

Maori Reserved Land Amendment Bill

Government Bill

Explanatory note

General policy statement

The Bill requires taxation to be taken into account when calculating the amount of compensation payable to lessees under section 4 of the Maori Reserved Land Amendment Act 1998.

Under that Act lessees were given 2 options in relation to compensation. They could, in 1998, elect either—

- (a) to accept the amounts payable under sections 16 and 26 of the Maori Reserved Land Amendment Act 1997; or
- (b) to have the lessee's compensation determined by the Land Valuation Tribunal in accordance with section 4 of the Maori Reserved Land Amendment Act 1998.

Compensation payable under the compensation model in the 1997 Act is net of taxation with the "taxation rate" applicable being stated in clause 1 of Schedule 2 of the 1997 Act.

In relation to lessees of urban residential land, the taxation rate is 24%.

In relation to lessees of land that is not urban residential land, the taxation rate is 33%.

As the compensation was being paid by the Crown "net of tax", section 31 of the 1997 Act accordingly amended the Income Tax Act 1994 to exempt these net amounts of compensation from taxation.

As the two Acts stand, a lessee who accepts compensation under the 1997 Act will have a deduction made on account of taxation while a lessee whose compensation in respect of identical matters is determined by the Land Valuation Tribunal under the 1998 Act will not suffer any such deduction.

The Bill is designed to ensure that, in both cases, deductions are made on account of taxation. The rates of deduction will be the same in both cases.

The effect of applying a deduction on account of taxation to the compensation determined by the Land Valuation Tribunal means that those lessees who chose the Land Valuation Tribunal option will, for tax purposes, be treated in the same way as the other lessees.

In these circumstances it is considered fair to allow each of the lessees who chose the Land Valuation Tribunal option to revisit the election that they made in 1998.

The Bill accordingly gives these lessees a second opportunity either—

- (a) to accept the compensation and the solatium payment payable under the 1997 Act; or
- (b) to have the lessee's compensation determined under the 1998 Act (as amended by this Bill) by the Land Valuation Tribunal.

If a lessee who has made an application to the Land Valuation Tribunal, decides not to proceed with that application and to accept the compensation and the solatium payment payable under the 1997 Act, interest at the rate of 11% will be payable on that compensation and the solatium payment. The period in respect of which interest is payable will begin with the date (most probably in 1998) on which the lessee filed the lessee's application to the Land Valuation Tribunal. Interest is not, under either Act, exempt from income tax.

The rate of 11% is the rate prescribed under section 87 of the Judicature Act 1908 and applied by section 23(2) of the Maori Reserved Land Amendment Act 1997.

Clause by clause analysis

Clause 1 relates to the Title.

Part 1

Preliminary provisions

Clause 2 provides that the Act comes into force on the date on which it receives the Royal assent.

Clause 3 provides that the Act binds the Crown.

Part 2

Provisions relating to compensation of lessees

Clause 4 amends section 4 of the Maori Reserved Land Act 1998 (which relates to the determination of compensation by the Land Valuation Tribunal). The amendments make the compensation determined by the Land Valuation Tribunal net of taxation.

Subclause (1) provides that the amount of the compensation payable to the lessee is—

- (a) the market value of the lessee's interest in the lease (as determined under section 4(3)(a)) less the market value of the lessee's interest in the lease (as determined under section 4(3)(b)); less
- (b) the amount that is required to make the compensation net of tax, which amount is,—
 - (i) if the lessee is a lessee of urban residential land, 24% of the amount that is the result of the calculation in *paragraph (a)*; and
 - (ii) if the lessee is a lessee of land that is not urban residential land, 33% of the amount that is the result of the calculation in *paragraph (a)*.

Subclause (2) effects a consequential amendment to section 4(6) of the Maori Reserved Land Amendment Act 1998.

Clause 5 applies to any lessee (being a lessee to whom the Maori Reserved Land Amendment Act 1997 applies) who has, before the commencement of the Bill, filed under section 3(5)(b) of the Maori Reserved Land Amendment Act 1998, an application to have the lessee's compensation determined by the Land Valuation Tribunal in accordance with section 4 of that Act (not being a lessee who has, whether before or after the commencement of the Bill, withdrawn the application).

The clause gives every such lessee a second opportunity to elect either—

- (a) to accept—
 - (i) the amount of compensation payable to the lessee under section 16 of the Maori Reserved Land Amendment Act 1997; and
 - (ii) the amount of the solatium payment payable to the lessee under section 26 of the Maori Reserved Land Amendment Act 1997; or

- (b) to have the lessee's compensation determined by the Land Valuation Tribunal in accordance with section 4 of the Maori Reserved Land Amendment Act 1998 (as amended by *clause 4*).

