

**Te Ture Whenua Maori Amendment
Bill (No 2)
Maori Land Amendment Bill (No 2)**

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Maori Fisheries Bill as reported from the Fisheries and Other Sea-related Legislation Committee. The committee of the whole House has further amended the bill and divided it as follows:

- The Maori Fisheries Bill, comprising the Preamble, Parts 1 to 6, and Schedules 1 to 8
 - This bill, comprising Part 7
-

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

~~Subject to this Act,~~

Words struck out by a majority

Subject to this Act,

Words inserted by a majority

As reported from the committee of the whole House

New

Subject to this Act,

Text inserted

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Words struck out

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Words inserted

Hon David Benson-Pope

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is—
- (a) Te Ture Whenua Maori Amendment Act (No 2) **2004**; or
 - (b) the Maori Land Amendment Act (No 2) **2004**.
- (2) In this Act, Te Ture Whenua Maori Act 1993 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

169 New heading and sections <26A> <26AA> to 26M inserted

The principal Act is amended by inserting, after section 26, the following heading and sections:

“Jurisdiction of Court under Maori Fisheries Act 2003

New (majority)

“26AA Interpretation

In **sections 26A to 26M**, unless the context otherwise requires,—

“Aotearoa Fisheries Limited has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“constitutional documents has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“income share has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“mandated iwi organisation has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“settlement assets has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“Te Ohu Kai Moana Trustee Limited has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“Te Putea Whakatupu Trustee Limited has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“Te Wai Maori Trustee Limited has the meaning given to it in **section 5 of the Maori Fisheries Act 2003**

“trust income has the meaning given to it in **section 62 of the Maori Fisheries Act 2003.**

Struck out (majority)

“26A Advisory jurisdiction of Court

The Court has exclusive jurisdiction to advise on matters referred to it under a dispute resolution process referred to in **section 140(1) of the Maori Fisheries Act 2003.**

New (majority)

“26A Advisory jurisdiction of Court

The Court has exclusive jurisdiction to advise on disputes referred to it—

- “(a) under a dispute resolution process referred to in **section 140(1) of the Maori Fisheries Act 2003:**
- “(b) by a party to a dispute under **section 141(2) of the Maori Fisheries Act 2003.**

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Struck out (majority)

“26B Jurisdiction of Court to make determinations

The Court has exclusive jurisdiction to hear and determine, and make orders accordingly, in relation to matters referred to it—

- “(a) against decisions of Te Ohu Kai Moana Trustee Limited under **sections 140(2) or 141 of the Maori Fisheries Act 2003:**
- “(b) against an application by Te Ohu Kai Moana Trustee Limited under **section 144(1) of the Maori Fisheries Act 2003:**
- “(c) against action taken by Te Ohu Kai Moana Trustee Limited in reliance on **section 145 of the Maori Fisheries Act 2003.**

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New (majority)

“26B Jurisdiction of Court to make determinations

The Court has exclusive jurisdiction to hear and determine, and make orders accordingly, in relation to—

- “(a) disputes referred to it under **section 141 of the Maori Fisheries Act 2003:**
- “(b) applications by Te Ohu Kai Moana Trustee Limited under **section 144(1) of the Maori Fisheries Act 2003:**
- “(c) action taken by Te Ohu Kai Moana Trustee Limited in reliance on **section 145 of the Maori Fisheries Act 2003:**
- “(d) disputes referred to it by any party under **section 145A of the Maori Fisheries Act 2003.**

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“26C Principles applying to exercise of jurisdiction in relation to Maori Fisheries Act 2003

“(1) Any person who is a party to a matter referred to in **section 26A** or **section 26B** has standing in relation to the powers provided for in **sections 26A to 26M**.

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New (majority)

“(1A) A request for advice under **section 26A**, or an application for a determination under **section 26B**, is—

“(a) a proceeding for the purposes of this Act; and

“(b) an application within the ordinary jurisdiction of the Court.

