

Te Ture Whenua Maori Amendment Act (No 3) 2004

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is Te Ture Whenua Maori Amendment Act (No 3) 2004.
- (2) In this Act, Te Ture Whenua Maori Act 1993 is called “the principal Act”.

2 Commencement

This Act comes into force on 1 January 2005.

3 New heading and sections 26O to 26ZB inserted

The principal Act is amended by inserting, after section 26N, the following heading and sections:

“Jurisdiction of Court under Maori Commercial Aquaculture Claims Settlement Act 2004

“26O Interpretation

In sections 26P to 26ZB, unless the context otherwise requires, **iwi aquaculture organisation**, **settlement assets**, and **trustee** have the same meaning as in sections 4 and 5 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

“26P Advisory jurisdiction of Court

The Court has exclusive jurisdiction to advise on disputes referred to it under a dispute resolution process referred to in section 53 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

“26Q Jurisdiction of Court to make determinations

The Court has exclusive jurisdiction to hear and determine, and make orders accordingly, in relation to disputes referred

to it under section 54 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

“26R Principles applying to exercise of jurisdiction in relation to Maori Commercial Aquaculture Claims Settlement Act 2004

- “(1) Any person who is a party to a matter referred to in section 26P or section 26Q has standing in relation to the powers provided for in sections 26P to 26ZB.
- “(2) A request for advice under section 26P, or an application for a determination under section 26Q, is—
- “(a) a proceeding for the purposes of this Act; and
 - “(b) an application within the ordinary jurisdiction of the Court.
- “(3) The Court has the power and authority to give advice or make determinations as it thinks proper.
- “(4) The Court must determine an application or matter referred to it for advice or determination under section 26P or section 26Q by applying the same criteria as would be applied under the Maori Commercial Aquaculture Claims Settlement Act 2004.
- “(5) Sections 26P and 26Q do not limit the right of any person to appeal against any decision of the Court.
- “(6) The Court does not have jurisdiction under this section unless it is satisfied that section 53 of the Maori Commercial Aquaculture Claims Settlement Act 2004 has been complied with by the parties.
- “(7) Where a dispute resolution process contemplated by section 53 of the Maori Commercial Aquaculture Claims Settlement Act 2004 has not been agreed or has not been complied with, the Court must order the parties to engage in a dispute resolution process on terms it prescribes unless it believes, for specified reasons, that such a process is inappropriate.
- “(8) Nothing in this section or in section 26P or section 26Q restricts any other right of a person to bring proceedings in the Court.

“26S Procedure of Court in its advisory jurisdiction

- “(1) The jurisdiction conferred by section 26P is exercised by written request to the Chief Judge by a party seeking advice.
- “(2) Within 20 working days of receiving a request under section 26P, the Chief Judge must allocate the request either to himself or herself or to another Judge to address.
- “(3) Before supplying the advice sought, the Judge addressing a request for advice may (but is not obliged to)—
- “(a) exercise the powers in section 67 for the purpose stated there:
 - “(b) consult with the requestor and parties affected by the advice:
 - “(c) refer some or all of the issues arising from the request to a mediator for mediation.
- “(4) The Chief Judge may appoint 1 or more additional members (not being Judges of the Maori Land Court) who have knowledge of relevant tikanga Maori or other expertise for the purpose of assisting the Judge with the request for advice.

“26T Procedure of Court in making determinations

- “(1) The jurisdiction conferred by section 26Q is exercised on written application to the Chief Judge by a party seeking the determination.
- “(2) Within 20 working days of receiving an application under section 26Q, the Chief Judge must allocate the application either to himself or herself or to another Judge to address.
- “(3) The Judge addressing an application for a determination may (but is not obliged to) do 1 or more of the following:
- “(a) if subsection (5) applies, determine the issue and make an order accordingly:
 - “(b) refer the application to the Court for hearing and determination:
 - “(c) exercise the powers in section 67 for the purpose stated there:
 - “(d) refer issues arising from the application to a mediator for mediation:
 - “(e) if subsection (6) applies, dismiss or defer consideration of the application.

