

MAORI AFFAIRS BILL

EXPLANATORY NOTE

Tena koutou e te iwi.

Ko te whakatakotoranga tenei i te Pire hou i mua i te aroaro o te Whare Paremata me te iwi nui hoki. Ko te taahu tenei o nga whakaaro kua waihangatia hei kaupapa mo nga ture katoa e pa ana ki te iwi Maori. Heoi ko nga korero e rarangi nei i roto i te Pire i tenei wa e pa anake ana ki te Kooti Whenua Maori, me etahi o nga tikanga-a-iwi. Ko te nuinga o nga ture kei te whakapukapukatonutia, a, akuanei ka tukuna atu ki a koutou.

Ko te tumanako kia ata tirohia e koutou tenei wahanga o te Pire. Kia tae ki te wa mo te Komiti Motuhake hei titiro ki tenei Pire hou me ata whakaputa tonu koutou i o koutou whakaaro.

Kia mahara ake ki tenei, katahi ano ka tukuna te mana whakatakoto ture e pa ana ki te iwi Maori kia noho maana ano e waihanga. No reira, kia kaha ki te whakaputa, ki te whakawhaiti, ki te whakapakari i nga whakaaro ki runga i tenei Pire hou.

In 1978 the Government introduced a consolidation of the Maori Affairs Act 1953 and the Maori Housing Act 1935, and their various amendments. However, at the request of the Maori people it was decided not to proceed with that Bill, and to invite the New Zealand Maori Council to consider the existing legislation and to make recommendations to the Government for its revision. In February 1983 the Council submitted to the Government Te Wahanga Tuatahi. Most of the proposals set out in that Kaupapa have been accepted in principle by the Government and it is proposed to introduce legislation giving effect to them.

This Bill represents the first stage of that process. It deals primarily with the Maori Land Courts and the general principles that are to apply in the interpretation and application of the legislation. It is proposed that the Maori Affairs Committee will use this Bill as the basis for the consideration of further proposals to be put before it by the Government as further work proceeds. This will enable both the Maori Affairs Committee and, through that committee, the Maori people generally, to be closely involved in the preparation of the new legislation.

Hon. Mr Couch

MAORI AFFAIRS

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A BILL INTITULED

An Act to reform the laws relating to Maori affairs in accordance with the principles set out in the Preamble to this Act

E tika ana hoki, ko te Tiriti o Waitangi te taonga whakatapu i te nohoanga i waenganui i te Iwi Maori me te Karauna, a, e tika ana ano hoki kia maharatia ake te tuku a te Iwi Māori i tona rangatiratanga i raro i te maru o te Tiriti o Waitangi. Ko taua rangatiratanga, ko nga taonga tukuiho a te Iwi Maori; a, kia maharatia ano hoki te ahua nei, ko te whenua te turangawaewae o te Iwi Maori. No reira me kaha te pupuri i te whenua me te aru tikanga e pumau ai te noho, a, e puta ai he hua ki te Iwi, A e tika ana, me hanga he ahuatanga hei awahina i te Iwi ki te whakamana i enei kaupapa. 5 10

Whereas the Treaty of Waitangi symbolises the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of sovereignty for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas 15

rangatiratanga in the context of this Act means the custody and care of matters significant to the cultural identity of the Maori people of New Zealand in trust for future generations: And whereas, in particular, it is desirable to recognise the special relationship of Maori people to their land and for that reason to promote the retention of that land in the hands of Maori people, and to facilitate the occupation and utilisation of that land for the benefit of the Maori people: And whereas it is desirable to establish agencies to assist the Maori people to achieve the implementation of these principles:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Maori Affairs Act 1984.

(2) This Act shall come into force on the 1st day of June 1985.

2. Interpretation of the Act generally—(1) It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the principles set out in the Preamble to this Act.

(2) Without limiting the generality of subsection (1) of this section, it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, and control of Maori taonga by Maori people.

(3) The Maori and English versions of the Preamble to this Act are hereby declared to be of equal authority.

PART I

TIKANGA A IWI

3. Recognition and encouragement of Maori language—

(1) Official recognition is hereby given to the Maori language of New Zealand in its various dialects and idioms as the ancestral tongue of that portion of the population of New Zealand who are of Maori descent.

(2) The Minister may from time to time take such steps as he considers appropriate for the encouragement of the learning and use of the Maori language (in its various dialects and idioms), both within and without the Department, and, in particular, for the provision to Government departments and other institutions of information concerning, and translations from or into, the Maori language.

Cf. 1953. No. 94. s. 77A; 1974, No. 73, s. 51

4. Training and employment schemes for Maoris—

(1) The Board of Maori Affairs may from time to time, with the approval of the Minister, authorise the preparation and carrying into effect of schemes for the training, retraining, and employment of Maoris. 5

(2) Without limiting the generality of **subsection (1)** of this section, any such scheme may contain provisions for one or more of the following activities:

(a) The recruitment and placement of Maoris in employment:

(b) The training and retraining of Maoris in trades, professions, or occupations: 10

(c) The arranging of apprenticeships for Maoris:

(d) The provision of suitable accommodation for Maoris who are training for employment, or who are otherwise studying, or who are employed in any trade, profession, or occupation. 15

(3) Any scheme may be prepared and administered in collaboration with any other Government department, education authority, or institution, or any other person or body of persons engaged in similar purposes. 20

Cf. 1974, No. 73, s. 6

5. Kokiri Centres—(1) In this section the term “Kokiri Centre” means any place in which training and tuition is given in respect of any of the following matters:

(a) Any trade, profession, or occupation: 25

(b) Any skill or art that promotes the general social wellbeing of the community:

(c) Maori language, Maori customs and traditions, Maori arts and handicrafts, and other aspects of Maori culture relating to the identity of the Maori race: 30

(d) Languages, customs and traditions, and arts and handicrafts of members of other races.

(2) The Board of Maori Affairs, with the approval of the Minister, may from time to time, on behalf of the Crown,—

(a) Purchase, take on lease, or otherwise acquire any land or place for the purpose of establishing Kokiri Centres: 35

(b) Do all things necessary for the erection, replacement, repair, upkeep, improvement, maintenance, operation, furnishing, and equipment of any building or premises on any land to which **paragraph (a)** of this subsection applies: 40

(c) Employ such persons and pay such remuneration or wages as the Board of Maori Affairs thinks fit to any person employed at any such Kokiri Centre:

5 (d) Enter into such arrangements (whether by way of lease, licence, or otherwise) as it thinks fit with such persons (whether as trustees, managers, elders, or otherwise) as it thinks fit for the conduct of any such Kokiri Centre.

10 (3) Any land or premises acquired under this section may be sold, leased, or otherwise disposed of upon such terms and conditions as the Board thinks fit; but no such land or premises shall be sold without the consent of the Minister.

15 (4) In respect of any lease of, or licence to occupy, any land to which **subsection (2)** of this section applies, the Board, on behalf of the Crown, may from time to time impose such charges as it thinks fit, and may prescribe such rules as it thinks necessary for regulating the management and control of any Kokiri Centre or any activity carried on therein.

20 (5) All expenditure incurred by the Board under this section shall be paid out of money appropriated by Parliament from the Consolidated Account and all income derived by the Board under this section shall be paid into the Consolidated Account.

Cf. 1953, No. 94, s. 464A; 1980, No. 67, s. 5

25 **6. Hostels**—(1) Without limiting the other powers conferred on the Board of Maori Affairs by this Act, the Board may from time to time, on behalf of the Crown,—

(a) Purchase, take on lease, or otherwise acquire any land or premises for the purpose of providing or maintaining hostels for the accommodation of Maoris:

30 (b) Do all things necessary for the erection, replacement, repair, upkeep, improvement, maintenance, operation, furnishing, and equipment of any building or premises on any land to which **paragraph (a)** of this subsection applies:

35 (c) Employ such persons and pay such remuneration or wages as the Board thinks fit to any person employed at any such hostel:

40 (d) Enter into such arrangements (whether by way of lease, licence, or otherwise) with such persons (whether as trustees, managers, or otherwise) as the Board thinks fit for the management or administration of any such hostel.

(2) Any land or premises acquired by the Board under this section may be sold, leased, or otherwise disposed of by the Board upon such terms and conditions as it thinks fit; but no such land or premises shall be sold without the consent of the Minister.

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(3) In respect of any accommodation provided by the Board under this section, the Board may from time to time impose such charges as it thinks fit, and prescribe such rules as it thinks necessary for regulating the management and control of any hostel or the conduct of any person in any hostel.

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(4) All expenditure incurred by the Board under this section shall be paid out of money appropriated by Parliament from the Consolidated Account, and all income derived by the Board under this section shall be paid into the Consolidated Account.

Cf. 1953, No. 94, s. 464B; 1982, No. 124, s. 11

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PART II

DEPARTMENT OF MAORI AFFAIRS

7. Department of Maori Affairs to continue—There shall continue to be a Department of State called the Department of Maori Affairs under the direction and control of the Minister of Maori Affairs.