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“(1B) The Court has the power and authority to give advice or make determinations as it thinks proper.

“(2) The Court must determine ~~any~~ ~~an~~ application ~~or matter referred to it for advice or determination~~ under **section 26A or section 26B** by applying the same ~~(criteria as would be applied)~~ considerations as would be relevant under the Maori Fisheries Act 2003.

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“(3) **Sections 26A and 26B** do not limit the right of any person to appeal against any decision of the Court.

Struck out (majority)

“(4) A request for advice under **section 26A**, or an application for a determination under **section 26B**, is an application within the ordinary jurisdiction of the Court, and the Court has the power and authority to give advice or make determinations as it thinks proper.

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“(5) The Court does not have jurisdiction under ~~(this section)~~ section 26A or section 26B unless it is satisfied that **section 140(1) of the Maori Fisheries Act 2003** has been complied with by the parties.

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New

“(5A) **Subsection (5) does not limit section 141 or section 144 or section 145 of the Maori Fisheries Act 2004.**

“(6) Where a dispute resolution process contemplated by **section 140(1) of the Maori Fisheries Act 2003** has not been agreed or has not been complied with, the Court must order the parties to engage in a dispute resolution process on terms it prescribes unless it believes, for specified reasons, that such a process is inappropriate. 5

“(7) Nothing in this section or in **section 26A or section 26B** restricts any other right of a person to bring proceedings in the Court. 10

“26D **Procedure of Court in its advisory jurisdiction**

“(1) The jurisdiction conferred by **section 26A** is exercised by written request to the Chief Judge by a party seeking advice.

“(2) Within 20 working days of receiving a request under **section 26A**, the Chief Judge must allocate the request either to him or herself or to another Judge to address. 15

“(3) Before supplying the advice sought, the Judge addressing a request for advice may (but is not obliged to)—

“(a) exercise the powers in section 67 for the purpose stated there: 20

“(b) consult with the requestor and parties affected by the advice:

“(c) refer some or all of the issues arising from the request to a mediator for mediation.

“(4) The Chief Judge may appoint 1 or more additional members (not being Judges of the Maori Land Court) who have knowledge of relevant tikanga Maori or other expertise for the purpose of assisting the Judge with the request for advice. 25

“26E **Procedure of Court in making determinations**

“(1) The jurisdiction conferred by **section 26B** is exercised on written application to the Chief Judge by a party seeking the determination. 30

- “(2) Within 20 working days of receiving an application under **section 26B**, the Chief Judge must allocate the application either to him or herself or to another Judge to address.
- “(3) The Judge addressing an application for a determination may (but is not obliged to) do 1 or more of the following: 5
- “(a) if **subsection (5)** applies, determine the issue and make an order accordingly:
- “(b) refer the application to the Court for hearing and determination:
- “(c) exercise the powers in section 67 for the purpose stated there: 10
- “(d) refer issues arising from the application to a mediator for mediation:
- “(e) if **subsection (6)** applies, dismiss or defer consideration of the application. 15
- “(4) The Chief Judge may appoint 1 or more additional members (not being Judges of the Maori Land Court) who have knowledge of relevant tikanga Maori or other expertise for the purpose of providing advice on the application.
- “(5) The Judge may make a determination under **subsection (3)(a)** if the Judge is satisfied that— 20
- “(a) the applicant has taken reasonable steps to notify affected parties of the application and <those parties do not oppose the application; or>

Struck out (majority)

“(b) those parties do not oppose the application. 25

New (majority)

“(b) the parties have taken reasonable steps to resolve their dispute, as provided for in **section 141(2A) of the Maori Fisheries Act 2003**.

