

Māori Purposes Bill (No 2) 2002

Government Bill

Explanatory note

General policy statement

The Māori Purposes Bill (**No 2**) is an omnibus piece of legislation that validates the constitution of the Waitangi Tribunal (the **Tribunal**) for certain inquiries. It also amends 3 existing statutes in relation to—

- the operations of the Waitangi Tribunal under the Second Schedule of the Treaty of Waitangi Act 1975;
- ministerial responsibility for Te Reo Whakapuaki Irirangi (Te Mangai Paho) under the Broadcasting Act 1989;
- the operation in relation to Ngāti Tuwharetoa of the fishery licensing regime in Lake Taupo under the Fisheries Act 1908 as amended by the Maori Land Amendment and Maori Land Claims Adjustment Act 1926.

It is intended that these 3 amendments be broken up into 3 separate Bills at the committee of the whole House stage.

The validation clause clarifies the status of the Tribunal in the case of 3 inquiries where changes of membership occurred after the hearings had commenced.

The amendments to the Second Schedule of the Treaty of Waitangi Act 1975 are intended to facilitate the completion of an inquiry if there is no longer a quorum of the Tribunal constituted for that inquiry because the presiding officer or a member of the Tribunal is unable to continue holding office.

There is also provision to appoint, on a temporary basis, an acting presiding officer from within a Tribunal set up for an inquiry.

The practical reason behind these amendments is that the Tribunal is from time to time confronted with the difficulty, particularly in a very long-running inquiry, of a member being no longer able to continue to participate in the inquiry. Without legal authorisation to replace a member in such a circumstance, there is a possibility of having to start an inquiry over again.

Because the Tribunal is bound by the rules of natural justice, the Bill limits the circumstances when the Chairperson may exercise the powers created by these amendments and prescribes certain conditions that must be met.

The amendment to the Broadcasting Act 1989 is a technical amendment to reflect the transfer of responsibility for Part IVA of that Act from the Minister of Broadcasting to the Minister of Māori Affairs.

The amendment to the Maori Land Amendment and Maori Land Claims Adjustment Act 1926 gives effect to an agreement of the Department of Conservation and Ngāti Tuwharetoa to increase the number of fishing licences to which the iwi is entitled. That number has not been increased since 1926.

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Clause 2 is the commencement provision. It provides that all amendments come into force on the day after the day the Bill receives the Royal assent.

Part 1

Treaty of Waitangi Act 1975

Clause 3 provides that the Treaty of Waitangi Act 1975 is called “the principal Act” in *Part 1*.

Clause 4 provides for the validation of the Tribunal as constituted to inquire into, and make recommendations on, the claims heard in the Hauraki inquiry (Wai 686), the Kaipara inquiry (Wai 674), and the Wellington Tenths inquiry (Wai 145).

Clause 5 adds 5 new clauses to the Second Schedule of the Treaty of Waitangi Act 1975 to permit the Chairperson of the Tribunal, subject to certain prescribed conditions, to appoint—

- (a) another member of the Tribunal or a Judge of the Māori Land Court to replace the presiding officer or former presiding officer holding office under clause 5(1)(a) for the purpose of

an inquiry into a particular claim or other matter (*new clause 5AA*):

- (b) another member of the Tribunal to replace a member or former member holding office under clause 5(1)(b) for the purpose of a particular claim or other matter (*new clause 5AB*).

In the case of an appointment of a replacement presiding officer, the criteria of clause 5(2) and (3) apply (*new clause 5AA(2)*).

New clause 5AC enables replacement appointments to be made before or after the Tribunal has begun its inquiry into a claim or other matter. The power may be exercised only in the circumstance that—

- (a) the person to be replaced—
 - (i) has ceased to hold office in accordance with clause 2 of the Second Schedule or, in the case of a Judge of the Maori Land Court, under section 12 of Te Ture Whenua Maori Act 1993 (which provides for the tenure of Judges under that Act); or
 - (ii) is, because of his or her physical or mental health, unable to continue to participate in the inquiry; or
- (c) it would be unreasonable, in the Chairperson's opinion, to expect the person, because of his or her personal circumstances, to continue to participate in the inquiry.

If the Tribunal has begun inquiring into a claim or other matter, the Chairperson must not exercise the power unless there is an adequate record of that inquiry to date and it is reasonable to expect the replacement presiding officer or member to review the record.

For the avoidance of doubt, it is provided that the power conferred by *new clauses 5AA and 5AB* is able to be exercised even if the relevant circumstances permitting replacement arose before this Bill came into force.

New clause 5AD provides for the Chairperson to appoint, for a specified period, an acting presiding officer from among the members of the Tribunal inquiring into the particular claim or other matter. This power applies only if a presiding officer is prevented by illness or unforeseen circumstances from being present at part or all of a sitting. A member may be appointed to be the acting presiding officer whether or not that member meets the legal qualification required by clause 5(2).

New clause 5AE provides that an acting presiding officer may only be appointed if, in the opinion of the Chairperson, the Tribunal can

properly continue to exercise its functions under an acting presiding officer. An acting presiding officer has the powers of a presiding officer under the Act while so acting (*new clause 5AE*).

Part 2

Broadcasting Act 1989

This Part of the Bill makes technical amendments to sections 53I and 53S of the Broadcasting Act 1989 to provide that the responsibility for the appointment of members of Te Reo Whakapuaki Irirangi (Te Mangai Paho) and for giving directions to that body lies with the Minister responsible for the administration of that Part of the Broadcasting Act 1989.

Part 3

Maori Land Amendment and Maori Land Claims Adjustment Act 1926

This Part of the Bill amends the proviso to section 14(9) of the Maori Land Amendment and Maori Land Claims Adjustment Act 1926 by increasing, from 50 to 200, the number of licences that may be issued, free of charge and without the consent of the Governor-General, to members of Ngāti Tuwharetoa to permit fishing for exotic species in Lake Taupo in accordance with the applicable regulations.