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Cf. 1953, No. 94, s. 3; 1968, No. 14, s. 3; 1974, No. 73, s. 4

8. Functions and objectives of Department—(1) The general functions of the Department shall be—

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(a) To give effect, under the direction of the Minister, to the provisions of this Act and of all other enactments administered by it:

(b) To carry out any other directions of the Minister for the benefit of individuals or groups of the Maori people:

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(c) To provide the clerical and administrative services necessary for the efficient functioning of the Maori Land Court.

(2) The principal objectives of the Department shall be as follows:

35

(a) The promotion of the health, education, and general social wellbeing of the Maori people:

(b) The—

(i) Retention of Maori land in the hands of the owners; and

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(ii) Promotion of the effective use and administration of Maori land by or on behalf of the owners:

- (c) The preservation, encouragement, and transmission of the Maori language, Maori customs and traditions, Maori arts and crafts, and other aspects of Maori culture relating to the identity of the Maori people:
- 5 (d) The qualification of Maoris for, and their entry into, all trades, professions, and occupations.

Cf. 1953, No. 94, s. 4; 1974, No. 73, s. 4

9. Secretary for Maori Affairs—There shall from time to time be appointed under the State Services Act 1962 a Secretary
10 for Maori Affairs, who shall be the chief administrative officer of the Department.

Cf. 1953, No. 94, s. 4A (1); 1974, No. 73, s. 4

10. Deputy Secretary for Maori Affairs—(1) There shall from time to time be appointed under the State Services Act
15 1962 a Deputy Secretary for Maori Affairs, who, subject to the control of the Secretary, shall have and may exercise all the powers, duties, and functions of the Secretary, and shall be his deputy.

(2) On the occurrence from any cause of a vacancy in the
20 office of the Secretary (whether by reason of death, resignation, or otherwise), and in the case of the illness, absence, or other temporary incapacity of the Secretary, and so long as any such vacancy, illness, absence, or incapacity continues, the Deputy Secretary shall have and may exercise all the powers, duties,
25 and functions of the Secretary.

(3) The fact that the Deputy Secretary exercises any power, duty, or function of the Secretary shall be conclusive evidence of his authority to do so, and no person shall be concerned to inquire whether the occasion has arisen requiring or
30 authorising him to do so.

Cf. 1953, No. 94, s. 4B; 1974, No. 73, s. 4

11. Other officers and employees of Department—
(1) There shall from time to time be appointed under the State Services Act 1962 such other officers and employees of the
35 Department as may be necessary for the efficient administration of this Act and of the other enactments administered by the Department.

(2) All officers and employees of the Department shall act under the direction of the Secretary in the exercise and
40 performance of the powers, duties, and functions conferred or imposed on them by this Act or any other enactment, and

shall have all such powers, duties, and functions as may be conferred on them by that enactment or delegated or assigned to them by the Secretary.

(3) Nothing in **subsection (3)** of this section shall apply to the exercise and performance by a Registrar of his powers, duties, and functions in respect of any particular matter before him or the Court. 5

Cf. 1953, No. 94, s. 4A (2); 1974, No. 73, s. 4

PART III

THE MAORI LAND COURT 10

Constitution of Court

12. Maori Land Court to continue—(1) There shall continue to be a Court of record called the Maori Land Court, which shall be the same Court as that existing under the same name immediately before the commencement of this Act. 15

(2) In addition to the jurisdiction and powers expressly conferred on it by this or any other Act, the Court shall have all the powers that are inherent in a Court of record.

Cf. 1953, No. 94, s. 15

13. Appointment of Judges—(1) The Governor-General 20 may from time to time, by warrant under his hand, appoint fit and proper persons to be Judges of the Maori Land Court.

(2) Subject to **sections 15 and 16** of this Act, the number of Judges shall not at any time exceed 7.

(3) No person shall be appointed a Judge unless he has held 25 a practising certificate as a barrister or solicitor for at least 7 years.

(4) No person shall be appointed a Judge if he has attained the age of 68 years.

(5) Every Judge shall, by virtue of his office, be a Justice of 30 the Peace for New Zealand.

(6) The office of Judge may be held in conjunction with any other office that, in the opinion of the Governor-General, is not incompatible with judicial office.

(7) No Judge shall practise as a barrister or solicitor. 35

Cf. 1953, No. 94, s. 16; 1974, No. 73, s. 43 (1)

14. Chief Judge—(1) The Governor-General shall from time to time, by warrant under his hand, appoint a Chief Judge of the Maori Land Court.

(2) Subject to **subsection (3)** of this section, the Chief Judge shall hold that office so long as he holds office as a Judge.

(3) With the prior approval of the Governor-General, the Chief Judge may resign that office without resigning his office as a Judge.

(4) Whenever by reason of illness, absence from New Zealand, or any other cause the Chief Judge is prevented from exercising the duties of his office, or during any vacancy in the office of Chief Judge, the Governor-General may, by writing under his hand, appoint one of the other Judges to act as Chief Judge until the Chief Judge resumes his duties, and during that period to execute the duties of that office and to exercise all powers that may be lawfully exercised by the Chief Judge.

Cf. 1947, No. 16, s. 5A; 1979, No. 125, s. 7

15. Temporary Judges—(1) Subject to **section 18** of this Act, at any time during the illness or absence of any Judge, or for any other temporary purpose, the Governor-General may, by warrant under his hand, appoint any one or more persons who would otherwise be eligible for appointment (including a former Judge) to be a Judge for such term, not exceeding 12 months, as the Governor-General may specify.

(2) Any person appointed a Judge under this section may be reappointed, but no Judge shall hold office under this section for more than 2 years in the aggregate.

(3) Every person appointed a Judge under this section shall, during the term of his appointment, be paid the salary and allowances payable by law to a Judge other than the Chief Judge.

Cf. 1908, No. 89, s. 11; 1981, No. 40, s. 2 (1)

16. Former Judges—(1) Subject to **section 18** of this Act, the Governor-General may, by warrant under his hand, appoint any former Judge to be an acting Judge for such term not exceeding 2 years or, if the former Judge has attained the age of 72 years, not exceeding 1 year, as the Governor-General may specify.

(2) During the term of his appointment, the former Judge may act as a Judge during such period or periods only and in such place or places only as the Chief Judge may determine.

(3) Every former Judge appointed under this section shall, during each period when he acts as a Judge, but not otherwise, be paid a salary at the rate for the time being payable by law to a Judge other than the Chief Judge, and shall also be paid such travelling allowances or other incidental or minor allowances as may be fixed from time to time by the Governor-General. 5

(4) Every former Judge appointed under this section shall, during each period when he acts as a Judge, have all the jurisdiction, powers, protections, privileges, and immunities of a Judge. 10

Cf. 1908, No. 89, s. 11A; 1981, No. 40, s. 2 (1)

17. Certificate by Chief Judge and 1 other Judge prerequisite—No appointment may be made under section 15 or section 16 of this Act otherwise than on a certificate signed by the Chief Judge and at least 1 other permanent Judge to the effect that, in their opinion, it is necessary for the due conduct of the business of the Court that 1 or more temporary Judges, or (as the case may require) 1 or more acting Judges, be appointed. 15 20

Cf. 1908, No. 89, s. 11B; 1981, No. 40, s. 2 (1)

18. Tenure of office—(1) The Governor-General may, if he thinks fit, remove a Judge for inability or misbehaviour.

(2) Every Judge shall retire from office on attaining the age of 68 years. 25

Cf. 1947, No. 16, s. 7

19. Salaries and allowances of Judges—(1) There shall be paid to the Chief Judge and every other Judge out of the Consolidated Account, without further appropriation than this section,— 30

- (a) A salary at such rate as the Governor-General, by Order in Council, from time to time determines; and
- (b) Such allowances as are from time to time prescribed by the Governor-General by Order in Council; and
- (c) Such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time by the Governor-General. 35

(2) The salary of a Judge shall not be diminished by an Order in Council under this section during the continuance of his appointment. 40

(3) Any Order in Council made under **paragraph (a)** or **paragraph (b)** of **subsection (1)** of this section and any determination made under **paragraph (c)** of that subsection, and any provision of any such order or determination, may be
5 made so as to come into force on a date to be specified in that behalf in the order or determination, being the date of the making of the order or determination or any other date, whether before or after the date of the making of the order or determination or the date of the commencement of this
10 section.

(4) Every such Order in Council or determination, and every provision of any such order or determination, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the order or determination.

15 (5) Every Order in Council made under **subsection (1)** of this section shall be deemed to be a regulation for the purposes of the Regulations Act 1936.

Cf. 1953, No. 94, s. 21; 1978, No. 70, s. 2 (1)

20. Chief Registrar, Registrars, and other officers of Court—(1) There shall from time to time be appointed under
20 the State Services Act 1962 a Chief Registrar of the Maori Land Court who, subject to the control of the Secretary, shall be responsible for the administration of the Maori Land Court and the Maori Appellate Court throughout New Zealand.

25 (2) There shall from time to time also be appointed under that Act such Registrars, Deputy Registrars, and other officers of the Court as may from time to time be required.

Cf. 1953, No. 94, s. 22

21. Court districts—(1) The Governor-General may from
30 time to time, by Order in Council,—

(a) Divide New Zealand into Maori Land Court districts, and declare the name by which each such district shall be designated:

35 (b) Abolish any such district, or alter the limits or the designation of any such district, as he thinks fit.