- “(6) The Judge may dismiss or defer consideration of an application under **subsection (3)(e)** if— 30
- “(a) it is vexatious, frivolous, or an abuse of the Court, or fails to satisfy rules of court; or
- “(b) it does not present serious issues for determination; or

- “(c) the Judge considers it is appropriate to dismiss or defer consideration of the application for another reason.
- “(7) The Judge may choose not to address an application if the Judge is satisfied that the issues presented by the application are governed by another enactment or are more appropriately addressed in another forum. 5
- “26F **Procedure for applications referred to Court**
- “(1) If a matter is referred to the Court for hearing and determination under **section 26E(3)(b)**, the Court may (but it is not obliged to) do 1 or more of the following: 10
- “(a) if **subsection (2)** applies, determine the issue and make an order accordingly;
- “(b) exercise the powers in section 67 for the purpose stated there;
- “(c) if **subsection (3)** applies, dismiss or defer consideration of the application: 15
- “(d) request a report from Te Ohu Kai Moana Trustee Limited on any matter the Court considers appropriate.
- “(2) The Court may make a determination under **subsection (1)(a)** if it is satisfied that— 20
- “(a) the applicant has taken reasonable steps to notify affected parties of the application; and
- “(b) those parties do not oppose the application.
- “(3) The Court may dismiss or defer consideration of an application under **subsection (1)(c)** if— 25
- “(a) it is vexatious, frivolous, or an abuse of the Court, or fails to satisfy rules of court; or
- “(b) it does not present serious issues for determination; or
- “(c) the Court considers it is appropriate to dismiss or defer consideration of the application for another reason. 30
- “(4) The Court may choose not to address an application if it is satisfied that the issues presented by the application are governed by another enactment or are more appropriately addressed in another forum.
- “(5) The Court may, of its own motion or at the request of any party to the proceeding, appoint 1 or more additional members 35

(not being Judges of the Maori Land Court) who have knowledge of relevant tikanga Maori or other expertise to assist the Court.

“26G Appointment of mediator

- “(1) A Judge who decides to refer issues to a mediator under **section 26D(3)(c) or section 26E(3)(d) or section 26K(3)(a)** must consult the parties affected by the application about who to appoint as mediator. 5
- “(2) The parties affected by the application may, by agreement among them, appoint as the mediator 1 or more persons with the skills and experience to undertake mediation on issues arising under the Maori Fisheries Act **2003**. 10
- “(3) If a mediator is not appointed by agreement under **subsection (2)**, the Judge must— 15
- “(a) appoint a mediator; and
- “(b) before doing so, be satisfied that the mediator has the skills and experience to undertake mediation on issues arising under the Maori Fisheries Act **2003**.

“26H Judge appointed as mediator

- “(1) A Judge other than the Judge addressing an application may be a mediator. 20
- “(2) However, a Judge acting as a mediator is to be treated as acting judicially and retains the same immunities as he or she has when acting as a Judge.
- “(3) Despite **subsection (2)**, a Judge who acts as a mediator must not sit as a Judge of the Court on any of the same issues. 25

“26I Conduct of mediation

- “(1) A Judge may advise a mediator of the issues that need to be addressed at mediation.
- “(2) The following persons are entitled to attend and participate in a mediation: 30
- “(a) parties affected and their representatives; and
- “(b) any other person with the leave of the Judge addressing the application.

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- “(3) A mediator may—
- “(a) follow those procedures (structured or unstructured) and do those things the mediator considers appropriate to resolve the issues referred to the mediator promptly and effectively; and 5
 - “(b) receive any information, statement, admission, document, or other material in any way or form the mediator thinks fit, whether or not it would be admissible in judicial proceedings.
- “(4) Written and oral material presented at or for the mediation must be kept confidential by the mediator and those participating in the mediation, unless the party who produces the material consents to its disclosure. 10
- “(5) No person may be sued for defamation for statements made in mediation. 15
- “(6) Statements made and material presented at a mediation are admissible in a subsequent mediation of the same issues but are not admissible in other proceedings before a person acting judicially, unless the parties participating in the mediation consent to the admission of the statement or material. 20
- “26J **Successful mediation**
- “(1) If some or all of the issues referred to mediation are resolved at mediation, the mediator must—
- “(a) record the terms of that resolution; and
 - “(b) deliver them to the Judge. 25
- “(2) The Judge may include the terms of resolution so delivered in an order signed by the Judge and sealed with the seal of the Court.
- “26K **Unsuccessful mediation**
- “(1) If some or all of the issues referred to mediation are not resolved by mediation, and the mediator believes that those issues are unlikely to be resolved, the mediator must— 30
- “(a) report that lack of resolution to the Judge; and
 - “(b) state the issues that are unresolved and any issues that have been resolved. 35