Clause 6 deals with the effect of an election (made at that second opportunity) to accept—

- (a) the amount of compensation payable to the lessee under section 16 of the Maori Reserved Land Amendment Act 1997; and
- (b) the amount of the solatium payment payable to the lessee under section 26 of the Maori Reserved Land Amendment Act 1997.

The chief executive of Te Puni Kokiri is required to pay those amounts to the lessee and the lessee's application to have the compensation determined by the Land Valuation Tribunal has no effect.

Clause 7 requires the Crown to pay interest at the rate of 11% on the amount payable by way of compensation and the amount payable by way of solatium as a result of an election under *clause 5(7)(a)*.

The period in respect of which interest is payable will begin with the date (most probably in 1998) on which the lessee elected to have the compensation determined by the Land Valuation Tribunal.

Clause 8 provides that if the lessee does not exercise the lessee's opportunity under this Bill to make a second election, the lessee will be deemed to have elected to have the lessee's compensation determined by the Land Valuation Tribunal.

Clause 9 provides that an application filed before the commencement of this Bill under section 3(5)(b) of the Maori Reserved Land Amendment Act 1998 may be determined by the Land Valuation Tribunal only if the lessee who filed that application either makes, or is deemed to have made, an election in accordance with *clause 5(7)(b)*.

Clause 10 effects consequential amendments to provisions of the Maori Reserved Land Amendment Act 1997 and the Maori Reserved Land Amendment Act 1998 and the Income Tax Act 1994.

Hon Parekura Horomia

Maori Reserved Land Amendment Bill

Government Bill

Contents

1	Title	6	Effect of election
	Part 1	7	Payment of interest
	Preliminary provisions	8	Effect of failure to make election
2	Commencement	9	Determination of applications to Land Valuation Tribunal
3	Act to bind the Crown	10	Consequential amendments
	Part 2		
	Provisions relating to compensation of lessees		
4	Determination of compensation by Land Valuation Tribunal		Schedule
5	Right of certain lessees to make fur- ther elections in relation to compensation		Consequential amendments to Maori Reserved Land Amendment Act 1997

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Maori Reserved Land Amendment Act 2001.

(2) This Act is part of the Maori Reserved Land Act 1955¹.

¹ 1955 No 38

Part 1

5

Preliminary provisions

2 Commencement

This Act comes into force on the date on which this Act receives the Royal assent.

3 Act to bind the Crown

10

This Act binds the Crown.

Part 2

Provisions relating to compensation of lessees

- 4 Determination of compensation by Land Valuation Tribunal**
- (1) Section 4 of the Maori Reserved Land Amendment Act 1998 is amended by repealing subsection (5), and substituting the following subsection: 5
- “(5) The amount of the compensation payable to the lessee under subsection (1) is—
- “(a) the market value determined under subsection (3)(a) less the market value determined under subsection (3)(b); less 10
- “(b) the amount that is required to make the compensation net of tax, which amount is,—
- “(i) if the lessee is a lessee of urban residential land; 24% of the amount that is the result of the calculation in **paragraph (a)**; and 15
- “(ii) if the lessee is a lessee of land that is not urban residential land, 33 % of the amount that is the result of the calculation in **paragraph (a)**.” 20
- (2) Section 4 of the Maori Reserved Land Amendment Act 1998 is amended by inserting in subsection (6), after the words “subject to this section”, the words “and to the Maori Reserved Land Amendment Act 2001”.
- 5 Right of certain lessees to make further elections in relation to compensation** 25
- (1) This section applies to any lessee (being a lessee to whom the Maori Reserved Land Amendment Act 1997 applies) who has, before the commencement of this Act, filed under section 3(5)(b) of the Maori Reserved Land Amendment Act 1998, an application to have the lessee’s compensation determined by the Land Valuation Tribunal in accordance with section 4 of that Act. 30
- (2) This section does not apply to any lessee who has, whether before or after the commencement of this Act, withdrawn the application filed by that lessee under section 3(5)(b) of the Maori Reserved Land Amendment Act 1998. 35

- (3) The chief executive of Te Puni Kokiri must, after the commencement of this Act, give to each lessee to whom this section applies a notice specifying both—
- (a) the amount of compensation payable to the lessee under section 16 of the Maori Reserved Land Amendment Act 1997; and 5
 - (b) the amount of the solatium payment payable to the lessee under section 26 of the Maori Reserved Land Amendment Act 1997.
- (4) The notice must state the rate of interest payable on the amounts specified in the notice and the period in respect of which interest will be paid. 10
- (5) The notice must state that the lessee may elect either—
- (a) to accept both of the amounts specified in the notice; or
 - (b) to have the lessee's compensation determined by the Land Valuation Tribunal in accordance with section 4 of the Maori Reserved Land Amendment Act 1998 (as amended by **section 4** of this Act). 15
- (6) The notice under **subsection (3)** must be given to the lessee not later than 1 month after the date on which this Act comes into force. 20
- (7) The lessee may, within 3 months after being given a notice under **subsection (3)**, elect to inform the chief executive of Te Puni Kokiri, by notice in writing signed by the lessee, either—
- (a) that the lessee will accept both of the amounts specified in the notice; or 25
 - (b) that the lessee will proceed to have the lessee's compensation determined by the Land Valuation Tribunal in accordance with section 4 of the Maori Reserved Land Amendment Act 1998 (as amended by **section 4** of this Act). 30