(2) The Chief Judge shall from time to time assign a Judge to each district, or to 2 or more districts, as he thinks fit sufficient.

40 (3) There shall be a Registrar for each district, but the same person may hold office as Registrar for any 2 or more districts.

Cf. 1953, No. 94, s. 23

22. Seal of Court—(1) The Court shall have, in the custody of each Judge and Registrar, a seal, which shall be the seal of the Court and shall be used for sealing documents that require to be sealed.

(2) The form of the seal shall be such as the Governor-General from time to time determines. 5

(3) The seal in use at the commencement of this Act shall continue to be the seal of the Court unless and until a new seal is duly prescribed by the Governor-General.

Cf. 1953, No. 94, s. 24

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Objectives, Jurisdiction, and Powers

23. General objectives—(1) The primary objective of the Court shall be to promote and assist in the retention of Maori land in the hands of the owners and the effective use and administration of Maori land by or on behalf of the owners. 15

(2) The Court shall seek—

(a) To ascertain and give effect to the wishes of the owners of Maori land to which any proceedings relate:

(b) To provide a means whereby owners of Maori land may be kept informed of any proposals relating to the land, and a forum in which the owners might discuss any such proposal: 20

(c) To determine or facilitate the settlement of disputes and other matters among owners of Maori land simply and efficiently: 25

(d) To protect minority interests in Maori land against an oppressive majority, and to protect majority interests in such land against an unreasonable minority:

(e) To ensure fairness in dealings with the owners of Maori land in multiple ownership: 30

(f) To promote practical solutions to problems arising in the administration or use of Maori land.

(3) Without limiting **section 2 (2)** of this Act, in exercising its jurisdiction and powers under this Act the Court shall at all times have regard to the objectives set out in the foregoing provisions of this section. 35

24. General jurisdiction of Court—(1) In addition to any jurisdiction specifically conferred on it otherwise than by this section, the Court, subject to the provisions of **subsection (2)** of this section, shall have the following jurisdiction: 40

- 5 (a) To hear and determine any claim, whether at law or in equity, to the ownership or possession of Maori freehold land, or to any right, title, estate, or interest in any such land or in the proceeds of the alienation of any such right, title, estate, or interest:
- (b) To determine the relative interests of the owners in common, whether at law or in equity, of any Maori freehold land:
- 10 (c) To hear and determine any claim to recover damages, not exceeding \$12,000, for trespass or any other injury to Maori freehold land:
- (d) To determine for the purposes of any proceedings in the Court or for any other purpose whether any specified land is Maori freehold land or General land or Crown land.

15 (2) Nothing in the foregoing provisions of this section shall limit or affect the jurisdiction of any other Court, but no matter that has been heard and determined by the Maori Land Court or the Appellate Court shall thereafter be heard in any other
20 Court.

(3) Any proceedings commenced in the Maori Land Court may, if the Judge thinks fit, be removed for hearing into any other Court of competent jurisdiction.

25 Cf. 1953, No. 94, s. 30; 1956, No. 61, s. 89 (1); 1960, No. 120, s. 5; 1962, No. 45, s. 2; 1974, No. 73, s. 47; 1976, No. 148, s. 5

25. Jurisdiction in respect of injunctions—The Court, on application made by any person interested or by the Registrar of the Court, or of its own motion, may at any time issue an
30 order by way of injunction—

- (a) Against any Maori in respect of any actual or threatened trespass or other injury to Maori freehold land; or
- 35 (b) Prohibiting any person from dealing with or doing any injury to any property that is the subject-matter of any application, or that might otherwise be affected by any application, to the Court, or of any application to the Chief Judge in respect of the exercise of any jurisdiction specially conferred on him by this Act or otherwise, if in any such case the application has not
40 been finally disposed of by the Court or the Chief Judge or the Appellate Court, as the case may be; or

- (c) Prohibiting any owner or any other person or persons without lawful authority from cutting or removing, or authorising the cutting or removal, or otherwise making any disposition of any timber trees, timber, or other wood, or any flax, tree ferns, sand, topsoil, metal, minerals, or other substances whether usually quarried or mined or not, on or from any Maori freehold land; or 5
- (d) Prohibiting the distribution, by any trustee or agent, of rent, purchase money, royalties, or other proceeds of the alienation of land, or of any compensation payable in respect of the land, affected by any order to which an application has been made to the Chief Judge under **section 41** of this Act. 10

26. Court may issue declaratory consolidated order in substitution for orders creating title to Maori land— 15

(1) Where any instrument of title issued with respect to any Maori freehold land, whether or not such instrument has been registered under the Land Transfer Act 1952, does not, by reason of changes of ownership effected or evidenced by subsequent orders of the Court, or certificates or other documents recorded in the records of the Court or in the Land Transfer Office, fully disclose the names of the several persons for the time being entitled to any estate or interest in that land and the several shares and interests to which they are so entitled, the Court may, in accordance with the provisions of this section, make an order (in this section referred to as a consolidated order) declaring, as at the date of the order, the names of the persons who, by virtue of the instrument of title or the subsequent orders, certificates, or other documents aforesaid, are then entitled to any estate or interest in the land and the several shares and interests to which they are so entitled. 20 25 30

(2) An order under this section may be made by the Court on the application of the Registrar. 35

(3) Notice of every consolidated order proposed to be made by the Court pursuant to this section shall be given in such manner as the Court may direct, and a draft of the proposed consolidated order shall be open for public inspection in the office of the Court, without payment of any fee, for such period, being not less than 2 months in any case, as the Court may direct. 40

(4) Where a beneficial owner named in the original instrument of title or in any subsequent order has died, whether before or after the commencement of this Act, and in respect of his beneficial interest a succession order has been made
5 under any former Act or a vesting order has been made under section 136 of the Maori Affairs Act 1953, vesting the interest of the deceased owner in a trustee pursuant to the will of the deceased, the trustee shall be deemed to be the beneficial owner
10 of that interest for the purposes of the consolidated order, and the existence of the trust shall be disclosed in the order by reference to the will of the deceased owner.

(5) The District Land Registrar, on the application of the Registrar of the Court, shall register the consolidated order against the title to the land affected thereby, and any such
15 registration shall have effect to vest the land in the persons named in the order, for the estate and in the relative shares and interests defined in the order, subject to any existing lease, licence, mortgage, charge, or other encumbrance, and subject to any disposition effected otherwise than by an order of the
20 Court.

(6) A consolidated order shall not be registered under **subsection (5)** of this section in any case where the legal estate in the land is vested in the Maori Trustee or is vested by statute in any other trustee.

(7) Where a consolidated order has been registered in accordance with the foregoing provisions of this section, the Court may at any time, on the request in writing of the District Land Registrar, issue a certificate, under the seal of the Court, as to the identity and extent of any interest referred to in the
30 order that is subject to any existing lease, licence, mortgage, charge, or other encumbrance, or is subject to any disposition that was effected, otherwise than by an order of the Court, before the date of the consolidated order, and any such certificate shall, unless and until amended or revoked by the
35 Court, be conclusive evidence as to the facts certified to therein.

(8) The consolidated order shall be made to incorporate the effect of any order affecting the ownership of any interest made by the Court subsequent to the drawing up of the draft consolidated order.

40 Cf. 1953, No. 94, s. 445; 1957, No. 81, s. 6; 1967, No. 124, s. 126; 1974, No. 73, s. 52 (4)

27. Court may make order to restore effect of lost instruments of alienation—(1) On proof to the satisfaction of the Court that any instrument of alienation of Maori freehold land, whether executed before or after the commencement of this Act, has been lost or destroyed, it may make an order under this section if it is satisfied— 5

- (a) That the said instrument was duly executed by or on behalf of the alienor; and
- (b) In the case of an instrument requiring confirmation, that it was duly confirmed, or if not so confirmed, that the Court or other competent authority had made a pronouncement in favour of confirmation; and 10
- (c) That the instrument was not wilfully destroyed by or with the connivance of the applicant for an order under this section. 15

(2) By an order under this section, the Court may declare the nature and effect of the instrument to which the order relates, and the instrument shall be deemed to have been of the nature and to have had effect according to its tenor, as declared in the order. 20

(3) Instead of or in addition to making an order declaring the nature and effect of the instrument, the Court may, on any application under this section, make an order vesting any land or interest in land to which the instrument related in any person or persons claiming under the instrument or in any other person or persons claiming under or through the first-mentioned person or persons. 25

(4) On any application under this section, the Court shall be guided in all matters by what it deems to be the real justice of the case. 30

Cf. 1953, No. 94, s. 446

28. Jurisdiction of Court under Fencing Act 1978—

(1) Notwithstanding anything to the contrary in the Fencing Act 1978, the Court shall have exclusive jurisdiction to hear and determine all claims, disputes, and questions arising under that Act in respect of any Maori freehold land. 35

(2) In addition to the exclusive jurisdiction conferred on the Court by **subsection (1)** of this section, it shall have jurisdiction, concurrent with that of any other Court of competent jurisdiction, to hear and determine any claim, dispute, or question arising under that Act in respect of any Maori freehold land or of any General land owned by Maoris. 40

(3) In the exercise of its jurisdiction under this section, the Court may make an order for the payment of any sum in respect of any claim, dispute, or question under the said Act, and by the same or a subsequent order may direct by whom
5 and to whom respectively any such sum shall be paid.