- “(4) The Chief Judge may appoint 1 or more additional members (not being Judges of the Maori Land Court) who have knowledge of relevant tikanga Maori or other expertise for the purpose of providing advice on the application.
- “(5) The Judge may make a determination under subsection (3)(a) if the Judge is satisfied that—
- “(a) the applicant has taken reasonable steps to notify affected parties of the application, and those parties do not oppose the application; or
 - “(b) the parties have taken reasonable steps to resolve their dispute, as provided for in section 54(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004.
- “(6) The Judge may dismiss or defer consideration of an application under subsection (3)(e) if—
- “(a) it is vexatious, frivolous, or an abuse of the Court, or fails to satisfy rules of court; or
 - “(b) it does not present serious issues for determination; or
 - “(c) the Judge considers it is appropriate to dismiss or defer consideration of the application for another reason.
- “(7) The Judge may choose not to address an application if the Judge is satisfied that the issues presented by the application are governed by another enactment or are more appropriately addressed in another forum.

“26U Procedure for applications referred to Court

- “(1) If a matter is referred to the Court for hearing and determination under section 26T(3)(b), the Court may (but it is not obliged to) do 1 or more of the following:
- “(a) if subsection (2) applies, determine the issue and make an order accordingly:
 - “(b) exercise the powers in section 67 for the purpose stated there:
 - “(c) if subsection (3) applies, dismiss or defer consideration of the application:
 - “(d) request a report from the trustee on any matter the Court considers appropriate.
- “(2) The Court may make a determination under subsection (1)(a) if it is satisfied that—

- “(a) the applicant has taken reasonable steps to notify affected parties of the application; and
- “(b) those parties do not oppose the application.
- “(3) The Court may dismiss or defer consideration of an application under subsection (1)(c) if—
 - “(a) it is vexatious, frivolous, or an abuse of the Court, or fails to satisfy rules of court; or
 - “(b) it does not present serious issues for determination; or
 - “(c) the Court considers it is appropriate to dismiss or defer consideration of the application for another reason.
- “(4) The Court may choose not to address an application if it is satisfied that the issues presented by the application are governed by another enactment or are more appropriately addressed in another forum.
- “(5) The Court may, of its own motion or at the request of any party to the proceeding, appoint 1 or more additional members (not being Judges of the Maori Land Court) who have knowledge of relevant tikanga Maori or other expertise to assist the Court.

“26V Appointment of mediator

- “(1) A Judge who decides to refer issues to a mediator under section 26S(3)(c) or section 26T(3)(d) or section 26Z(3)(a) must consult the parties affected by the application about who to appoint as mediator.
- “(2) The parties affected by the application may, by agreement among them, appoint as the mediator 1 or more persons with the skills and experience to undertake mediation on issues arising under the Maori Commercial Aquaculture Claims Settlement Act 2004.
- “(3) If a mediator is not appointed by agreement under subsection (2), the Judge must—
 - “(a) appoint a mediator; and
 - “(b) before doing so, be satisfied that the mediator has the skills and experience to undertake mediation on issues arising under the Maori Commercial Aquaculture Claims Settlement Act 2004.

“26W Judge appointed as mediator

- “(1) A Judge other than the Judge addressing an application may be a mediator.
- “(2) However, a Judge acting as a mediator is to be treated as acting judicially and retains the same immunities as he or she has when acting as a Judge.
- “(3) Despite subsection (2), a Judge who acts as a mediator must not sit as a Judge of the Court on any of the same issues.

“26X Conduct of mediation

- “(1) A Judge may advise a mediator of the issues that need to be addressed at mediation.
- “(2) The following persons are entitled to attend and participate in a mediation:
 - “(a) parties affected and their representatives; and
 - “(b) any other person with the leave of the Judge addressing the application.
- “(3) A mediator may—
 - “(a) follow those procedures (structured or unstructured) and do those things the mediator considers appropriate to resolve the issues referred to the mediator promptly and effectively; and
 - “(b) receive any information, statement, admission, document, or other material in any way or form the mediator thinks fit, whether or not it would be admissible in judicial proceedings.
- “(4) Written and oral material presented at or for the mediation must be kept confidential by the mediator and those participating in the mediation, unless the party who produces the material consents to its disclosure.
- “(5) No person may be sued for defamation for statements made in mediation.
- “(6) Statements made and material presented at a mediation are admissible in a subsequent mediation of the same issues, but are not admissible in other proceedings before a person acting judicially, unless the parties participating in the mediation consent to the admission of the statement or material.

“26Y Successful mediation

- “(1) If some or all of the issues referred to mediation are resolved at mediation, the mediator must—
- “(a) record the terms of that resolution; and
 - “(b) deliver them to the Judge.
- “(2) The Judge may include the terms of resolution so delivered in an order signed by the Judge and sealed with the seal of the Court.

