

**Te Ture Whenua Maori Amendment Bill
Maori Land Amendment Bill**

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

{Subject to this Act,}

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**Te Ture Whenua Maori Amendment
Maori Land Amendment**

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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 **2000**; or
- (b) the Maori Land Amendment Act **2000**.

- (2) In this Act, the Te Ture Whenua Maori Act 1993¹ is called the “principal Act”.

¹ 1993, No 4

New (unanimous)

1A Commencement

This Act comes into force on ***((1 July 2001)) 1 July 2002.***

5

Part 1

Amendments to principal Act

Amendments relating to preamble and interpretation

2 Preamble of principal Act amended

- (1) The first paragraph of the preamble of the principal Act is amended— 10

(a) by inserting, after the words “hapū hoki, a,” where they first occur, the words “a ki te whakangungu i ngā wāhi tapu”:

(b) by omitting the word “Kōti”, and substituting the words “Te Kooti”. 15

- (2) The second paragraph of the preamble of the principal Act is amended by inserting, after the words “and their hapu” where they first occur, the words “, and to protect wahi tapu”.

3 Interpretation of Act generally

20

Section 2(2) of the principal Act is amended by adding the words “, and that protects wahi tapu”.

4 Interpretation

- (1) Section 4 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions: 25

New (unanimous)

Ahi ka means fires of occupation

forestry right has the same meaning as in section 2 of the Forestry Rights Registration Act 1983

kaitiaki means guardian

long-term lease means a lease—

- (a) for a term of more than (42) 52 years; or
- (b) for a term that would be more than (42) 52 years if 1 or more rights of renewal were exercised

5

Struck out (unanimous)

ota kaitiaki means a document prepared under **section 219A(1)** and confirmed, or to be confirmed, by the Court under **section 219A(3)**:

ota whakanoho means an order made under section 328 or the right to exclusive use and occupation conferred by such an order:

10

papanga wharenoho means a site for a dwelling:

tikanga Maori means Maori customary values and practices

tipuna means ancestor

Struck out (unanimous)

wahi rahui means land set apart under **section 338(1)**, or which must be treated as if it were set apart under that section:

15

wahi tapu means land set apart under **section 338(1)(b)**

whanaunga means a person related by blood

whangai means a person adopted in accordance with tikanga Maori.

20

- (2) Section 4 of the principal Act is amended by inserting, after subparagraph (vi) of paragraph (a) of the definition of **alienation**, the following subparagraph:

“(vii) the granting, renewal, variation, transfer, assignment, or mortgage of a forestry right over Maori land; and”.

25

Struck out (unanimous)

- (3) Section 4 of the principal Act is amended by repealing the definition of “occupation order”.

New (unanimous)

(3) The definition of **General land owned by Maori** in section 4 of the principal Act is amended by omitting the words “more than 4”, and substituting the words “a Maori or by a group of”.

(4) The section heading of section 4 of the principal Act is amended by omitting the words **of English terms**. 5

Amendments relating to Maori Land Court

5 Appointment of Judges

Section 7 of the principal Act is amended by inserting, after subsection (2), the following subsection: 10

“(2A) A person must not be appointed a Judge unless the person is suitable, having regard to the person’s knowledge and experience of te reo Maori, tikanga Maori, and the Treaty of Waitangi.”

Struck out (unanimous)

6 General jurisdiction of Court 15

Section 18(1)(i) of the principal Act is amended by omitting the words “specified land”, and substituting the words “Maori freehold land or General land owned by Maori”.

7 Jurisdiction in respect of injunctions

Section 19(1)(a) of the principal Act is amended by inserting, after the word “land”, the words (“*or any wahi tapu*”) “, Maori reservation, or wahi tapu”. 20

8 New section 22A inserted

The principal Act is amended by inserting, after section 22, the following section: 25

“22A Power of Court to grant specific performance of leases of Maori freehold land

The Court has the same jurisdiction as that of the High Court to grant and enforce specific performance or to award damages in addition to, or in substitution for, specific performance, in respect of leases of Maori freehold land or leases of General land owned by Maori that ceased to be Maori land under Part I of the Maori Affairs Amendment Act 1967.”

