

## TREATY OF WAITANGI AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Treaty of Waitangi Act 1975.

*Clause 1* relates to the Short Title and commencement. The Bill is to come into force on 1 July 1988.

*Clause 2* repeals subsections (2), (2A), and (3) of section 4 of the principal Act, and substitutes new subsections (2), (2A), and (3).

The new *subsection (2)* provides for an increase in the number of members on the Waitangi Tribunal.

Under subsection (2) (as enacted in 1985) the Tribunal consists of—

- (a) The Chief Judge of the Maori Land Court, who shall be the Chairman;
- (b) Six persons, of whom at least 4 shall be Maori.

Under the new *subsection (2)* the Chief Judge of the Maori Land Court continues to be the Chairperson of the Tribunal but the other members of the Tribunal will number not less than 2 and not more than 16. There is no longer a requirement that at least 4 members of the Tribunal be Maori.

The Minister of Maori Affairs, in considering the suitability of persons for appointment to the Tribunal, is required by *paragraph (a)* of the new *subsection (2A)* to have regard to the partnership between the 2 parties to the Treaty. This requirement is new.

Under the new *subsection (3)* each appointed member of the Tribunal will continue, as at present, to be appointed for a term not exceeding 3 years.

*Clause 3* inserts 2 new sections 4A and 4B into the principal Act.

The new *section 4A* empowers the Chairperson of the Tribunal to appoint a Judge of the Maori Land Court as the deputy of the Chairperson of the Tribunal.

The new *section 4B* provides that the appointment of a Judge as the deputy of the Chairperson of the Waitangi Tribunal, or service by a Judge as that deputy or as a member of the Tribunal does not affect his or her tenure of his or her judicial office or his or her rights as a Judge.

*Clause 4* inserts a new *section 6A* into the principal Act.

*Subsection (1)* of the new section provides that the Waitangi Tribunal may refer to the Maori Appellate Court for decision any question arising in proceedings before the Tribunal, being—

- (a) A question of fact or of Maori custom or usage; and

(b) A question—

- (i) Relating to the rights of ownership to any particular land or fisheries according to customary law principles of “take” and occupation or use; and
- (ii) Calling for the determination, to the extent practicable, of Maori tribal boundaries, whether of land or fisheries.

*Subsection (2)* of the new section provides that the Waitangi Tribunal may refer to the Maori Land Court for decision any question which arises in any proceedings before the Tribunal and which relates to the Maori or group of Maori to whom any land or any part of any land or any interest in land is to be returned pursuant to a recommendation under section 8A (2) (a) of the principal Act (as inserted by *clause 4* of the Treaty of Waitangi (State Enterprises) Bill). There is a right of appeal to the Maori Appellate Court against any decision of the Maori Land Court under this subsection.

*Clause 5: Subclause (1)* inserts a new *subsection (1A)* into section 7 of the principal Act.

The new subsection provides that the Tribunal may, from time to time, for sufficient reason, defer, for such period or periods as it thinks fit, its inquiry into any claim made under section 6 of the principal Act.

*Subclause (2)* effects a consequential amendment.

*Clause 6* repeals clauses 1 to 4 of the Second Schedule, and substitutes new *clauses 1 to 3*. *Clause 4*, which is not re-enacted, provided for the appointment of Deputy members.

The new *clause 1* provides that any member of the Tribunal whose term of office has expired or who has resigned from office shall, whether or not that member's successor has come into office, continue in office for the purpose of completing any proceedings heard by the Tribunal before the expiry of the member's term of office or the member's resignation.

The new *clause 2* deals with the circumstances in which an appointed member of the Waitangi Tribunal vacates office. The clause is new to the extent that—

- (a) It provides expressly that such a member is deemed to have vacated his or her office if he or she dies or is, under the Insolvency Act 1967, adjudged bankrupt; and
- (b) It provides that the powers and functions of the Tribunal are not affected by any vacancy in its membership.