- “(2) Affected parties who participate in the mediation may, if mediation fails and they all agree, withdraw and discontinue the application.
- “(3) Subject to **subsection (2)**, the Judge must, on receiving a report under **subsection (1)**, either— 5
- “(a) refer some or all of the unresolved issues to a mediator for mediation; or
- “(b) refer the unresolved issues to the Court for hearing and determination or for the provision of advice, as the case may be. 10
- “(4) A Judge who refers unresolved issues to the Court under **subsection (3)(b)** may be the Judge who hears the matter or provides advice.
- “26L **Orders and interim orders**
- “(1) In making orders under **sections 26A to 26K**, the Judge or the Court, as the case may be, may do 1 or more of the following: 15
- “(a) incorporate or restate the terms of an agreement reached by the persons participating in an application:
- “(b) incorporate the terms that express the outcome of mediation: 20
- “(c) specify that the order applies for general or specific purposes:
- “(d) specify the purpose or purposes for which the order is made:
- “(e) specify a date after which the order ceases to have effect: 25
- “(f) in relation to a mandated iwi organisation,—

Struck out (majority)

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|----------------------------------------------------------------------------------------------------------|----|
| “(i) remove directors, trustees, or office holders from office: | |
| “(ii) appoint new or additional directors, trustees, or office holders: | 30 |
| “(iii) direct how new or additional directors, trustees, or office holders must be appointed or elected: | |
| “(iv) vary its constitutional documents: | |

New (majority)

- “(i) require new elections or the appointment of office holders in accordance with the constitutional documents of the mandated iwi organisation:
- “(ii) require Te Ohu Kai Moana Trustee Limited to suspend recognition of a mandated iwi organisation until specified changes are made to its constitutional documents: 5
- “(iii) until the Judge or the Court is satisfied that the dispute has been satisfactorily resolved, prevent an action— 10
- “(A) to allocate and transfer settlement assets under **section 101 or section 102 of the Maori Fisheries Act 2003**:
- “(B) to pay income under **section 60 of the Maori Fisheries Act 2003**: 15
- “(C) to distribute trust income under **section 67 or section 81 of the Maori Fisheries Act 2003**:
- “(iv) specify additional conditions or requirements necessary— 20
- “(A) to assist in the timely resolution of the dispute; or
- “(B) to prevent prejudice to the interests of the mandated iwi organisation or the members of its iwi:
- “(fa) make orders as to costs under section 79: 25

- “(g) make other orders not inconsistent with the Maori Fisheries Act **2003**, *<or>* as the Judge or Court considers appropriate.

Struck out (majority)

- “(2) A director, trustee, or office holder appointed by order of the Court under **subsection (1)(f)** holds office as if he or she were appointed, as the case may be, as— 30
- “(a) a director by the shareholders of the company; or
- “(b) a trustee by the person nominated for the purpose of appointing new trustees or as otherwise provided in the

Struck out (majority)

- trust deed creating the trust, or under the Trustee Act 1956 or any other enactment; or
- “(c) an office holder in accordance with the relevant constitutional documents of the entity.
- “(3) The Judge or the Court, as the case may be, may also order if it is considered appropriate,—
- “(a) that distributions under the **Maori Fisheries Act 2003** (including income shares and distributions in respect of them) to or by 1 or more of the parties to the proceeding must be suspended until further notice; or
- “(b) that settlement assets, as defined in **section 5 of the Maori Fisheries Act 2003**, affected by an order made under **subsection (1)** be subject to a temporary injunction prohibiting any person from dealing with the assets until the order is given effect to.