(4) Any sum made payable by any such order, or any specified part of that sum, may be made a charge on the land or on any specified interest therein.

(5) Any such order may also charge the land, during the
10 continuance of the order or for a limited period, with interest on the amount for the time being owing under the charge at such rate, not exceeding 5 percent per annum, as the Court may determine.

(6) In the exercise of its jurisdiction under this section, the
15 Court, in its discretion, may order payment to be made in respect of the erection or repair of any fence, notwithstanding that any notice required by the Fencing Act 1978 to be given or served has not been so given or served.

Cf. 1953, No. 94, s. 441; 1975, No. 135, s. 16

20 **29. Governor-General may confer special jurisdiction—**

(1) The Governor-General may, by Order in Council, confer upon the Court jurisdiction to determine any claim, dispute, issue, question, or other matter affecting the rights of Maoris in any real or personal property, or any other matter that, in
25 the opinion of the Governor-General, properly falls within the field of the special expertise of the Court.

(2) Any order made by the Court in any case referred to it under this section shall have the same effect and shall be dealt with as nearly as may be in the same manner as an order or
30 determination of similar nature made by the Court in the exercise of the jurisdiction expressly conferred upon it by this Act.

(3) Nothing in this section shall authorise such an extension of the jurisdiction of the Court as would remove or modify
35 any statutory restriction or limitation of the jurisdiction of the Court, or to confer on the Court authority to vary or annul any order or decision of any other Court.

Cf. 1953, No. 94, s. 31

30. Governor-General may refer any matter to Court for inquiry and report—(1) Without limiting **section 29** of this Act, the Governor-General may, by Order in Council, refer to the Court for its opinion thereon—

- (a) Any claim, dispute, issue, question, or other matter affecting the rights of Maoris in any real or personal property; or 5
 - (b) Any other matter of public importance that, in the opinion of the Governor-General, properly falls within the field of the special expertise of the Court. 10
- (2) Nothing in **subsection (1)** of this section shall authorise the making of an Order in Council conferring on the Court the power to investigate the commission of any offence.
- (3) Where any matter is referred to the Court under this section, the Court shall inquire into and consider the matter, and shall report its opinions and findings to the Governor-General. 15
- (4) For the purposes of this section the Court shall have, in addition to its ordinary powers, all the powers of a Commission under the Commissions of Inquiry Act 1908, and the provisions of that Act, with any necessary modifications, shall apply to any case under this section. 20

31. Reference to Court by Chief Judge—(1) The Chief Judge may at any time refer to the Court for inquiry and report any matter as to which, in his opinion, it may be necessary or expedient that any such inquiry should be made. 25

(2) A reference under this section shall be deemed to be an application within the ordinary jurisdiction of the Court, and the Court shall have full power and authority accordingly to hear the same and to make such report and recommendations thereon to the Chief Judge as it thinks proper. 30

Cf. 1953, No. 94, s. 453

32. Exercise of jurisdiction generally—(1) Subject to any express provisions of this Act relating to the making of applications, the jurisdiction of the Court may be exercised on the application of— 35

- (a) Any person claiming to have an interest in the matter; or
 - (b) The Minister or the Secretary or a Registrar. 40
- (2) Notwithstanding **subsection (1)** of this section, the Court may grant to any person, body, or association leave to make an application to the Court for the exercise of its jurisdiction where the Court is satisfied—

(a) That a question of importance to the Maori people or any section of the Maori people is involved; and

5 (b) That, because of the standing of the proposed applicant among the Maori people concerned and the proposed applicant's relationship to or connection with any land to which the application relates, it is appropriate that leave be granted to the proposed applicant.

(3) In the course of the proceedings on any application, the Court may, subject to the rules of Court, without further
10 application, and upon such terms as to notice to parties and otherwise as the Court thinks fit, proceed to exercise any other part of its jurisdiction the exercise of which in those proceedings the Court considers necessary or desirable—

15 (a) To achieve a practical resolution of any differences arising in the proceedings; or

(b) To achieve better management and utilisation of any land to which the application relates; or

(c) To facilitate the implementation of the wishes of the owners represented in the proceedings.

20 Cf. 1953, No. 94, s. 27; 1974, No. 73, s. 45

33. Powers of Court may be exercised by any Judge—

(1) Any Judge sitting alone, or any 2 or more Judges sitting together, may exercise all the powers of the Court.

25 (2) With the consent of the parties, proceedings may be continued before a Judge or Judges other than the Judge or Judges before whom they were commenced.

Cf. 1953, No. 94, s. 26

34. Powers of Registrars—Without limiting section 33 of this Act, the jurisdiction and powers conferred on the Maori Land
30 Court by this or any other Act may be exercised by any Registrar of the Court especially designated for the purposes of this section by the Chief Judge with the concurrence of the Chief Registrar, in all or any of the classes of cases specified by the rules of Court, as the Chief Judge may determine.

35. Power of Judge to refer matter to Registrar—

(1) Subject to the rules of Court, a Judge may refer to a Registrar for inquiry and report—

- (a) Any proceedings that require the preparation of any whakapapa; or 5
- (b) Any proceedings that require any prolonged examination of documents or any scientific or local investigation that cannot, in the opinion of the Judge, conveniently be made before him:
- (c) Any proceedings where the question in dispute consists wholly or in part of matters of account: 10
- (d) With the consent of the parties, any other proceedings:
- (e) Any question arising in any proceedings.

(2) Where any proceedings or question are referred to a Registrar under this section, a Judge may direct how the reference shall be conducted, and may remit any report for further inquiry and report, and, on consideration of any report or further report, may give such judgment or make such order in the proceedings as may be just. 15

(3) A Judge may, after deciding or reserving any question of liability, refer to the Registrar or to the Registrar and an accountant any mere matter of account that is in dispute between the parties, and, after deciding the question of liability, may give judgment on the Registrar's report. 20

Cf. 1947, No. 16, s. 62

25

36. Avoidance of unnecessary formality—(1) Every Judge conducting any proceedings shall do so in such a way as in his opinion will best avoid unnecessary formality.

(2) Whenever during any hearing a Judge considers that a settlement of any matter in dispute may be facilitated more readily by an informal discussion among the parties than by a continuance of the hearing, he may adjourn the hearing to enable such a discussion to take place. 30

(3) Any Judge conducting a hearing of any matter may apply to the hearing such rules of marae protocol as he considers appropriate. 35

37. Powers of Judge to call conference and give directions—(1) For the purpose of ensuring that any application or intended application may be determined in a

convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without any such application, and on such
5 terms as he thinks fit, direct the holding of a conference of parties or intended parties or their counsel presided over by a Judge.

(2) At any such conference the Judge presiding may do all or any of the following things:

- 10 (a) With the consent of the applicant, amend the application to give better effect to the applicant's intention:
 (b) Settle the issues to be determined:
 (c) Give directions as to service, and as to the public notification of the application and any hearing:
 15 (d) Direct by whom and by what time any notice of intention to appear, or any statement in reply, shall be filed:
 (e) Direct the filing of further particulars by any party:
 (f) Direct further research by any party, or by the Registrar from the Court records:
 20 (g) Direct the filing by any party of any valuation, land use, or other report that may assist the Court in determining any matter in issue:
 (h) Fix a time by which affidavits or other documents shall be filed:
 25 (i) Exercise any powers of direction or appointment vested in the Court or a Judge by the rules of Court in respect of applications of the class with which the Judge is dealing:
 (j) Give such consequential directions as may be necessary:
 30 (k) Fix a time and place for the hearing of the application.

(3) Notwithstanding any of the foregoing provisions of this section, a Judge may, at any time before the hearing of an application has been commenced, exercise any of the powers specified in **subsection (2)** of this section without holding a
35 conference under **subsection (1)** of this section

Cf. 1972, No. 130, s. 10; 1977, No. 32, s. 14

Orders and Rehearings

38. Orders to be pronounced in open Court, and minute recorded—(1) The substance of every final order of the Court
40 shall be pronounced orally in open Court.

(2) Subject to **section 39** of this Act, every such order shall take effect according to its terms as from the commencement of the day on which it is so pronounced.

(3) A minute of the order shall forthwith be entered in the
45 records of the Court.

Cf. 1953, No. 94, s. 34 (1)

39. Commencement of orders—(1) Except as may be provided by the rules of Court, every order of the Court shall be drawn up, sealed, and signed in accordance with the rules.

(2) Every such order shall be dated as of the date of the minute of the order, and shall relate back to that date. 5

Cf. 1953, No. 94, s. 34 (7)

40. Rehearings—(1) Subject to **subsection (2)** of this section, on an application made in accordance with the rules of Court by any person interested in any matter in respect of which the Court has made an order, the Judge by whom the order was made or any other Judge may, in his discretion, order a rehearing to be had upon such terms as he thinks reasonable, and in the meantime to stay proceedings. 10

(2) A rehearing under this section shall not be granted on an application made more than 28 days after the order, unless the Judge is satisfied that the application could not reasonably have been made sooner. 15

(3) An application under this section shall not operate as a stay of proceedings unless the Judge so orders.