The new *clause 3* relates to the remuneration, allowances, and expenses of members of the Waitangi Tribunal. The clause is new to the extent that it provides that the remuneration of the members of the Waitangi Tribunal is to be determined by the Higher Salaries Commission.

*Clause 7* repeals *clause 5* of the Second Schedule to the principal Act, and substitutes a new clause (which relates to sittings of the Tribunal).

The new *clause 5 (1)* provides that the persons to constitute the Tribunal for the purposes of any sitting of the Tribunal shall comprise—

- (a) As presiding officer—
  - (i) The Chairperson; or
  - (ii) A Judge of the Maori Land Court appointed by the Chairperson to act as presiding officer; or
  - (iii) A member of the Tribunal appointed by the Chairperson to act as presiding officer; and
- (b) Such other members of the Tribunal (being not less than 2 and not more than 6) as are appointed by the Chairperson.

The new *clause 5 (2)* provides that only a member of the Tribunal who is a barrister or solicitor of the High Court of at least 7 years' standing shall be qualified for appointment as presiding officer under *clause 5 (1) (a) (iii)* of the Second Schedule to the principal Act.

The new *clause 5 (7)* provides that every application made to the Tribunal under section 8D of the principal Act (as inserted by *clause 2* of the Treaty of Waitangi (State Enterprises) Bill) shall be considered, and any recommendation made pursuant to subsection (1) (b) (ii) of that section shall be made, by at least 3 members of the Tribunal (including the presiding officer) of whom at least 1 shall be a Maori.

The new *clause 5 (7)* is similar to *clause 5 (6)* which, as *clause 5 (4)*, was enacted in 1985.

*Clause 8* repeals subclause (2) of *clause 8* in the Second Schedule to the principal Act, and substitutes a new subclause. The subclause is new to the extent that it empowers the Chairperson of the Tribunal, or any other person, being the presiding officer at a sitting of the Tribunal or a member of the Tribunal purporting to act by direction or with the authority of the Chairperson, to issue directions or conduct conferences.

*Clause 9* effects a consequential amendment to the Fourth Schedule to the Higher Salaries Commission Act 1977.

*Clause 10* contains transitional provisions in respect of the members of the Waitangi Tribunal.

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Hon. K. T. Wetere

## TREATY OF WAITANGI AMENDMENT

### ANALYSIS

Title	6. New clauses substituted
1. Short Title and commencement	1. Member to continue in office to complete proceedings
2. Waitangi Tribunal	2. Vacation of office
3. New sections inserted	3. Remuneration, allowances, and expenses of members of Tribunal
4A. Deputy Chairperson	7. Sittings of Tribunal
4B. Appointment of Judge not to affect tenure, etc.	8. Tribunal to be a Commission of Inquiry
4. Power of Tribunal to state case for Maori Appellate Court or Maori Land Court	9. Amendment to Higher Salaries Commission Act 1977
5. Power of Tribunal to defer claim	10. Transitional provisions

### A BILL INTITULED

#### An Act to amend the Treaty of Waitangi Act 1975

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

5 **1. Short Title and commencement**—(1) This Act may be cited as the Treaty of Waitangi Amendment Act 1988, and shall be read together with and deemed part of the Treaty of Waitangi Act 1975\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1988.

10 **2. Waitangi Tribunal**—(1) Section 4 of the principal Act (as amended by section 2 of the Treaty of Waitangi Amendment Act 1985) is hereby amended by repealing subsections (2), (2A), and (3), and substituting the following subsections:

15 “(2) The Tribunal shall consist of—  
“(a) The Chief Judge of the Maori Land Court, who shall be both a member of the Tribunal and its Chairperson:

\*R.S. Vol. 8, p. 877  
Amendment: 1985, No. 148

“(b) Not less than 2 other members and not more than 16 other members to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice. 5

“(2A) In considering the suitability of persons for appointment to the Tribunal, the Minister of Maori Affairs—

“(a) Shall have regard to the partnership between the 2 parties to the Treaty; and

“(b) Shall have regard not only to a person’s personal 10 attributes but also to a person’s knowledge of and experience in the different aspects of matters likely to come before the Tribunal.