Hon Parekura Horomia

Māori Purposes Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Māori Purposes Act (No 2) **2002**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.

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Part 1 Treaty of Waitangi Act 1975

- 3 Treaty of Waitangi Act 1975 called principal Act in this Part** 5
- In this Part, the Treaty of Waitangi Act 1975¹ is called “the principal Act”.
- ¹ 1975 No 114
- 4 Validation in respect of certain inquiries** 10
- The Tribunal is deemed to be, and to have always been, constituted in accordance with the principal Act for the purpose of inquiring into, and making recommendations on, the claims heard in the following inquiries:
- (a) the Hauraki inquiry (Wai 686):
 - (b) the Kaipara inquiry (Wai 674):
 - (c) the Wellington Tenths inquiry (Wai 145).
- 5 Second Schedule amended** 15
- The Second Schedule of the principal Act is amended by inserting, after clause 5, the following clauses:
- “5AA Chairperson may appoint replacement presiding officer**
- “(1) For the purposes of an inquiry into a particular claim or other matter under section 5(1), the Chairperson may appoint another member of the Tribunal or a Judge of the Māori Land Court to replace a presiding officer or former presiding officer holding office under clause 5(1)(a). 20
- “(2) Clause 5(2) and (3) applies to a replacement appointment under **subclause (1)**. 25
- “5AB Chairperson may appoint replacement member**
- For the purposes of an inquiry into a particular claim or other matter under section 5(1), the Chairperson may appoint another member of the Tribunal to replace a member or former member holding office under clause 5(1)(b). 30
- “5AC Conditions applying to replacement appointments**
- “(1) An appointment made under **clause 5AA or clause 5AB** may be made before or after the Tribunal has begun to inquire into a particular claim or other matter under section 5(1).

- “(2) The power conferred on the Chairperson by **clauses 5AA and 5AB** may be exercised only if—
- “(a) the presiding officer or member holding office under clause 5(1) has ceased to hold office—
 - “(i) as provided for in clause 2; or 5
 - “(ii) in the case of a Judge of the Māori Land Court, as provided for in section 12 of Te Ture Whenua Maori Act 1993: 10
 - “(b) the personal circumstances of the presiding officer or member holding office under clause 5(1) make that person unable by reason of his or her physical or mental condition to continue to participate in the inquiry into the particular claim or other matter: 10
 - “(c) in the opinion of the Chairperson it would be unreasonable to expect the presiding officer or member holding office under clause 5(1) to continue to participate in the inquiry into the particular claim or other matter because of his or her personal circumstances. 15
- “(3) If the Tribunal has commenced its inquiry into the particular claim or other matter, the Chairperson must not exercise the power conferred by **clause 5AA or clause 5AB** unless— 20
- “(a) there is an adequate record of the inquiry that has already been heard by the Tribunal; and
 - “(b) it is reasonable to expect the person appointed to the Tribunal under **clause 5AA or clause 5AB** to review the record of that inquiry. 25
- “(4) For the avoidance of doubt, the power conferred by **clauses 5AA and 5AB** may be exercised even if the relevant circumstance under **subclause (2)** arose before the commencement of the Maori Purposes Bill (No 2) **2002**. 30
- “5AD Chairperson may appoint acting presiding officer**
- “(1) The Chairperson may appoint an acting presiding officer if the presiding officer appointed under clause 5(1)(a) for the purposes of the particular claim or other matter under section 5(1) is temporarily unable to be present for the whole or part of a sitting because of— 35
- “(a) his or her illness; or
 - “(b) unforeseen circumstances that prevent his or her attendance.

“(2) Clause 5(2) does not apply to an appointment under this clause.

“(3) In making an appointment under this clause, the Chairperson must fix and state the period for which the acting presiding officer is appointed.

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“5AE Conditions applying to appointment of acting presiding officer

“(1) The power conferred on the Chairperson by **clause 5AD** may be exercised only if, in the opinion of the Chairperson, the Tribunal can, with an acting presiding officer, properly continue to exercise its functions to inquire into the particular claim or other matter.

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“(2) A person appointed to be an acting presiding officer under **clause 5AD** has, while that person is the acting presiding officer, the powers of a presiding officer under this Act.”

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Part 2
Broadcasting Act 1989

6 Broadcasting Act 1989 called principal Act in this Part

In this Part, the Broadcasting Act 1989² is called “the principal Act”.

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² 1989 No 25

7 Membership of Te Reo Whakapuaki Irirangi

Section 53I of the principal Act is amended by omitting the words “, after consultation with the Minister of Māori Affairs,”.

8 Te Reo Whakapuaki Irirangi to have regard to Government policy

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(1) Section 53S(1) of the principal Act is amended by omitting the words “jointly by the Minister and the Minister of Māori Affairs”, and substituting the words “by the Minister”.

(2) Section 53S(2) of the principal Act is amended by omitting the words “and the Minister of Māori Affairs”.

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(3) Section 53S(3) of the principal Act is amended by omitting the words “and the Minister of Māori Affairs, acting jointly,”.

Part 3
Maori Land Amendment and
Maori Land Claims Adjustment Act 1926

- 9 Maori Land Amendment and Maori Land Claims Adjustment Act 1926** 5
In this Part, the Maori Land Amendment and Maori Land Claims Adjustment Act 1926³ is called “the principal Act”.
³ 1926 No 64
- 10 Bed of Lake Taupo vested in Crown** 10
The proviso to section 14(9)(c) of the principal Act is amended by omitting the expression “50”, and substituting the expression “200”.