(4) The rehearing need not take place before the Judge by whom the proceedings were originally heard. 20

(5) On any rehearing, the Court may affirm its former determination, or may vary or annul that determination, and may exercise any jurisdiction which it could have exercised on the original hearing. 25

(6) When a rehearing has been granted, the period allowed for an appeal to the Appellate Court shall not commence to run until the rehearing has been disposed of by a final order of the Court.

Cf. 1953, No. 94, s. 28; 1961, No. 129, s. 4; 1974, No. 73, s. 46; S.R. 1948/197, r. 230 (1), (3), (8) 30

41. Special powers of Chief Judge with respect to Court orders—(1) The jurisdiction conferred on the Chief Judge by this section shall be exercised only on application in writing made by or on behalf of a person who alleges that he has been adversely affected by an order made by the Court and that the said order was erroneous in fact or in law by reason of a mistake, error, or omission on the part of the Court, or in the presentation of the facts of the case to the Court. 35

(2) The Chief Judge may, in his absolute discretion, decline to exercise jurisdiction with respect to any such application. 40

(3) On any application under this section, the Chief Judge may require the applicant to deposit in an office of the Court such sum as he thinks fit as security for costs, and may summarily dismiss the application if the amount so fixed is
5 not so deposited within the time allowed, and may if he thinks fit summarily dismiss any other application made under this section.

(4) The Chief Judge shall have and may exercise in respect of any application or proceedings under this section the same
10 power as the Court possesses under **section 67** of this Act to make such order as it thinks just as to the payment of costs, and the provisions of that section shall, with any necessary modification, apply accordingly.

(5) The Chief Judge may refer any application under this
15 section to the Court or the Appellate Court for inquiry and report, and may deal with any such application without holding formal sittings or hearing the parties in open Court.

(6) The Chief Judge may state a case for the opinion of the Supreme Court on any point of law that arises in relation to
20 any application made under this section; and the provisions of **section 60** of this Act shall, with all necessary modifications, extend and apply to any case so stated.

(7) On any application under this section, the Chief Judge, if he is satisfied that there has been any mistake, error, or
25 omission as aforesaid, may cancel or amend any order of the Court or may make such other order as in his opinion is required for the purpose of remedying the mistake, error, or omission, and, notwithstanding anything to the contrary in this Act, any order made under this section may be made to
30 take effect retrospectively to such extent as the Chief Judge thinks necessary for the purpose of giving full effect to that order.

(8) Every such order shall be deemed to be an order of the Court and shall be subject to appeal to the Appellate Court.

35 (9) On the determination of an appeal by the Appellate Court, no further application in respect of the same matter shall be made to the Chief Judge under this section.

(10) No appeal shall lie to the Appellate Court from the dismissal by the Chief Judge of an application under this
40 section.

(11) No order made by the Chief Judge under this section, or made by the Appellate Court on appeal from any such order, shall take away or affect any right or interest acquired for value and in good faith under any instrument of alienation executed before the making of any such order, but any such instrument may be perfected, confirmed, or registered as if no order had been made under this section. 5

(12) No payment made in good faith pursuant to or for the purposes of the original order shall be deemed to have been made without lawful authority by reason of the fact that that order has been cancelled or amended by an order made under this section. 10

(13) All consequential amendments required to be made in any order, record, or document made, issued, or kept by the Court, by reason of any order made by the Chief Judge or the Appellate Court under this section, may be made by any Judge of the Court, and where it becomes necessary to correct the Land Transfer Register, a copy of the order and a note of the consequential amendments made pursuant to this subsection shall be transmitted by the Registrar of the Court to the District Land Registrar, who shall thereupon make all necessary amendments in the register of the title to the land affected. 15 20

(14) The powers conferred on the Chief Judge by this section shall not apply with respect to any freehold order made under Part XIV of the Maori Affairs Act 1953 in respect of customary land. 25

(15) Notwithstanding anything to the contrary in this Act, the powers conferred on the Chief Judge by this section may be exercised in respect of orders to which the provisions of section 65 of this Act would otherwise be applicable. 30

(16) Every order made by the Chief Judge under this section shall be signed by the Chief Judge and sealed with the seal of the Maori Land Court.

(17) The Chief Judge may at any time cause duplicates of any order made by himself, or by any former Chief Judge or any Deputy for the Chief Judge under this section or the corresponding provisions of any former enactment, to be signed and sealed. 35

(18) Every such duplicate shall have the word "Duplicate" written or stamped thereon, and shall have the same evidentiary value as the orders of which it is a duplicate. 40

(19) Notwithstanding that an application has been made under this section, any trustee or agent holding any money for distribution as aforesaid may, unless an injunction under **section 47 (d)** of this Act has been obtained and served on him, distribute the money to the person entitled thereto in accordance with the terms of the order to which the application relates.

(20) Where an injunction is obtained as aforesaid, the Chief Judge may, in the order made pursuant to the application before him or by a separate order, determine the persons to whom any money to which the injunction relates shall be paid and their relative shares or interests in the money.

Cf. 1953, No. 94, s. 452; 1958, No. 41, s. 8; 1961, No. 129, s. 10; 1965, No. 121, s. 7; 1967, No. 124, s. 144; 1974, No. 73, s. 64 (1)

PART IV

THE MAORI APPELLATE COURT

Constitution of Court

42. Maori Appellate Court to continue—There shall continue to be a Court of record called the Maori Appellate Court (in this Act referred to as the Appellate Court), which shall be the same Court as that existing under the same name immediately before the commencement of this Part of this Act.

Cf. 1953, No. 94, s. 37

43. Constitution of Court—(1) The Judges of the Maori Land Court for the time being shall be the Judges of the Appellate Court.

(2) Any 3 or more Judges shall have power to act as the Appellate Court.

(3) The Appellate Court may sit in 2 or more divisions at the same time, and each division shall have all the powers and jurisdiction of the Appellate Court.

(4) The Chief Judge, if present, or, in his absence, either the senior Judge present or another Judge to be appointed in that behalf by the Chief Judge, shall preside in the Appellate Court.

(5) Proceedings in the Appellate Court may be continued before Judges other than those before whom they were commenced.

Cf 1953, No. 94, s. 38; 1974, No. 73, s. 48

44. Officers of Maori Land Court to be officers of Appellate Court—The Registrars, Deputy Registrars, and other officers of the Maori Land Court shall, without further appointment, act in the same capacity in the Appellate Court.

Cf. 1953, No. 94, s. 51

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45. Seal—(1) The Appellate Court shall have, in the custody of each Registrar, a seal, which shall be the seal of the Court and shall be used for sealing documents that require to be sealed.

(2) The form of the seal shall be such as the Governor-General from time to time determines. 10

(3) The seal in use at the commencement of this Act shall continue to be the seal of the Appellate Court unless and until a new seal is duly prescribed by the Governor-General.

Cf. 1953, No. 94, s. 52

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Procedural Provisions

46. Successive appeals in respect of same matter—Successive appeals to the Appellate Court may be brought in respect of the same order at the suit of different persons, but no matter determined on appeal shall be again brought in question in any other appeal. 20

Cf. 1953, No. 94, s. 44

47. Appeals to be by way of rehearing—(1) Every appeal to the Appellate Court shall be by way of rehearing.

(2) No party, at the hearing of an appeal, shall be entitled to adduce any evidence that was not adduced at the earlier hearing, but the Appellate Court may allow any such further evidence to be adduced if, in its opinion, it is necessary to enable it to reach a just decision in the case. 25

(3) Nothing in **subsection (2)** of this section shall prevent the Appellate Court from referring to any record or other document filed or held in the records of the Court although that record or document may not have been produced or referred to at the earlier hearing. 30

(4) The evidence adduced at the earlier hearing shall be proved by the records of the Maori Land Court, and no other proof of that evidence shall be admitted except by leave of the Appellate Court. 35

Cf. 1953, No. 94, s. 44A; 1962, No. 45, s. 4

48. Powers of Court on appeal—(1) On any appeal the Appellate Court may, by order, do such one or more of the following things as it thinks fit:

- (a) It may affirm the order appealed from:
 - 5 (b) It may annul or revoke that order, with or without the substitution of any other order:
 - (c) It may vary that order:
 - (d) It may direct the Maori Land Court to make such other or additional order as the Appellate Court thinks fit:
 - 10 (e) It may direct a rehearing by the Maori Land Court of the whole or any specified part of the matter to which the order relates:
 - (f) It may make any order that the Maori Land Court could have made in the proceedings:
 - 15 (g) It may dismiss the appeal.
- (2) The Appellate Court, in the exercise of the jurisdiction conferred on it by this section, may exercise, as though it were the Maori Land Court, any of the discretionary powers conferred upon that Court.

20 Cf. 1953, No. 94, s. 45; 1962, No. 45, s. 5

49. Decision of majority to be decision of Court—(1) The decision of the Appellate Court shall be in accordance with the opinion of the majority of the Judges present.

- (2) If the Judges present are equally divided in opinion, the
25 order appealed from or under review shall be deemed to be affirmed.