5

9 Power of Court to make order to restore effect of lost instruments of alienation

10

Section 25(1) of the principal Act is amended—

- (a) by omitting from paragraph (b) the expression “; and”;
- (b) by repealing paragraph (c).

Struck out (unanimous)**10 Power of Maori Land Court to give advice or make determination as to representatives of class or group of Maori**

15

- (1) Section 30 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) Any advice supplied or determination made under subsection (1) as to the most appropriate representatives of any class or group of Maori may identify those representatives for either general or specific purposes relating to the proceedings, negotiations, consultations, allocation, or other matter.”

20

- (2) Section 30 of the principal Act is amended by inserting, after subsection (3), the following subsections:

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“(3A) The Maori Land Court may specify a date after which advice supplied or a determination made under subsection (1) ceases to have effect.

“(3B) The Maori Land Court must, before specifying a date under **subsection (3A)**, consult the parties to the proceedings or the persons involved in the negotiations, consultations, allocation, or other matter.”

30

New (unanimous)

10 New section 30 substituted

The principal Act is amended by repealing section 30, and substituting the following section:

“30 Maori Land Court’s jurisdiction to advise on or determine representation of Maori groups

5

“(1) The Maori Land Court may do either of the following things:

“(a) advise other courts, commissions, or tribunals as to who are the most appropriate representatives of a class or group of Maori:

“(b) determine, by order, who are the most appropriate representatives of a class or group of Maori.

10

“(2) The jurisdiction of the Maori Land Court in **subsection (1)** applies to representation of a class or group of Maori in or for the purpose of (current or intended) proceedings, negotiations, consultations, allocations of property, or other matters.

15

“(3) A request for advice or an application for an order under **subsection (1)** is an application within the ordinary jurisdiction of the Maori Land Court and the Maori Land Court has the power and authority to give advice and make determinations as the Court thinks proper.”

20

10A New sections 30A to 30I inserted

The principal Act is amended by inserting, after section 30, the following sections:

“30A Intent of sections

The intent of **section 30** and **sections 30B to 30I** is—

25

“(a) to enable and encourage applicants and persons affected by an application under **section 30** to resolve their differences concerning representation, without adjudication; and

“(b) to enable the Chief Judge to facilitate, as far as possible, successful resolution of differences surrounding an application by the persons affected, without adjudication.

30

New (unanimous)

- 30B Powers of Judge in addressing requests for advice**
- (1) The jurisdiction in **section 30(1)(a)** (to advise other courts, commissions, or tribunals) is exercised by written request to the Chief Judge by the court, commission, or tribunal seeking the advice. 5
- (2) The Chief Judge may address the request or may allocate the request to another Judge and must do 1 or the other within 20 working days of receiving the request.
- (3) The Judge addressing a request for advice may (but is not obliged to) do 1 or more of the following things, before supplying the advice sought: 10
- (a) exercise the powers in section 67 for the purpose expressed in that section:
- (b) consult with the requestor and persons (*interested in or*) affected by the advice: 15
- (c) refer some or all of the (*matters*) issues arising from the request to a mediator for mediation.
- 30C Powers of Judge in addressing applications for determination**
- (1) The jurisdiction in **section 30(1)(b)** is exercised on written application to the Chief Judge (*by or for a person or entity affected by the proceedings, negotiations, consultation, allocation of property, or other matter, in respect of which the application is made*). 20
- (2) The Chief Judge may address the application or may allocate (*it*) the application to another Judge and must do 1 or the other within 20 working days of receiving the application. 25
- (3) The Judge addressing an application for a determination may (but is not obliged to) do 1 or more of the following things: 30
- (a) determine the most appropriate representatives of a class or group of Maori, and order accordingly, if **sub-section (5)** applies. 30
- (b) refer the application to the Maori Land Court for hearing and determination:
- (c) exercise the powers in section 67 for the purpose expressed in that section: 35

New (unanimous)