“(3) Every member of the Tribunal appointed under subsection (2) (b) of this section shall hold office for such term as 15 the Governor-General shall specify in his or her appointment, being a term not exceeding 3 years, but may from time to time be reappointed.”

(2) Section 2 of the Treaty of Waitangi Amendment Act 1985 is hereby consequentially repealed. 20

**3. New sections inserted**—The principal Act is hereby amended by inserting, after section 4, the following sections:

“4A. **Deputy Chairperson**—(1) The Chairperson of the Tribunal may from time to time appoint a Judge of the Maori Land Court as the deputy of the Chairperson of the Tribunal. 25

“(2) In any case in which the Chairperson of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of Chairperson, the deputy of the Chairperson of the Tribunal shall have and may exercise all the powers, functions, and 30 duties of the Chairperson.

“(3) No acts done by a person holding office as the deputy of the Chairperson of the Tribunal in that person’s capacity as such deputy, and no act done by the Tribunal while a deputy of the Chairperson of the Tribunal is acting as such deputy, shall 35 in any proceedings be questioned on the ground that the occasion for the deputy’s so acting had not arisen or had ceased.

“4B. **Appointment of Judge not to affect tenure, etc.**— The appointment of a Judge as the deputy of the Chairperson 40 of the Tribunal, or service by a Judge as that deputy or as a member of the Tribunal, does not affect his or her tenure of his or her judicial office or his or her rank, title, status, precedence,

salary, annual or other allowances or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, his or her service as a member shall be taken to be service as a Judge.”

- 5     **4. Power of Tribunal to state case for Maori Appellate Court or Maori Land Court**—The principal Act is hereby amended by inserting, after section 6, the following section:
- “6A. (1) The Tribunal may refer to the Maori Appellate Court for decision any question arising in proceedings before the  
10 Tribunal, being—
- “(a) A question of fact or of Maori custom or usage; and  
    “(b) A question—
- “(i) Relating to the rights of ownership to any  
15             particular land or fisheries according to customary law principles of ‘take’ and occupation or use; and  
        “(ii) Calling for the determination, to the extent practicable, of Maori tribal boundaries, whether of land or fisheries.
- “(2) The Tribunal may refer to the Maori Land Court for  
20 decision any question which arises in any proceedings before the Tribunal and which relates to the Maori or group of Maori to whom any land or any part of any land or any interest in land is to be returned pursuant to a recommendation under **section 8A (2) (a)** of this Act.
- 25     “(3) Any question referred to the Maori Appellate Court under **subsection (1)** of this section or to the Maori Land Court under **subsection (2)** of this section shall be in the form of a special case to be drawn up by the parties (if any) to the proceedings and, if the parties do not agree, or if there are no  
30 parties, to be settled by the Tribunal.
- “(4) The Maori Appellate Court shall have jurisdiction—
- “(a) To decide any question referred to it under **subsection (1)** of this section; and  
        “(b) To hear and determine any appeal against any decision  
35             of the Maori Land Court on any question referred to that Court under **subsection (2)** of this section.
- “(5) The Maori Land Court shall have jurisdiction to decide any question referred to it under **subsection (2)** of this section.
- “(6) The decision of the Maori Appellate Court on any  
40 question referred to it under **subsection (1)** of this section and on any appeal determined by it pursuant to **subsection (4) (b)** of this section shall be binding on the Tribunal.

“(7) Subject to **subsection (8)** of this section, the decision of the Maori Land Court on any question referred to it under **subsection (2)** of this section shall be binding on the Tribunal.