Cf. 1953, No. 94, s. 39

Jurisdiction and Orders of Court

50. Appeals from Maori Land Court—(1) Except as
30 expressly provided to the contrary in this Act or any other enactment, the Appellate Court shall have jurisdiction to hear and determine appeals from any final order of the Maori Land Court, whether made under this Act or otherwise.

- (2) Any such appeal may be brought by or on behalf of any
35 party to the proceedings in which the order is made, or any other person bound by the order or materially affected by it.

(3) Every such appeal shall be commenced by notice of appeal
40 appealed from or within such further period as the Appellate Court may allow.

Cf. 1953, No. 94, s. 42

51. Appeals from provisional determinations—(1) By leave of the Maori Land Court, but not otherwise, an appeal shall lie to the Appellate Court from any provisional or preliminary determination of the Maori Land Court made in the course of any proceedings. 5

(2) Any such appeal may be brought by or on behalf of any person who is materially affected by the determination appealed from, or who would be bound by an order made in pursuance of it.

(3) The Maori Land Court may decline leave where it is satisfied that the interests of justice and of the parties would best be served by completing the proceedings before any appeal is made to the Appellate Court. 10

(4) When leave to appeal is so given, the Maori Land Court may either stay further proceedings in the matter or continue the same, but no final order shall be made until the appeal has been finally disposed of or dismissed. 15

(5) When any such appeal has been determined by the Appellate Court, no further appeal shall lie at the suit of any person from any final order made in those proceedings by the Maori Land Court, so far as that order conforms to the determination of the Appellate Court. 20

(6) Where no leave to appeal is sought against any provisional or preliminary determination made by the Maori Land Court in any proceedings, the Appellate Court may decline to hear any appeal against the final order of the Maori Land Court made in those proceedings if it is satisfied that the appellant had a reasonable opportunity to appeal against the provisional or preliminary determination and that the point that would be in issue on the appeal is substantially the same as that to which the provisional or preliminary determination related. 25 30

Cf. 1953, No. 94, s. 43

52. Commencement of orders—(1) Every order made by the Appellate Court shall, subject to the provisions of this section, take effect or be deemed to have taken effect on a date to be specified in the order. 35

(2) Different dates may be fixed by the Appellate Court as the dates for the commencement of different provisions of any order.

(3) In so far as an order of the Appellate Court varies an order of the Maori Land Court, the order of the Appellate Court may be made to take effect on a date not earlier than the date on which the order so varied would have taken effect if there had been no appeal. 40

(4) Any order made by the Maori Land Court by direction of the Appellate Court pursuant to **paragraph (d) of section 24 (1)** of this Act shall, in accordance with the terms of the order of the Appellate Court, take effect on the date fixed by **section 38** 5 of this Act for the taking effect of the order appealed from, or from the date fixed by that section for the taking effect of orders of the Court, or from a date to be specified by the Appellate Court.

(5) If in any case the Appellate Court fails to specify the date 10 on which the order of the Court shall take effect, it shall take effect on the commencement of the day of the date of the minute of the order entered in the records of the Appellate Court.

Cf. 1953, No. 94, s. 47

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PART V

MISCELLANEOUS PROVISIONS RELATING TO THE COURTS

53. Interpretation—In this Part of this Act the term “Court” includes, unless the context otherwise requires, both the Maori Land Court and the Appellate Court.

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Cf. 1953, No. 94, s. 53

54. Practice notes—The Chief Judge, with the concurrence of at least 2 other Judges, may from time to time, for the guidance of parties to any class or classes of proceedings and their advisers, issue such instructions or suggestions (not being 25 inconsistent with this Act or any rules of Court) by way of practice notes as may be necessary or desirable for the proper conduct of such proceedings.

Cf. 1953, No. 94, s. 25A; 1976, No. 148, s. 3

55. Maori Land Court Special Aid Fund—(1) There shall 30 be paid out of the Consolidated Account into a fund to be known as the Maori Land Court Special Aid Fund (in this section referred to as the Fund) such amounts as are from time to time appropriated by Parliament for the purpose.

(2) The Fund shall be held by the Maori Trustee.

(3) The Court may from time to time, in its discretion, make orders for the payment from the Fund of the legal costs or the out-of-pocket expenses or both of any person or class of persons heard or represented in any proceedings before the Court.

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(4) No person in whose favour an order has been made under **subsection (3)** of this section may apply for or be granted assistance under the Legal Aid Act 1969 in respect of the same matter.

(5) Where an order is made under **subsection (3)** of this section, the Court may also make an order charging any real or personal property of the person or class of persons in whose favour the first order is made, or of any other owners whose interests are or could have been affected by any order made in the proceedings to which the grant of aid relates, with the whole or any part of the amount so ordered to be paid out of the Fund, and fixing the terms and conditions on which the amount charged is to be repaid.

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(6) Every charge created by an order of the Court under **subsection (5)** of this section shall be in favour of the Crown.

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(7) Any such charge may be registered against any interest in land to which it relates in accordance with **section 72** of this Act.

(8) Except as the Court may otherwise order, there shall also be paid out of the Fund—

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(a) All costs and out-of-pocket expenses of any person called by the Court as a witness under **section 57 (2)** of this Act; and

(b) The fees and expenses of any barrister or solicitor appointed under **section 58 (3)** of this Act.

30

Cf. 1953, No. 94, s. 57A; 1974, No. 73, s. 50

Procedural Provisions

56. Parties and witnesses may use Maori language—Any party or witness in any proceedings before the Court may give his evidence or address the Court in Maori.

35

Cf. 1975, No. 147, Second Schedule, clause 6.

57. Evidence in proceedings—(1) The Court may act on any testimony, sworn or unsworn, and may receive as evidence any statement, document, information, or matter that, in the opinion of the Court, may assist it to deal effectually with the matters before it, whether the same would, apart from this section, be legally admissible in evidence or not.

40

(2) The Court may itself cause such inquires to be made, call such witnesses (including expert witnesses), and seek and receive such evidence, as it considers may assist it to deal effectually with the matters before it, but shall ensure that the parties are
 5 kept fully informed of all such matters and, where appropriate, given an opportunity to reply.

(3) Subject to the foregoing provisions of this section, the Evidence Act 1908 shall apply to the Court, and to the Judges of the Court, and to all proceedings in the Court, in the same
 10 manner as if the Court were a Court within the meaning of that Act.

Cf. 1953, No. 94, s. 54

58. Representation of parties, etc.—(1) Any party or other person entitled to appear in any proceedings in the Court may
 15 appear—

- (a) Personally; or
- (b) By a barrister or solicitor of the High Court; or
- (c) With the leave of the Court, by any other agent or representative.

20 (2) Any leave under **subsection (1) (c)** of this section may be given on such terms as the Court thinks fit, and may at any time be withdrawn.

(3) In any proceedings under this Act, the Court may appoint a barrister or solicitor—

- 25 (a) To assist the Court, where any application before the Court is unopposed and the Court considers that it should hear argument on any point:
- (b) To represent any person or class of persons, where the Court considers that the interests of that person or
 30 class of persons could be affected by any order that may be made in the proceedings.

(4) A barrister or solicitor appointed under **subsection (3)** of this section may call any person as a witness in the proceedings, and may cross-examine witnesses called by any party to the
 35 proceedings or by the Court.

Cf. 1953, No. 94, s. 58

59. Court may amend proceedings—(1) In the course of any proceedings, the Court may, on the application of any party or of its own motion, amend any defects or errors in
 40 the proceedings.

(2) All such amendments may be made on such terms as the Court thinks fit.

Cf. 1953, No. 94, s. 59

60. Case may be stated for High Court—(1) The Appellate Court or, with the sanction of the Chief Judge, the Maori Land Court, may, in any proceedings before it, state a case for the opinion of the High Court on any point of law that arises in those proceedings.

5

(2) The Chief Judge may withdraw any such case at any time before it has been considered by the High Court.

(3) The decision of the High Court on any case stated under this section shall be subject to appeal to the Court of Appeal, and any case so stated for the opinion of the High Court may be removed into the Court of Appeal for hearing.

10

(4) The decision of the High Court or Court of Appeal, as the case may be, on any case stated under this section shall be binding on the Maori Land Court and the Appellate Court.

Cf. 1953, No. 94, s. 67

15

General Provisions as to Orders

61. Orders may be made subject to conditions—(1) Any order may be made subject to the performance of any condition within such period as may be specified in the order.

(2) Notwithstanding anything in **section 38** of this Act or the rules of Court, no such order shall be sealed while it remains subject to a condition that has not yet been fulfilled.

20

(3) Where an order has been made subject to the performance of any condition, the Court may, without further application but subject to the giving of such notices (if any) as the Court may direct,—

25

(a) Amend or cancel the order on the failure to comply with the condition within the specified period; or

(b) Extend that period for such further time as the Court thinks fit.

30

Cf. 1953, No. 94, s. 34 (8A); 1961, No. 129, s. 5 (2)

62. Orders not invalid for want of form, etc.—(1) No order made by the Court shall be invalid merely because of any error, irregularity, or defect in its form, or in the practice or procedure of the Court.

35

(2) No order shall be questioned or invalidated on the ground of any variance between the order as drawn up, sealed, and signed and the minute of the order; and in the case of any such variance the order shall prevail.