- “(d) refer some or all of the ~~((matters))~~ issues arising from the application to a mediator for mediation:
- “(e) dismiss or defer consideration of the application, if **subsection (6)** applies.
- “(4) The Judge may choose not to ~~((progress))~~ address an application if the Judge is satisfied that the issues it presents are governed by another enactment, or another part of this Act, or are more appropriately addressed in another forum. 5
- “(5) The Judge may make a determination under **subsection (3)(a)** if the Judge is satisfied that— 10
- “(a) the applicant has taken reasonable steps to notify those persons ~~((who may be))~~ affected by the application of the application; and
- “(b) those persons ~~((support))~~ do not oppose the application.
- “(6) The Judge may dismiss or defer consideration of an application under **subsection (3)(e)** if— 15
- “(a) it is vexatious, frivolous or an abuse of the Maori Land Court, or fails to satisfy rules of court; or
- “(b) it does not present serious issues for determination; or
- “(c) the Judge considers it appropriate to dismiss or defer consideration of the application for another reason. 20

“30D Appointment of mediator

- “(1) A Judge who decides to refer ~~((matters))~~ issues to a mediator under **section 30B(3)(c)**, **section 30C(3)(d)**, **section 30G(3)(a)**, or **section 30I(2)** must consult ~~((the applicant and))~~ the persons affected by the application about who to appoint as mediator. 25
- “(2) The ~~((applicant and the))~~ persons affected by the application may, by agreement among them, appoint as mediator a person or persons with the skills and experience to undertake mediation on issues of representation for a class or group of Maori. 30
- “(3) The Judge must appoint a mediator if a mediator is not appointed by agreement under **subsection (2)**.
- “(4) The Judge must be satisfied, before appointing a mediator, that the mediator has the skills and experience to undertake mediation on issues of representation for a class or group of Maori. 35

New (unanimous)

“(5) A Judge other than the Judge addressing an application may be a mediator; a Judge acting as a mediator is, however, to be treated as acting judicially, and retains the same immunities as when acting as a Judge.

New

“(6) Despite **subsection (5)**, a Judge who acts as a mediator must not sit as a Judge of a Maori Land Court on some or all of the same issues. 5

“30E **Conduct of mediation**

Struck out

“(1) A Judge may specify how a mediation, or aspects of it, are to be conducted and the mediator’s powers in **subsection (2)** are subject to this subsection. 10

New

“(1) A Judge may advise a mediator of the issues that need to be addressed at mediation.

“(1A) The following persons are entitled to attend and participate in a mediation: 15

- “(a) persons affected and their representatives:
- “(b) any other person with the leave of the Judge addressing the application.

“(2) A mediator may— 20

“(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

“(b) receive any information, statement, admission, document, or other material, in any way or form from the mediator 25

New (unanimous)

thinks fit, whether or not it would be admissible in judicial proceedings.

Struck out

“(c) receive information from a person that is to be kept confidential from all other persons and may exclude that information from reports to the Judge under **section 30F(1)** or **section 30G(1)**. 5

“(3) Written and oral material presented at or for the mediation must be kept confidential by the mediator and those ~~((involved))~~ participating in the mediation unless the person who produces the material consents to its disclosure. 10

“(4) A person may not be sued for defamation for statements made in mediation.

“(5) Statements made and material presented at 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 ~~((involved))~~ participating in the mediation consent to the admission of the statement or material. 15

“30F **Successful mediation**

“(1) If some or all of the issues referred to mediation are resolved at mediation, the mediator must— 20

“(a) record the terms of that resolution; and

“(b) deliver them to the Judge.

“(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 Maori Land Court. 25

“30G **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

New (unanimous)

Struck out

“(b) summarise in writing for the Judge the significant features of and affecting the mediation.

New

“(b) state the issues that are unresolved and any issues that have been resolved.

5

“(2) The ~~(applicant and the other persons involved)~~ persons affected participating in the mediation may, if mediation fails and they all agree, withdraw and discontinue the application.

Struck out

“(3) Unless an application under **section 30(1)(b)** is withdrawn and discontinued under **subsection (2)**, the Judge must, on receiving a report under **subsection (1)**, either—

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“(a) refer some or all of the matters arising from the application or the mediator’s report under **subsection (1)** to a mediator for mediation; or

“(b) refer the application to the Maori Land Court for determination.

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“(4) A Judge referring an application to the Maori Land Court under **subsection (3)(b)** may be a Judge of the Maori Land Court that hears the matter.