New (majority)

- “(2) The Judge or the Court, at the request of any party, may also order, as considered appropriate, that an action referred to in **subsection (1)(f)(iii)** be subject to an interim injunction until—
- “(a) the date specified in the order; or
- “(b) the conditions specified in the order are met; or
- “(c) a further order is made by the Court; or
- “(d) the order ceases to have effect.
- “(3) If the Court makes an order under **subsection (1)(f)(iii)** or **subsection (2)** that an action be prevented or be subject to an interim injunction, as the case may be, the affected assets must be held in trust by Te Ohu Kai Moana Trustee Limited in accordance with **section 118A**.

“26M Proceedings where additional members appointed

If additional members are appointed under **section 26D(4)** or **section 26E(4)** or **section 26F(5)**, the proceedings and processes of the Court cannot be challenged on appeal or in any other proceedings on the grounds that an additional member had a tribal affiliation or other relationship with any of the parties

unless it is shown that the additional member acted in bad faith.”

New (majority)

169A New section 118A inserted

The principal Act is amended by inserting, after section 118, the following section:

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“118A Circumstances when certain assets and payments must be held in trust

“(1) If the Court makes an order under **section 26L(1)(f)(iii) or (2)** that an action be prevented or be subject to an interim injunction, as the case may be,—

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“(a) Te Ohu Kai Moana Trustee Limited must hold the assets that are subject to the order in trust for that mandated iwi organisation until—

“(i) the date specified in the order; or

“(ii) the conditions specified in the order are met; or

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“(iii) the order ceases to have effect; and

“(b) the mandated iwi organisation is entitled to receive any income earned from those assets for the period that they are held in trust, except that Te Ohu Kai Moana Trustee Limited is entitled to deduct the reasonable costs of administering the assets.

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“(2) In this section, **mandated iwi organisation** and **Te Ohu Kai Moana Trustee Limited** have the meaning set out in **section 26AA.**”

170 Consequential <and related> amendments

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New (majority)

(1AA) Section 4 of the principal Act is amended by adding to paragraph (a) of the definition of **order** the following subparagraph:

New (majority)

“(iv) an order or decision made by a Judge, the Chief Judge, or the Court under **sections 26A to 26L**; and”.

(1AB) The principal Act is amended by repealing section 30A that was inserted by section 6(1) of Te Ture Whenua Maori Amendment Act 2001 (2001 No 11).

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(1) Section 30B of the principal Act is amended by repealing subsection (2) and substituting the following:

“(2) Within 20 working days of receiving a request under subsection (1), the Chief Judge must allocate the request either to him or herself or to another Judge to address.”

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(2) Section 30C of the principal Act is amended by repealing subsection (2) and substituting the following:

“(2) Within 20 working days of receiving an application under subsection (1), the Chief Judge must allocate the application either to him or herself or to another Judge to address.”

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(3) Section 34 of the principal Act is amended by inserting, after the words “appointed under”, the *<expression>* <words> “**section 26D(4) or section 26E(4) or section 26F(5)** or”.

(4) Section 35 of the principal Act is amended by inserting, after the words “appointed under”, the *<expression>* <words> “**section 26D(4) or section 26E(4) or section 26F(5)** or”.

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(5) Section 36(1) of the principal Act is amended by inserting, after the words “Maori Land Court under”, the words “**section 26D(4) or section 26E(4) or section 26F(5)** or”.

Legislative history

15 September 2004

Divided from Maori Fisheries Bill (Bill 90–2) as
Bill 90–3A