6 Effect of election

- (1) If the chief executive of Te Puni Kokiri receives from the lessee a notice under **section 5(7)(a)**,—
- (a) the lessee's application to have the lessee's compensation determined by the Land Valuation Tribunal in accordance with section 4 of the Maori Reserved Land Amendment Act 1998 has no effect; and 35
 - (b) that chief executive must, within 3 months after the day on which he or she receives that notice, pay to the lessee 40

the amounts specified in the notice given to the lessee under **section 5(3)**.

- (2) The chief executive of Te Puni Kokiri must, forthwith after receiving a notice under **section 5(7)(a) or section 5(7)(b)** file a copy of that notice in the office of the District Court in which the lessee's application under section 3(5)(b) of the Maori Reserved Land Amendment Act 1998 was filed. 5
- (3) The chief executive of Te Puni Kokiri must ensure that the copy filed under **subsection (2)** is endorsed with a note stating the date on which the notice was received by that chief executive. 10

7 Payment of interest

- (1) Where a lessee makes an election under **section 5(7)(a)** of this Act, the Crown must, on paying the amounts to which that election relates, pay those amounts together with interest at the rate of 11% per annum in respect of the period— 15
- (a) beginning with the date on which the lessee filed under section 3(5)(b) of the Maori Reserved Land Amendment Act 1998 the lessee's application to have the lessee's compensation determined by the Land Valuation Tribunal in accordance with section 4 of that Act; and 20
- (b) ending with the date on which a cheque in payment of the amounts and the interest is forwarded to the lessee.
- (2) Where interest is payable under **subsection (1)** in respect of any amounts, no interest is payable under section 23 of the Maori Reserved Land Amendment Act 1997 in respect of those amounts. 25

8 Effect of failure to make election

Where a lessee to whom **section 5** applies does not, within the period allowed by **subsection (7)** of that section, take either of the steps permitted by that subsection, the lessee is deemed to have given to the chief executive of Te Puni Kokiri on the last day of that period a notice under **section 5(7)(b)**. 30

9 Determination of applications to Land Valuation Tribunal

An application filed before the commencement of this Act under section 3(5)(b) of the Maori Reserved Land Amendment Act 1998 may be determined by the Land Valuation Tribunal only if the lessee who filed that application either makes, or is deemed to have made, an election in accordance with **section 5(7)(b)** of this Act. 5

10 Consequential amendments

- (1) The Maori Reserved Land Amendment Act 1997 is consequentially amended in the manner set out in the Schedule. 10
- (2) Section 3(7) of the Maori Reserved Land Amendment Act 1998 is consequentially amended by inserting, before the words “Where the lessee”, the words “Subject to the Maori Reserved Land Amendment Act **2001**,”. 15
- (3) The Maori Reserved Land Amendment Act 1998 is consequentially amended by repealing so much of the Schedule as relates to sections 20(1) and 26 of the Maori Reserved Land Amendment Act 1997.
- (4) Section CB5(1)(p) of the Income Tax Act 1994 is amended by adding the words “or under **section 7** of the Maori Reserved Land Amendment Act **2001**”. 20
-

s 10(1)

Schedule

Consequential amendments to Maori Reserved Land Amendment Act 1997

Section 19(1)

Insert, after the expression “1998”, the expression “and in **sections 5 and 6** of the Maori Reserved Land Amendment Act **2001**”. 5

Section 20

Repeal subsection (1) and substitute:

“(1) No compensation is payable under this Act or the Maori Reserved Land Amendment Act 1998 or the Maori Reserved Land Amendment Act **2001** to the lessee of a lease to which this Act applies if the lessee is the Crown or a Crown entity.” 10

Section 22(2)

Insert, after the expression “1998”, the expression “or the Maori Reserved Land Amendment Act **2001**”. 15

Section 23(3)

Insert, after the expression “subsections (1) and (2)”, the expression “or in **section 7** of the Maori Reserved Land Amendment Act **2001**”.

Section 24

Insert, after the expression “1998”, the expression “or the Maori Reserved Land Amendment Act **2001**”. 20

Section 26

Repeal subsection (9) and substitute:

“(9) This section is subject to section 3 of the Maori Reserved Land Amendment Act 1998 and **sections 5 and 6** of the Maori Reserved Land Amendment Act **2001**.” 25