“26Z Unsuccessful mediation

- “(1) If some or all of the issues referred to mediation are not resolved by mediation, and the mediator believes that those issues are unlikely to be resolved, the mediator must—
- “(a) report that lack of resolution to the Judge; and
 - “(b) state the issues that are unresolved and any issues that have been resolved.
- “(2) Affected parties who participate in the mediation may, if mediation fails and they all agree, withdraw and discontinue the application.
- “(3) Subject to subsection (2), the Judge must, on receiving a report under subsection (1), either—
- “(a) refer some or all of the unresolved issues to a mediator for mediation; or
 - “(b) refer the unresolved issues to the Court for hearing and determination or for the provision of advice, as the case may be.
- “(4) A Judge who refers unresolved issues to the Court under subsection (3)(b) may be the Judge who hears the matter or provides advice.

“26ZA Orders and interim orders

- “(1) In making orders under sections 26P to 26Z, the Judge or the Court, as the case may be, may do 1 or more of the following:
- “(a) incorporate or restate the terms of an agreement reached by the persons participating in an application:
 - “(b) incorporate the terms that express the outcome of mediation:

- “(c) specify that the order applies for general or specific purposes:
 - “(d) specify the purpose or purposes for which the order is made:
 - “(e) specify a date after which the order ceases to have effect:
 - “(f) in relation to an iwi aquaculture organisation,—
 - “(i) require new elections or the appointment of office holders in accordance with the constitutional documents of the iwi aquaculture organisation:
 - “(ii) require the trustee to suspend recognition of an iwi aquaculture organisation until specified changes are made to its constitutional documents:
 - “(iii) until the Judge or the Court is satisfied that the dispute has been satisfactorily resolved, prevent an action to allocate and transfer settlement assets under the Maori Commercial Aquaculture Claims Settlement Act 2004:
 - “(iv) specify additional conditions or requirements necessary—
 - “(A) to assist in the timely resolution of the dispute; or
 - “(B) to prevent prejudice to the interests of the iwi aquaculture organisation or the members of its iwi:
 - “(g) make orders as to costs under section 79:
 - “(h) make other orders not inconsistent with the Maori Commercial Aquaculture Claims Settlement Act 2004, or as the Judge or Court considers appropriate.
- “(2) The Judge or the Court, at the request of any party, may also order, as it considers appropriate, that an action referred to in subsection (1)(f)(iii) be subject to an interim injunction until—
- “(a) the date specified in the order; or
 - “(b) the conditions specified in the order are met; or
 - “(c) a further order is made by the Court; or
 - “(d) the order ceases to have effect.
- “(3) If the Court makes an order under subsection (1)(f)(iii) or subsection (2) that an action be prevented or be subject to an in-

terim injunction, as the case may be, the affected assets must be held in trust by the trustee in accordance with section 118B.

“26ZB Proceedings where additional members appointed

If additional members are appointed under section 26S(4) or section 26T(4) or section 26U(5), the proceedings and processes of the Court cannot be challenged on appeal or in any other proceedings on the ground that an additional member had a tribal affiliation or other relationship with any of the parties unless it is shown that the additional member acted in bad faith.”

4 New section 118B inserted

The principal Act is amended by inserting, after section 118A, the following section:

“118B Circumstances when certain transfers and payments must be held in trust

“(1) If the Court makes an order under section 26ZA(1)(f)(iii) or (2) that an action be prevented or be subject to an interim injunction, as the case may be,—

“(a) the trustee must hold the assets that are subject to the order in trust for that iwi aquaculture organisation until—

“(i) the date specified in the order; or

“(ii) the conditions specified in the order are met; or

“(iii) the order ceases to have effect; and

“(b) the iwi aquaculture organisation is entitled to receive any income earned from those assets for the period that they are held in trust, except that the trustee is entitled to deduct the reasonable costs of administering the assets.

“(2) In this section, iwi aquaculture organisation and trustee have the meaning set out in section 26O.”

5 Consequential amendments

(1) Section 4 of the principal Act is amended by omitting from paragraph (a)(iv) of the definition of order the expression “26M”, and substituting the expression “26ZB”.

- (2) Section 34 of the principal Act is amended by inserting, after the words “section 26G(5) or”, the words “section 26S(4) or section 26T(4) or section 26U(5) or”.
- (3) Section 35 of the principal Act is amended by inserting, after the words “section 26G(5) or”, the words “section 26S(4) or section 26T(4) or section 26U(5) or”.
- (4) Section 36(1) of the principal Act is amended by inserting, after the words “section 26G(5) or”, the words “section 26S(4) or section 26T(4) or section 26U(5) or”.

14 December 2004

Legislative history

Divided from Aquaculture Reform Bill (Bill
181-2), third reading
