

MAORI PURPOSES BILL (NO. 2)

EXPLANATORY NOTE

PART I

MANA ENTERPRISES SCHEME

Part I provides for the cancellation of contracts entered into between the Crown and mana authorities for the purposes of the scheme known as the Mana Enterprises Scheme.

Where *clauses 5 to 7* are applied to a mana authority by an Order in Council made under *clause 4 (1)*, the mana contracts to which that mana authority is a party will be cancelled.

Clauses 6 and 7 provide that, where those clauses are applied to a mana authority by Order in Council,—

- (a) Any money disbursed to a mana authority by the Crown for the purposes of the Mana Enterprises Scheme will remain or become the property of that mana authority; and
- (b) Every security taken by that mana authority in respect of money so disbursed that has been lent, for the purposes of the mana enterprises scheme, to any other person shall remain or become the property of that mana authority.

PART II

KOKIRI CENTRES

Part II provides for the repeal, on 1 July 1994, of section 87 of the Maori Affairs Restructuring Act 1989, the section under which the chief executive of the Ministry of Maori Development may establish and maintain Kokiri Centres.

Hon. Doug Kidd

MAORI PURPOSES (NO. 2)

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A BILL INTITULED

An Act—

- 5 **(a) To provide for the cancellation of contracts entered into, for the purposes of the mana enterprises scheme, between the Crown and mana authorities; and**
- (b) To provide for the ownership of money disbursed to mana authorities under the mana enterprises scheme; and**
- 10 **(c) To repeal the provision authorising the establishment and maintenance of Kokiri Centres**

BE IT ENACTED by the Parliament of New Zealand as follows:

15 **1. Short Title and commencement—**(1) This Act may be cited as the Maori Purposes Act (No. 2) 1993.

(2) Except as provided in section 13 of this Act, this Act shall come into force on the day on which it receives the Royal assent.

PART I

MANA ENTERPRISES SCHEME

2. Objects—The objects of this Part of this Act are—

- (a) To provide for the cancellation of mana contracts:
- (b) To ensure that, where the Minister or a person acting on behalf of the Minister, has, for the purposes of the mana enterprises scheme, disbursed money to a mana authority (whether under a mana contract or not),—
- (i) That money shall remain or become the property of that mana authority; and
- (ii) Every security taken by a mana authority in respect of money so disbursed that has, for the purposes of the mana enterprises scheme, been lent by that mana authority to any other person shall remain or become the property of that mana authority:
- (c) To make provision incidental to paragraphs (a) and (b) of this section.

3. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Crown” means Her Majesty the Queen in right of New Zealand:

“Department of Maori Affairs” means the Department of Maori Affairs established under the Maori Affairs Act 1953:

“Inland Revenue Acts” means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974:

“Instrument” includes—

- (a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed or registered under any enactment; and

(b) Any judgment, order, or process of Court:

“Iwi Transition Agency” means the Iwi Transition Agency formed by the Maori Affairs Restructuring Act 1989:

“Land” has the meaning given to it by section 2 of the Land Transfer Act 1952:

“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable, or

to be observed or performed, in New Zealand or elsewhere):

5 “Loan” means a loan advanced to a borrower, by a mana authority, whether as a principal or as an agent for the Crown, from money disbursed by the Crown to that mana authority under the mana enterprises scheme:

10 “Loan transaction” means a loan advanced to a borrower by a mana authority from money disbursed by the Crown to that mana authority under the mana enterprises scheme (and, in the case of funds disbursed under a mana contract, to that mana authority as agent of the Crown):

15 “Mana authority” means any person to or for the benefit of or on behalf of whom or to whom for the benefit of any other person the Minister or any other person acting on behalf of the Crown has at any time disbursed money under the mana enterprises scheme; and includes any person appointed as an agent of the Crown under any mana contract:

20 “Mana contract”—

(a) Means a contract entered into, for the purposes of the mana enterprises scheme, between the Minister or any other person acting on behalf of the Crown, and any mana authority, being a contract under which—

25 (i) The Crown appointed the mana authority as its agent for the purposes of the contract; and

30 (ii) The Minister, or other person acting on behalf of the Crown, agreed to disburse sums of money to the mana authority as agent of the Crown from time to time on the terms and for the purposes specified in the contract (being purposes consistent with those of the mana enterprises scheme); and

35 (iii) It was contemplated that the mana authority as agent of the Crown might lend, on such terms and for such purposes as were agreed (being purposes consistent with those of the mana enterprises scheme) the whole or any part of the sums referred to in subparagraph (ii) of this paragraph; and

