprising subpart 13 of Part 6
- Property Law Amendment Bill comprising subpart 14 of Part 6
- Remuneration Authority Amendment Bill (No 2) comprising subpart 14A of Part 6
- Resource Management Amendment Bill comprising subpart 15 of Part 6
- this Bill comprising subpart 16 of Part 6
- Trans-Tasman Proceedings Amendment Bill comprising subpart 17 of Part 6

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Amy Adams

Te Ture Whenua Maori Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Te Ture Whenua Maori Amendment Act **2016**.

2 Commencement

This Act comes into force on **1 March 2017**.

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566 Principal Act

This **Act** amends Te Ture Whenua Maori Act 1993 (the **principal Act**).

567 Section 4 amended (Interpretation)

In section 4, insert in their appropriate alphabetical order:

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Chief Justice has the meaning given by **section 4(1) of the Judicature Modernisation Act 2013**

lawyer has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

568 Section 7 amended (Appointment of Judges)

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(1) Replace section 7(3) with:

(3) A person may be appointed a Judge only if—

(a) that person has for at least 7 years held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or

(b) that person—

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(i) holds a degree in law granted or issued by any university within New Zealand; and

(ii) has been admitted as a barrister and solicitor of the High Court; and

(iii) has held a practising certificate in a jurisdiction specified by Order in Council—

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(A) for at least 7 years; or

(B) for a lesser number of years but when that number of years is added to the number of years the person has held a New Zealand practising certificate the total number of years is at least 7.

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(2) Replace section 7(6) and (7) with:

(6) The Attorney-General must publish information explaining his or her process for—

- (a) seeking expressions of interest for the appointment of Judges of the court; and
 - (b) nominating ~~persons~~ a person for appointment as a Judge of the court.
- (7) If the Attorney-General is not for the time being responsible for recommending the appointment of Judges of the court, he or she must publish information explaining the responsible Minister's process for doing the things referred to in subsection (6). 5
- (8) A Judge must not practise as a lawyer.

569 New sections 7AA and 7AB inserted

After section 7, insert: 10

7AA Judge not to undertake other employment or hold other office

- (1) A Judge of the court must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the Chief Judge.
- (2) An approval under **subsection (1)** may be given only if the Chief Judge is satisfied that undertaking the employment or holding the office is consistent with the Judge's judicial office. 15
- (3) However, **subsection (1)** does not apply to another office if an enactment permits or requires the office to be held by a Judge.

7AB Protocol relating to activities of Judges

- (1) The Chief Justice must develop and publish a protocol containing guidance on— 20
 - (a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge; and
 - (b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge. 25
- (2) The Chief Justice may ~~only~~ develop and publish a protocol under **subsection (1)** only after consultation with the Chief Judge.

569A Section 9 amended (Appointment of temporary Judges)

After section 9(8), insert:

- (9) A superannuation subsidy must not be paid to a person who is appointed as a temporary Judge under this section. 30
- (10) **Subsection (9)** does not apply to a compulsory employer contribution within the meaning of section 101A of the KiwiSaver Act 2006.

569B Section 10 amended (Former Judges)

After section 10(3), insert: 35

- (3A) ~~A superannuation subsidy must not be paid to a person who is appointed as an acting Judge under this section.~~
- (3B) ~~**Subsection (3A)** does not apply to a compulsory employer contribution within the meaning of section 101A of the KiwiSaver Act 2006.~~

570 Section 90 replaced (Power to remove for contempt)

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Replace section 90 with:

90 Contempt of court

- (1) This section applies if any person—
- (a) wilfully insults a judicial officer, ~~or any Registrar, or any officer of the court, or any juror,~~ or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or
- (b) wilfully interrupts the proceedings of a court or otherwise misbehaves in court; or
- (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings.
- (2) If this section applies,—
- (a) any constable or officer of the court, with or without the assistance of any other person, may, by order of a ~~judicial officer~~ Judge, take the person into custody and detain him or her until the rising of the court; and
- (b) the ~~judicial officer~~ Judge may, if he or she thinks fit, sentence the person to—
- (i) imprisonment for a period not exceeding 3 months; or
- (ii) a fine not exceeding \$1,000 for each offence.
- (3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

Compare: 2011 No 81 s 365

571 New sections 98A to 98H inserted

After section 98, insert:

98A Information regarding reserved judgments

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- (1) ~~The Chief Judge must, in consultation with the Chief Justice, publish information about—~~
- (a) ~~the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and~~
- (b) ~~the number of judgments of the court that he or she considers to be outstanding beyond a reasonable time for delivery; and~~