New

“(3) Subject to **subsection (2)**, the Judge must, on receiving a report under **subsection (1)**, either—

20

“(a) refer some or all of the unresolved issues to a mediator for mediation; or

New (unanimous)

New

- “(b) refer the unresolved issues to the Maori Land Court for hearing and determination or for the provision of advice, as the case may be.
- “(4) A Judge referring unresolved issues to the Maori Land Court under **subsection (3)(b)** may be the Judge of the Maori Land Court that hears the matter or provides advice. 5

“30H Orders

- “(1) In making orders under **section 30** and **sections 30B to 30I**, the Judge or the Court, as the case may be, may do 1 or more of the following: 10

Struck out

- “(a) specify who, if anyone, is bound by the order:
- “(b) specify that an order is advisory only:
- “(c) specify the duties and powers of the representatives of a class or group of Maori and impose conditions on the ~~((excise))~~ exercise of those powers: 15
- “(d) incorporate or restate the terms of an agreement reached by the persons participating in an application.
- “(e) incorporate the terms that express the outcome of mediation: 20
- “(f) specify that the order applies for general or specific purposes:
- “(g) specify the purpose or purposes for which the order is made:
- “(h) specify a date after which the order ceases to have effect. 25

New (unanimous)

New

“(2) Neither a Judge nor the Court has jurisdiction to make an order that binds the Crown in relation to applications concerning Treaty settlement negotiations unless the Crown agrees to be bound.

5

“30I **Review of advice or determination**

“(1) The Maori Land Court may review any advice or determination supplied by it under **section 30(1)** if,—

“(a) in the case of advice, it is requested to do so by the court, commission, or tribunal at whose request that advice was supplied; and

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“(b) in other cases, the Chief Judge is satisfied, on receipt of a written application (*(by an interested party)*), that a review is necessary.

“(2) The Court may refer some or all of the (*lmatters*) issues arising on a review of advice or a determination under **subsection (1)** to a mediator for mediation.

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“(3) **Sections 30D to 30G** apply, with necessary changes, to mediation under **subsection (2)**.

“(4) The Court may, on any review under **subsection (1)**, change any advice supplied by it under **section 30(1)(a)** or amend an order made by it under **section 30(1)(b)** to reflect changes of circumstances or fact.

20

“(5) A review under **subsection (1)** must be completed within 3 months of receipt of the request or application for review.

25

“(6) This section applies to advice given and determinations made under section 30 of the principal Act before this Act was passed.

New

30J Definition of persons affected

In **sections 30A to 30G**, **persons affected** by, or in relation to, a request for advice or an application for an order under **section 30** are the members of the class or group of Maori to which the request or application relates.”

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10B Consequential changes

(1) Section 33 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) If the Maori Land Court exercises its jurisdiction under section 30(1) or **section 30I(1)**, and unless the Judge determines an application under **section 30C(3)(a)**, the Chief Judge must appoint 2 or more additional members (not being Judges of the Maori Land Court) to the Maori Land Court.”

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(2) Section 36 of the principal Act is amended by inserting in subsection (2), after the words “section 30(1) of this Act,”, the words “or where the Court is constituted under section 33”.

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Amendments relating to Maori Land Court Special Aid Fund

11 Maori Land Court Special Aid Fund

Section 98(9) of the principal Act is amended by inserting, after paragraph (a), the following (*paragraph*) paragraphs:

20

“(aa) The reasonable fees and reasonable expenses of any person the Registrar is directed, by the Judge, to engage to assist with an inquiry and report under section 40; and

25

New (unanimous)

“(ab) the reasonable fees and reasonable expenses of a mediator to whom a Judge refers matters under **section 30B(3)(c)**, **section 30C(3)(d)**, **section 30G(3)(a)**, or **section 30I(2)**; and”.

Amendments relating to administration of estates

- 12 Liability of Maori land for payment of debts of estate**
Section 104(3) of the principal Act is amended by inserting, after the word “dies”, the words “on or”.

- 13 Disposition by will** 5

Struck out (unanimous)

- (1) Section 108(2)(e) of the principal Act is amended by adding the words “or a whangai of a member of the testator’s whanau”.