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- (iv) A fee was to be paid by the Crown to the mana authority for the services provided by the mana authority under the contract; and
- (b) Includes any other contract (whether or not in writing and if in writing whether or not executed) the terms of which are substantially similar to those referred to in subparagraphs (i) to (iv) of paragraph (a) of this definition: 5
- “Mana enterprises scheme” means the scheme known as the mana enterprises scheme that— 10
- (a) Has been administered from time to time by the Department of Maori Affairs, the Iwi Transition Agency, and the Ministry of Maori Development, in conjunction with or by any other person; and 15
- (b) Was established for the purposes of broadening the Maori economic base, by providing, whether through grants directly from the Crown or through money provided under mana contracts or otherwise, financial support to enterprises that provide or create long-term, unsubsidised employment for Maori: 20
- “Maori” has the same meaning as in section 2 of the Ministry of Maori Development Act 1991:
- “Minister” means the Minister of Maori Affairs:
- “Ministry of Maori Development” has the same meaning as in section 2 of the Ministry of Maori Development Act 1991: 25
- “Property” means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes— 30
- (a) Choses in action and money:
- (b) Goodwill:
- (c) Rights, interests, and claims of every kind in or to property, arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective: 35
- “Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective: 40
- “Security” means a mortgage, submortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of 45

5 security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability and in any case whether upon demand or otherwise, whether present or future and whether actual or contingent, and includes an agreement or undertaking to give or execute whether on demand or otherwise any of the foregoing.

10 **4. Application of sections 5 to 7**—(1) The Governor-General may from time to time, by Order in Council published in the *Gazette*, apply sections 5 to 7 of this Act to any mana authority specified in the Order in Council.

(2) Every Order in Council made under subsection (1) of this section shall specify the date on which that Order in Council comes into force.

15 **5. Cancellation of mana contracts**—Where this section is applied to a mana authority by an Order in Council made under section 4 (1) of this Act, every mana contract to which that mana authority is a party shall be cancelled on the date on which that Order in Council comes into force.

20 **6. Ownership of money and property**—(1) Where this section is applied to a mana authority by an Order in Council made under section 4 (1) of this Act,—

25 (a) Any money disbursed by the Minister, or any other person acting on behalf of the Crown, to that mana authority under a mana contract on terms requiring that mana authority to administer or hold the money as agent of the Crown shall be deemed to be and have become the absolute property of the mana authority from the date on which the money was so disbursed; and

30 (b) Any money disbursed by the Minister or any other person acting on behalf of the Crown to that mana authority pursuant to the mana enterprises scheme (not being money disbursed under a mana contract) shall be deemed to be and to have become the absolute property of that mana authority from the date on which the money was so disbursed; and

35 (c) Any property acquired or income or other gain derived directly or indirectly from the administration or holding by that mana authority of any money referred to in paragraph (a) or paragraph (b) of this

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subsection shall be deemed to be the property or to be income or a gain of that mana authority; and

- (d) Any loss suffered or liability incurred, whether directly or indirectly, by the Crown or by that mana authority either as an agent of the Crown under a mana contract or as a principal party from the administration or holding by that mana authority of money or property referred to in **paragraph (a)** or **paragraph (b)** or **paragraph (c)** of this subsection shall be deemed to be a loss or liability of that mana authority and not of the Crown. 5 10

(2) This section shall apply notwithstanding anything contained in any mana contract or any other agreement or any enactment or any rule of law.

7. Consequential provisions—(1) Without limiting the generality of **section 6** of this Act, where this section is applied to a mana authority by an Order in Council made under **section 4 (1)** of this Act,— 15

- (a) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to that mana authority, whether as, or purportedly as, an agent for the Crown or otherwise and whether entered into with, or made by, or given to or by, or addressed to that mana authority or in the name of the Crown, before the day on which that Order in Council comes into force shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the Crown, or that mana authority in its capacity as an agent or purported agent for the Crown or otherwise, be binding on and enforceable by, against, or in favour of that mana authority as fully and effectually as if that mana authority had been acting as a principal in its own right at the time when they were entered into, made, given, or addressed, as the case may be; and 20 25 30 35

- (b) Any money owing by any person at any time under a loan transaction entered into by that mana authority shall be deemed from the date on which the money was advanced under that loan transaction to have been money owing to that mana authority, and any such money shall be deemed at all times from the date of 40

commencement of the loan transaction until the date of final repayment or other extinguishment thereof to have been or to be owing to that mana authority as a principal party; and