Cf. 1953, No. 94, ss. 34 (8), 64 (2)

40

63. Orders nominally in favour of deceased persons—

(1) No order shall be invalid merely because it is made in favour or otherwise in respect of any person who is deceased at the time of the making, sealing, or date of the order.

5 (2) In any such case (subject to this Act), the order may at any time be amended by the Court so as to conform to the facts of the case as existing at the date of the order, and any such amendment shall take effect from the date of the amended order.

10 Cf. 1953, No. 94, s. 35

64. Persons bound by orders affecting land—Every order of the Court affecting the title to Maori land or any interest in any such land shall bind all persons having any estate or interest in that land, whether or not they were parties to or
15 had notice of the proceedings in which the order was made, and whether or not they are subject to any disability.

Cf. 1953, No. 94, s. 63

65. Orders affecting Maori land conclusive after 10 years—(1) No order made by the Court with respect to Maori
20 land shall, whether on the ground of want of jurisdiction or on any other ground whatever, be annulled or quashed, or declared or held to be invalid, by any Court in any proceedings instituted more than 10 years after the date of the order.

(2) Where there is any repugnancy between 2 orders each
25 of which would otherwise, by reason of the lapse of time, be within the protection of this section, then, to the extent of any such repugnancy, the order that bears the earlier date shall prevail, whether those orders were made by the same or different Courts.

30 (3) Nothing in this section shall limit or affect the authority of the Chief Judge to cancel or amend any order under **section 41** of this Act.

Cf. 1953, No. 94, s. 68; 1967, No. 124, s.144 (2); 1974, No. 73, s. 64 (2)

35 **66. Exemptions from stamp duty—**Except as may be otherwise provided by this Act, no stamp duty shall be payable in respect of any order of the Court.

Cf. 1953, No. 94, s. 62

67. Orders as to costs—(1) In any proceedings, the Court may make such order as it thinks just as to the payment of the costs of those proceedings, or of any proceedings or matters incidental or preliminary to them, by or to any person who is a party to those proceedings or to whom leave has been granted by the Court to be heard. 5

(2) Where the Court is satisfied that any party to the proceedings has acted, not only on his own behalf, but on behalf of other persons having a similar interest in the proceedings, the Court shall have the same power to make an order for the payment of the costs of those proceedings by or to those other persons as it has under **subsection (1)** of this section in respect of that party. 10

(3) At any stage of any proceedings, the Court may require any party to deposit any sum of money as security for costs, and, in default of that deposit being made, the Court may stay the proceedings either wholly or in respect of the party so in default. 15

(4) When any sum has been so deposited as security for costs, it shall be disposed of in such manner as the Court directs. 20

(5) In any proceedings, the Court may make an order charging the whole or any part of the costs of the proceedings, and of any charges, fees, or expenses that, in the opinion of the Court, were reasonably and properly incurred by any party to the proceedings or by any other person for the purposes of or in relation to the proceedings, upon any land or interest in land or any revenues derived therefrom to which the proceedings relate, whether or not any other order is made in the proceedings in relation to the land. 25

(6) Any order made under this section for the payment of costs or imposing a charge for costs may, when made in open Court, either specify the sum or sums so payable or charged, or leave the amount to be determined by taxation in accordance with the rules of Court; but, in the latter case, the order as drawn up and sealed shall specify the sum or sums so determined by taxation. 30 35

Cf. 1953, No. 94, s.57; 1962, No. 45, s. 6; 1974, No. 73, s. 49

68. Taxation of costs—(1) All costs, charges, or expenses charged or chargeable to any Maori in connection with or incidental to the prosecution of or opposition to any claim or application to the Court or the Appellate Court, or in connection with any proceedings before Parliament or any Committee thereof, shall be subject to taxation in accordance with this section. 40 45

(2) On application by or on behalf of the person chargeable, the Court may either tax any such costs, charges, or expenses or refer the same to the Registrar or other officer of the Court for taxation.

5 (3) The Court may order a bill of items to be supplied for the purpose of any such taxation, or the taxing officer may require the production of such a bill.

(4) Any costs, charges, or expenses as aforesaid shall be subject to taxation although the person chargeable may have entered into an agreement as to the amount to be paid, and, 10 if the Court or taxing officer thinks the agreement to be unfair or unreasonable, it or he may reduce the amount payable under the agreement.

(5) The Court or taxing officer shall certify in writing the amount that should, in fairness to the parties, be paid in respect of any such costs, charges, or expenses, and the amount so certified shall be deemed to be the amount properly payable 15 by the person chargeable.

(6) This section shall not apply to any costs, charges, or 20 expenses that are liable to taxation and review in accordance with the provisions of Part VIII of the Law Practitioners Act 1982.

Cf 1953, No. 94, s. 451

69. Enforcement of orders for payment of money—

25 (1) For the purpose of enforcing any order made by the Court for the payment of money, the Chief Judge may, on the application of any party or of his own motion, transmit a copy of the order, under his hand and the seal of the Court by which the order was made, to a District Court, where it shall 30 be filed as of record in that Court.

(2) On the filing of a copy of any such order, the order shall, so long as it remains in force, be deemed to be a judgment of the District Court in an action for the recovery of a debt, and may be enforced accordingly in accordance with the 35 practice of that Court.

(3) For the purposes of this section, a certificate under the hand of a Judge of the Maori Land Court, with reference to any proceedings of that Court or of the Appellate Court in the matter in which the order to be enforced was made, or setting 40 forth any particulars relating to the performance or non-performance by any person of the requirements of that order, shall, unless the contrary is proved, be accepted by the District Court, and by all officers of that Court, as sufficient evidence of the facts so certified.

(4) The filing in the District Court under this section of a copy of an order made by the Maori Land Court or the Appellate Court shall not limit or affect any right or power of rehearing, appeal, amendment, or cancellation existing in respect of that order.

5

Cf. 1953, No. 94, s. 65

70. Appointment of a receiver to enforce charges, etc.—

(1) When, by or pursuant to this Act or any other enactment, any charge has been imposed upon any Maori land, or upon any legal or equitable interest in any such land, or upon the revenues derived from any such land, or upon the proceeds of the alienation of any such land, the Court may at any time and from time to time, for the purpose of enforcing that charge, appoint the Maori Trustee or any other fit person to be a receiver in respect of the property so charged.

10

15

(2) If, in any proceeding before the Court, the title to any property, being the subject-matter of that proceeding, is in dispute, the Court may, pending the determination by it of the dispute, appoint the Maori Trustee or any other fit person to be a receiver in respect of that property; and no appeal to the Appellate Court shall lie from an order made under this subsection.

20

(3) Subject to **subsection (4)** of this section, a receiver appointed under this section shall have all such rights, powers, duties, and liabilities as may be expressly conferred or imposed on him by the Court, and such other incidental powers as may be reasonably necessary for the exercise of the powers so conferred.

25

(4) No receiver appointed under this section shall have power to sell any Maori land, or to lease any such land otherwise than as provided in **subsection (5)** of this section.

30

(5) Notwithstanding any of the provisions of this Act as to the alienation of Maori land, a receiver appointed under this section for the purpose of enforcing a charge may, in his own name and with the leave of the Court, grant leases of any land so charged, or licences to remove timber, flax, kauri gum, minerals, or other substances from the land, for any term not exceeding 21 years, on such conditions and for such rent or other consideration as he thinks fit.

35

(6) Any lease or licence so granted in respect of land subject to the Land Transfer Act 1952 may be registered under that Act, and the District Land Registrar may register the same accordingly without requiring the production of any certificate of title.

40

(7) Where a receiver has performed the functions for which he was appointed, or where the Court is satisfied for any other reason that the receiver shall be discharged, the Court may make an order for his discharge, and may, if necessary, appoint
5 some other person to be a receiver in his place.

(8) Where an application for discharge is made by the receiver, he shall file his final accounts with his application, and, except where the receiver is the Maori Trustee, shall pay into Court any money held by him in respect of the
10 receivership.

Cf. 1953, No. 94, s. 33; 1964, No. 46, s. 5

71. Enforcement by High Court of injunctions—(1) For the purpose of enforcing any injunction issued by the Court, the Chief Judge may, on the application of any party or of his
15 own motion, transmit a copy of the injunction, under his hand and the seal of the Court by which the injunction was issued, to any Registrar of the High Court, who shall file it as of record in that Court.

(2) On the filing of a copy of any such injunction, the
20 injunction shall be deemed to have been issued by the High Court, and may be enforced by writ of attachment or otherwise in accordance with the practice of that Court.

(3) For the purposes of this section, a certificate under the hand of a Judge of the Maori Land Court, with reference to
25 any proceedings of that Court or of the Appellate Court in the matter in which the injunction was issued, or setting forth any particulars relating to the performance or non-performance by any person of the requirements of that injunction, shall, unless the contrary is proved, be accepted by the High Court and by
30 all officers of that Court as sufficient evidence of the facts so certified.

(4) The filing in the High Court under this section of a copy of an injunction issued by the Maori Land Court or the Appellate Court shall not limit or affect any right or power of
35 rehearing, appeal, amendment, or cancellation existing in respect of that order.