“(8) An appeal may be brought under section 42 of the Maori Affairs Act 1953 against any decision of the Maori Land Court on a question referred to it under **subsection (2)** of this section; and section 42 of the Maori Affairs Act 1953 shall apply in relation to any such appeal as if that decision were a final order of the Maori Land Court. 5

“(9) The Maori Appellate Court shall inform the Waitangi Tribunal of the decision of the Maori Appellate Court on— 10

“(a) Any question referred to it under **subsection (1)** of this section; and

“(b) Any appeal brought against any decision made by the Maori Land Court on any question referred to it under **subsection (2)** of this section. 15

“(10) The Maori Land Court shall inform the Waitangi Tribunal of—

“(a) The decision of the Maori Land Court on any question referred to it under **subsection (2)** of this section; and 20

“(b) The bringing of any appeal under **subsection (8)** of this section.”

**5. Power of Tribunal to defer claim**—(1) Section 7 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection: 25

“(1A) The Tribunal may, from time to time, for sufficient reason, defer, for such period or periods as it thinks fit, its inquiry into any claim made under section 6 of this Act.”

(2) Section 7 (2) of the principal Act is hereby amended by inserting, after the word “claim”, the words “or to defer its inquiry into any claim,”. 30

**6. New clauses substituted**—(1) The Second Schedule to the principal Act is hereby amended by repealing clauses 1 to 4, and substituting the following clauses:

**“1. Member to continue in office to complete proceedings**—Any member of the Tribunal whose term of office has expired or who has resigned from office shall, whether or not that member’s successor has come into office, continue in office for the purpose of completing any proceedings heard by the Tribunal before the expiry of the member’s term of office or the member’s resignation. 35 40

“2. **Vacation of office**—(1) Any member of the Tribunal appointed under section 4 (2) (b) of this Act may at any time resign his or her office by delivering a notice in writing to that effect to the Minister.

5 “(2) A member of the Tribunal appointed under section 4 (2) (b) of this Act shall be deemed to have vacated his or her office if he or she dies or is, under the Insolvency Act 1967, adjudged bankrupt.

10 “(3) Any member of the Tribunal appointed under section 4 (2) (b) of this Act may at any time be removed from office by the Governor-General for inefficiency, disability, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

“(4) The powers and functions of the Tribunal shall not be affected by any vacancy in its membership.

15 “3. **Remuneration, allowances, and expenses of members of Tribunal**—(1) There shall be paid to the members of the Tribunal such remuneration by way of fees, salary, wages, or allowances as may from time to time be fixed, whether generally or in respect of any particular member or  
20 members of the Tribunal, by the Higher Salaries Commission.

“(2) Any decision under subclause (1) of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no such date is specified, the decision shall take effect on the date thereof.

25 “(3) The Tribunal is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

30 “(4) There shall be paid to the members of the Tribunal travelling allowances and travelling expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.”

(2) Section 5 of the Treaty of Waitangi Amendment Act 1985 is hereby consequentially repealed.

35 **7. Sittings of Tribunal**—(1) The Second Schedule to the principal Act is hereby amended by repealing clause 5 (as amended by section 6 of the Treaty of Waitangi Amendment Act 1985), and substituting the following clause:

“5. (1) The persons to constitute the Tribunal for the purposes of any sitting of the Tribunal shall comprise—

40 “(a) As presiding officer—

“(i) The Chairperson; or

“(ii) A Judge of the Maori Land Court appointed by the Chairperson to act as presiding officer; or