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(e)	any other information about reserved judgments that he or she wishes to publish.	
(2)	The information referred to in subsection (1)(b) must be published periodically.	
	<u>The Chief Judge must, in consultation with the Chief Justice,—</u>	5
(a)	<u>publish information about the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and</u>	
(b)	<u>periodically publish information about the number of judgments of the court that he or she considers are outstanding beyond a reasonable time for delivery; and</u>	10
(c)	<u>publish information about reserved judgments that he or she considers is useful.</u>	
98B	Final written judgments to be published on Internet	
(1)	Every final written judgment of the court must be published on the Internet as soon as practicable unless there is good reason not to publish the complete judgment.	15
(2)	A final written judgment may be published on the Internet in part if there are good reasons for not publishing the other parts of the judgment.	
(3)	Good reason not to publish a judgment or part of it includes the following:	20
(a)	non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication;	
(b)	the judgment falls into a category of judgments that are of limited public value;	
(c)	taking into account the presumption in subsection (1) in favour of publication, a Judge nevertheless determines that the judgment or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.	25
(4)	In this section, final written judgment means a written decision that determines or substantially determines the outcome of any proceedings and that is either—	30
(a)	a written reserved judgment; or	
(b)	an oral judgment transcribed by an official transcription service.	
98C	Recusal guidelines	
	The Chief Judge must, in consultation with the Chief Justice, develop and publish guidelines to assist Judges to decide if they should recuse themselves from a proceeding.	35

98D Judge may make order restricting commencement or continuation of proceeding	
(1) A Judge may make an order (a section 98D order) restricting a person from commencing or continuing proceedings in the court.	
(2) The order may have—	5
(a) a limited effect (a limited order); or	
(b) an extended effect (an extended order).	
(3) A limited order restrains a party from continuing or commencing or continuing proceedings on a particular matter in the court.	
(4) An extended order restrains a party from continuing or commencing or continuing proceedings on a particular or related matter in the court.	10
(5) Nothing in this section limits the court's inherent power to control its own proceedings.	
98E Grounds for making section 98D order	
(1) A Judge may make a limited order <u>under section 98D</u> if, in at least 2 proceedings about the same matter in the court, the Judge considers that <u>at least 2 or more of</u> the proceedings are or were totally without merit.	15
(2) A Judge may make an extended order <u>under section 98D</u> if, in at least 2 proceedings about any matter considered by the court, the Judge considers that the proceedings are or were totally without merit.	20
(3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application or appeal involving the party to be restrained, but is not limited to those considerations.	
(4) The proceedings concerned must be proceedings instituted or conducted <u>commenced or continued</u> by the party to be restrained, whether against the same person or different persons.	25
(5) <u>For the purpose of this section and sections 98F and 98G, an appeal in a proceeding must be treated as part of that proceeding and not as a distinct proceeding.</u>	30
98F Terms of section 98D order	
(1) A <u>An order made under section 98D</u> order may restrain a party from instituting <u>commencing or continuing</u> any proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the court.	35
(2) A <u>An order made under section 98D</u> order , whether limited or extended, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or	

she is satisfied that there are exceptional circumstances justifying the longer period.

98G Procedure and appeals relating to section 98D orders

- (1) A party to any proceeding may apply for a limited order or an extended order.
- (1A) A Judge may make an order under **section 98D** (a **section 98D order**) either on an application under **subsection (1)** or on his or her own initiative. 5
- (2) An application for leave to continue or ~~issue~~ commence a civil proceeding by a party subject to a **section 98D** order may be made without notice, but the court may direct that the application for leave be served on any specified person. 10
- (2A) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be conducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice. ~~The Judge's determination of the application for leave is final.~~
- (2B) A Judge's determination of an application under **subsection (2)** for leave is final. 15
- (4) The party against whom a **section 98D** order is made may appeal against the order to the Maori Appellate Court.
- (5) The appellant in an appeal under **subsection (4)** or the applicant for the **section 98D** order concerned may, with the leave of the Maori Appellate Court, appeal against the determination of that appeal to the Court of Appeal. 20
- (6) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be.

98H References to Judge in sections 98D to 98G

The functions and powers of a Judge under **sections 98D to 98G** are exercisable by individual Judges of the Maori Land Court, and are exercisable also by the Judges acting as the Maori Appellate Court as if references in those sections to a Judge were references to the Judges acting as that court. 25

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Legislative history

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as Bill 178–3V