Cf. 1953, No. 94, s. 66 (1)-(4)

72. Registration of orders affecting title to land—(1) Any order of the Court affecting or relating to the title to land may
40 be registered against the title to that land either under the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may be.

(2) For the purposes of registration, the order shall be transmitted by the Registrar of the Court to the District Land Registrar or the Registrar of Deeds, as the case may be; and the said District Land Registrar or Registrar of Deeds shall thereupon (subject to any other provisions of this Act) register the same accordingly. 5

(3) The production of the certificate of title shall not be necessary for the purposes of any such registration under the Land Transfer Act 1952.

(4) Until registration has been effected, an order of the Court in respect of land subject to the Land Transfer Act 1952 shall affect only the equitable title to the land. 10

(5) Nothing in this section shall limit or affect any special provisions made elsewhere in this Act or in any other Act for the registration of any such order. 15

(6) If any order of the Maori Land Court that is annulled or revoked or varied by the Appellate Court, or if any other order or any instrument affected by the annulment or variation, has been registered by the District Land Registrar in respect of the title to any land, the order of the Appellate Court shall be transmitted to that Registrar for registration, and all necessary consequential amendments in the registration of any title shall be made by him accordingly. 20

Cf. 1953, No. 94, ss. 36, 49

Amendment of Orders, Warrants, and Records 25

73. Amendment of orders, warrants, etc.—(1) The Court or any Judge of the Court may at any time make or authorise to be made in any order, warrant, record, or other document made, issued, or kept by the Court all such amendments as are considered necessary to give effect to the true intention of any decision or determination of the Court, or to record the actual course and nature of any proceedings in the Court. 30

(2) Every such amendment shall take effect as of the date of commencement of the order, warrant, record, or other document so amended. 35

(3) Without limiting the foregoing provisions of this section, the Court may at any time during any proceedings direct the Registrar to make any amendment of any entry in the records of the Court that he is authorised to make under **section 74** of this Act. 40

Cf. 1953, No. 94, s. 60

74. Amendment of names of land owners in Court records and titles—On the application of an owner of Maori freehold land, the Registrar may amend any entry in the records of the Court, or in any certificate or other instrument of title relating to the interest of the applicant in the land, if he is satisfied that an amendment is necessary to show correctly the name or description of the applicant, or the name by which he is or desires to be commonly known, including, where the applicant is a married woman, her married name, or to distinguish between 2 or more persons having the same or similar names.

Cf. 1953, No. 94, s. 60A; 1974, No. 144, s. 3

75. Amendment or cancellation of orders not to affect acquired rights—(1) Where, whether pursuant to any provision of section 73 or section 74 of this Act or otherwise, any order, warrant, record, or other document is amended or cancelled, the amendment or cancellation shall not take away or affect any right or interest acquired in good faith and for value before the making of the amendment or cancellation.

(2) If any order or other document so amended or cancelled has previously been registered by a District Land Registrar, the order of amendment or cancellation shall be transmitted to him, and he shall make all necessary consequential amendments in the registration of the title to any land affected by the amendment or cancellation.

Cf. 1953, No. 94, s. 61

Contempt of Court

76. Failure to comply with summons, etc.—(1) Every person commits an offence who, after being summoned to attend to give evidence before the Court or to produce to it any papers, documents, records, or things, without sufficient cause—

- (a) Fails to attend in accordance with the summons; or
- (b) Refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Court to answer; or
- (c) Fails to produce any such paper, document, record, or thing.

(2) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$300.

(3) No person summoned to attend the Court shall be convicted of an offence against **subsection (1)** of this section unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there was made to that person a payment or tender of the amount fixed by the rules of Court. 5

Cf. 1908, No. 25, s. 9; 1980, No. 2, s. 4

77. Power to remove for contempt—If any person—

- (a) Wilfully insults the Court or any member of it or any officer of the Court, during a sitting of the Court, or in going to or returning from any sitting; or 10
 - (b) Wilfully interrupts the proceedings of the Court or otherwise misbehaves while the Court is sitting; or
 - (c) Wilfully and without lawful excuse disobeys any order or direction of the Judge in the course of any proceedings before the Court,— 15
- any officer of the Court, with or without the assistance of any member of the Police or other person, may by order of the Judge, take the offender into custody and detain him until the rising of the Court. 20

Cf. 1977, No. 121, s. 142

78. Obstructing officers of Court—Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$500 who wilfully obstructs or interferes with any Judge, Registrar, Receiver, or other officer of the Court in the execution of his powers or duties. 25

Cf. 1953, No. 94, s. 70

Rules of Court

79. Constitution of Rules Committee—(1) For the purposes of **section 81** of this Act there shall be a Rules Committee, to consist of— 30

- (a) The Chief Judge and one other Judge of the Court:
- (b) A person nominated by the New Zealand Maori Council:
- (c) The Secretary for Maori Affairs or a person nominated by him: 35
- (d) A barrister or solicitor of the High Court, nominated by the Council of the New Zealand Law Society.

(2) The members of the Rules Committee, other than the Chief Judge and the Secretary for Maori Affairs, shall be appointed by the Chief Judge for a term not exceeding 3 years.

5 (3) Any such member may be reappointed, or may at any time resign his office by writing addressed to the Chief Judge.

(4) The Rules Committee is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

10 (5) There shall be paid out of money appropriated by Parliament for the purpose to the members of the Rules Committee such fees, allowances, travelling allowances, and expenses as may be fixed in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

15 Cf. 1953, No. 94, s. 70A; 1980, No. 67, s. 3 (1)

80. Principal function of Rules Committee—The principal function of the Rules Committee shall be to review and keep under review the rules of Court, and from time to time to make such recommendations to the Minister as it thinks fit
20 for the amendment or revocation of any rules or the making of any new rules, to ensure that the rules are such as to facilitate the prompt, inexpensive, and just dispatch of the business of the Courts and the administration of justice in the Court.

81. Rules of Court—(1) The Governor-General, with the
25 concurrence of the Chief Judge and any 2 or more of the other members of the Rules Committee, may from time to time, by Order in Council, make rules of Court for the purposes of facilitating the prompt, inexpensive, and just dispatch of the business of the Court.

30 (2) The power of making rules under this section shall extend to all matters of practice or procedure and matters relating to or concerning the effect or operation in law of any practice or procedure in any case within the jurisdiction of the Court; but shall not extend to the prescribing of fees.

35 (3) Without limiting the generality of the foregoing provisions of this section, rules of Court may be made in respect of all or any of the following matters:

(a) Prescribing forms to be used for the purposes of any proceedings before the Court:

- (b) Prescribing the district in which proceedings are to be commenced, and the procedure to be adopted where proceedings are commenced in one district but should, under this Act or the rules, have been commenced in another district: 5
- (c) Prescribing the circumstances in which proceedings may be transferred from one district to another, and the procedure consequent on such transfer: 5
- (d) Prescribing the form of the records of the Court and providing for the custody of such records: 10
- (e) Providing for the receipt of and accounts for all money paid into or out of Court: 10
- (f) Prescribing conditions on which any fees prescribed under this Act in respect of any matter in the Court may in any case be reduced or remitted, and authorising any Judge of the Court to remit any outstanding fees that, by reason of lapse of time or for any other reason, have, in his opinion, become irrecoverable: 15
- (g) Providing for the appointment and public notification of sitting days of the Court, empowering the Chief Judge to appoint special sittings of the Court at such places and times as he thinks fit, and authorising any Judge to hold a sitting of the Court at any place where the Court does not usually sit: 20
- (h) Providing for the public notification of applications to the Court, and prescribing the circumstances in which any application or class of applications may be disposed of without public notification and without a hearing: 25
- (i) Prescribing the manner in which and the procedure by which witnesses are to be summoned to appear before the Court: 30
- (j) Prescribing the circumstances and manner in which and the procedure by which any Registrar may take evidence for use in any proceedings before the Court: 35
- (k) Authorising a Registrar to hear and determine any uncontested proceedings, or to conduct any inquiry and report thereon: 35
- (l) Prescribing, according to the nature of the proceedings and the amount involved therein, the costs and charges to be paid by any party in any proceedings before the Court to any other party, in addition to the money paid out of Court: 40

- 5 (m) Providing for the drawing up in writing, sealing, and signing of orders of the Court, or the minuting and other evidencing of any of any such orders or classes of orders, and the issuing of duplicate orders for evidentiary and registration purposes; and prohibiting the formal issuing of any order until the time for appeal has expired and any conditions attached to the order have been fulfilled:
- 10 (n) Prescribing the terms and conditions on which appeals to the Appellate Court may be brought, prosecuted, or withdrawn:
- 15 (o) Requiring any appellant to give security for the costs of the appeal, and providing for the dismissal of an appeal by the Maori Land Court or by a Judge of that Court on the ground of the failure of the appellant to conform to any such requirement, or to prosecute his appeal in accordance with the rules:
- 20 (p) Prescribing the classes of persons before whom affidavits, declarations, or affirmations to be used in any proceeding before the Court may be sworn or made within or outside New Zealand.
- (4) Rules of Court made under this section shall take effect from the date specified in that behalf by the Order in Council by which the rules are made.
- 25 Cf. 1953, No. 94, ss. 25, 40; 1980, No. 67, s. 3 (2), (3)