- “(iii) A member of the Tribunal appointed by the Chairperson to act as presiding officer; and
- “(b) Such other members of the Tribunal (being not less than 2 and not more than 6) as are appointed by the Chairperson. 5
- “(2) Only a member of the Tribunal who is a barrister or solicitor of the High Court of at least 7 years’ standing, shall be qualified for appointment as presiding officer under **subclause (1) (a) (iii)** of this clause.
- “(3) Where a Judge of the Maori Land Court acts as presiding officer pursuant to **subclause (1) (a) (iii)** of this clause, that Judge shall, while he or she holds office as presiding officer, be deemed to be a member of the Tribunal. 10
- “(4) Sittings of the Tribunal shall be held at such times and places as the Tribunal or the presiding officer from time to time appoints. 15
- “(5) Any sitting of the Tribunal may be adjourned from time to time and from place to place by the Tribunal or the presiding officer.
- “(6) Every claim before the Tribunal shall be heard and determined, and every Bill or proposed regulations or Order in Council referred to the Tribunal shall be considered and reported upon, by at least 3 members of the Tribunal (including the presiding officer) of whom at least 1 shall be Maori. 20
- “(7) Every application made to the Tribunal under **section 8D** of this Act shall be considered, and any recommendation made pursuant to **subsection (1) (b) (ii)** of that section shall be made, by at least 3 members of the Tribunal (including the presiding officer) of whom at least 1 shall be a Maori. 25
- “(8) In the event of disagreement in respect of any such matter, the decision of the majority of the members dealing with the matter shall be the decision of the Tribunal, and, where those members are equally divided, the decision of the presiding officer shall be the decision of the Tribunal. 30
- “(9) The Tribunal may meet in private or in public, as the Tribunal from time to time decides. The presiding officer shall cause such notice as he or she thinks fit to be given of any public sitting of the Tribunal to persons likely to be affected thereby. 35
- “(10) Except as expressly provided in this Act, the Tribunal may regulate its procedure in such manner as it thinks fit, and in doing so may have regard to and adopt such aspects of te kawa o te marae as the Tribunal thinks appropriate in the particular case, but shall not deny any person the right to speak 40

during the proceedings of the Tribunal on the ground of that person's sex."

(2) Section 6 of the Treaty of Waitangi Amendment Act 1985 is hereby consequentially repealed.

5     **8. Tribunal to be a Commission of Inquiry**—The Second Schedule to the principal Act is hereby further amended by repealing subclause (2) of clause 8, and substituting the following subclause:

10     “(2) The Chairperson of the Tribunal, or any other person, being the presiding officer at a sitting of the Tribunal or a member of the Tribunal purporting to act by direction or with the authority of the Chairperson,—

    “(a) May issue directions or conduct conferences; or

15     “(b) May issue summonses requiring the attendance of witnesses before the Tribunal, or the production of documents; or

    “(c) May do any other act preliminary or incidental to the hearing of any matter by the Tribunal.”

20     **9. Amendment to Higher Salaries Commission Act 1977**—The Fourth Schedule to the Higher Salaries Commission Act 1977 (as substituted by section 14 of the Higher Salaries Commission Amendment Act 1988) is hereby amended by inserting, after the item relating to the Wanganui Computer Centre Privacy Commissioner, the following item:

25     “The members of the Waitangi Tribunal.”

30     **10. Transitional provisions**—(1) Notwithstanding the provisions of section 2 of this Act, every member of the Tribunal in office immediately before the commencement of this Act and appointed under subsection (2) (b) of section 4 of the principal Act (as repealed by section 2 (1) of this Act) shall be deemed to have been duly appointed under subsection (2) (b) of section 4 of the principal Act (as substituted by section 2 (1) of this Act).

35     (2) The term of office of every person deemed by subsection (1) of this section to have been appointed a member of the Tribunal shall expire with the close of the last day of the period for which the member was appointed before the commencement of this Act.

40     (3) Notwithstanding the repeal of clause 4 of the Second Schedule to the principal Act (which provides for the appointment of deputies for members of the Tribunal), any person who is in office, immediately before the commencement

of this Act, as a deputy for a member of the Tribunal and who has been involved in that capacity in the hearing of any proceedings heard by the Tribunal may, after the commencement of this Act, act as a member of the Tribunal for the purpose of completing those proceedings.

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