5 (c) Any money received by that mana authority from a person under a loan transaction, whether by way of repayment of part or all of the principal amount of the loan, or the payment of any interest, penalty interest, or any other money payable thereunder shall
10 be deemed to be or to have been, as the case may require, the absolute property of that mana authority, whether the repayment or payment occurs before, on, or after the day on which that Order in Council comes into force; and

15 (d) Any security held as security for a loan by that mana authority, whether as, or purportedly as, an agent for the Crown or otherwise, or by the Crown, whether any document or other writing in respect of that security is in the name of that mana authority, or in
20 the name of the Crown,—

(i) Shall be deemed always to have been taken by and given to that mana authority as a principal in its own right; and

25 (ii) Shall be available to that mana authority as security for the discharge of the loan; and

(iii) Where the security extends to future or prospective debts or liabilities to that mana authority acting as aforesaid or to the Crown, shall be available as security for the discharge of such debts or liabilities to that mana authority; and
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(e) Any action, arbitration, proceeding, or cause of action which, immediately before the day on which that Order in Council comes into force, is pending or existing by, against, or in favour of the Crown, or that mana authority acting as agent for the Crown, may be prosecuted, and without the amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of the mana authority.
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40 (2) This section shall apply notwithstanding anything contained in any mana contract, security, or other agreement, or in any enactment or rule of law.

8. Certain matters not affected—Nothing effected or authorised by or pursuant to this Act and nothing done by the

Crown or any mana authority pursuant to this Act (not being something effected or authorised by this Act)—

- (a) Shall invalidate or discharge any loan transaction or security; or
- (b) Shall release any surety wholly or in part from all or any of that surety's obligations; or 5
- (c) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract, arrangement, loan transaction, or security or to accelerate the performance of any obligation; or 10
- (d) Shall be regarded as placing the Crown or any mana authority, or any other person, in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (e) Shall be regarded as placing the Crown or any mana authority or any other person, in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information. 15 20

9. Registers—(1) No District Land Registrar, Registrar of the High Court, or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the provisions of this Act to change the name of the Crown to that of a mana authority in those books or registers or in any document. 25

(2) The presentation to any such registrar or other person of any instrument—

- (a) Executed or purporting to be executed by a mana authority that acted as the agent of the Crown at the time any transaction evidenced by the instrument was entered into; and 30
- (b) Relating to any property that is subject to this Act; and
- (c) Containing a recital that that property has been deemed to be and to always have been owned by that mana authority by virtue of the provisions of this Act— 35

shall, in the absence of proof to the contrary, be sufficient evidence that the property is owned by that mana authority.

10. Loans acquired by mana authority for full consideration—For the purposes of the Inland Revenue Acts, where any money owing by any person under a loan and any amount repaid under that loan are deemed under this Act to be and to have become the property of a mana authority, that 40

property shall be deemed to have been acquired by that mana authority for an amount of consideration equal to the sum of such money owing and such amounts repaid.

5 **11. Goods and services tax**—Notwithstanding anything in the Goods and Services Tax Act 1985, neither the Crown nor any mana authority nor any other person shall incur any liability for goods and services tax which would not have arisen but for the provisions of this Act.

10 **12. Savings in respect of Land Transfer Act 1952**—Except as provided in section 9 of this Act, nothing in this Act derogates from the provisions of the Land Transfer Act 1952.

PART II

KOKIRI CENTRES

15 **13. Commencement**—This Part of this Act shall come into force on the 1st day of July 1994.

14. Repeal of provision authorising establishment and maintenance of Kokiri Centres—The Maori Affairs Restructuring Act 1989 is hereby amended by repealing section 87.

20 **15. Cancellation of arrangements**—Every arrangement entered into under section 87 (2) (d) of the Maori Affairs Restructuring Act 1989 for the conduct of a Kokiri Centre, being an arrangement in force immediately before the 1st day of July 1994, is hereby cancelled.

25 **16. Disposal of land, premises, furnishings, or equipment**—Any land, premises, furnishings, or equipment, acquired under section 87 of the Maori Affairs Restructuring Act 1989, may be sold, leased, or otherwise disposed of upon such terms and conditions as the chief executive of the Ministry
30 of Maori Development thinks fit:

Provided that no such land or premises shall be sold without the consent of the Minister of Maori Affairs.

17. Recovery of charges—Notwithstanding the repeal of section 87 of the Maori Affairs Restructuring Act 1989 by
35 **section 14** of this Act, the chief executive of the Ministry of Maori Development may recover, after the commencement of this section, any charges imposed before the commencement of this section under section 87 (4) of the Maori Affairs

Restructuring Act 1989 and unpaid at the commencement of this section.