Section 108 of the principal Act is amended by inserting, after subsection (2), the following subsections: 10

- “(2A) A person in whom an (*ota whakanoho*) occupation order has beenvested may leave the (*ota whakanoho*) occupation order by will to any 1 or more persons who come withinsubsection (2).

New (unanimous)

- “(2B) A person is entitled to succeed to an occupation order by will— 15
- “(a) if the person owns a beneficial interest in the land to which the occupation order applies; and
- “(b) if the Court is satisfied, in the circumstances, that the extent of the person’s beneficial interest in the land justifies that person succeeding to the occupation order. 20
- “(2C) An occupation order that passes by will is cancelled automatically on the date of expiry or termination of the occupation order”.

- 14 New section 109A inserted** 25
The principal Act is amended by inserting, after section 109, the following section:

- “109A **Succession to ota whakanoho on intestacy**
- “(1) (*Section*) Subject to subsection (2), section 109 applies, with all necessarymodifications, to an (*ota whakanoho*) occupation orderas if it were a beneficial interest in Maori freehold land. 30

Struck out (unanimous)

“(2) An ota whakanoho that passes by succession is cancelled automatically on the date of death of the successor to the ota whakanoho.

New (unanimous)

- “(2) A person is entitled to succeed to an occupation order—
- “(a) if the person owns a beneficial interest in the land to which the occupation order applies; and
 - “(b) if the Court is satisfied, in the circumstances, that the extent of the person’s beneficial interest in the land justifies that person succeeding to the occupation order.
- “(3) An occupation order that passes by succession is cancelled automatically on the date of expiry or termination of the occupation order.”

Struck out (unanimous)

15 Court may make provision for whangai

- (1) Section 115(1) of the principal Act is amended by adding the words “or a whangai of a member of the deceased owner’s whanau”.
- (2) Section 115(2) of the principal Act is amended by inserting, after the words “deceased owner” where they first occur, the words “or a whangai of a member of the deceased owner’s whanau”.

16 New section 119A inserted

The principal Act is amended by inserting, after section 119, the following section:

“119A Vesting of ota whakanoho

Sections 117 to 119 apply, with all necessary modifications, to an (*ota whakanoho*) occupation orderas if it were a beneficial interest in Maori freehold land.”

*Amendments relating to recording of ownership***17 New section 125A inserted**

The principal Act is amended by inserting, after section 125, the following section:

- “125A **Alteration to land appellation** 5
- “(1) The Court may, on application under **subsection (2)**, make an order amending the name given to the whole or part of a block of Maori freehold land in—
- “(a) the title to that land; and
- “(b) if necessary, the cadastral record map, produced under section 11(1)(c) of the Survey Act 1986, of the relevant land district. 10
- “(2) A legal or beneficial owner of Maori freehold land may apply to the Court for an order under **subsection (1)** for Maori freehold land in which the legal or beneficial owner has an interest and must pay, with the application, the amount necessary (if any) to enable the Registrar to make the payment (if any) required by **subsection (7)(c)**. 15
- “(3) On receiving an application under **subsection (1)**, the Registrar must, as soon as practicable,— 20
- “(a) notify every person with a beneficial interest in the Maori freehold land, whose identity and address is known to the Court, of the application; and
- “(b) notify the Registrar-General of Land and Chief Surveyor of the application; and 25
- “(c) invite submissions on the application from the persons notified.
- “(4) The Registrar (*may*) must specify a date by which submissions on the application must be received.
- “(5) The Court must not make an order under this section affecting the whole or part of a block of Maori freehold land unless it is satisfied— 30
- “(a) that the owners of the land have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and 35
- “(b) that there is a sufficient degree of support for the application among the owners; and
- “(c) that the format of the appellation, as amended, conforms with the requirements specified by the Surveyor-General under section 11(1)(g) of the Survey Act 1986. 40

- “(6) The Court must not make an order under this section affecting the whole or part of a block of Maori freehold land vested in a Maori incorporation unless it is satisfied—
- “(a) that the shareholders of the incorporation have been given sufficient notice of the application; and 5
 - “(b) that the shareholders have passed a special resolution supporting the application.
- “(7) If the Court makes an order under **subsection (1)**, the Registrar must forward—
- “(a) a copy of the order to the land registry office for the land registration district in which the land is situated, *(for registration by the Registrar-General of Land)* and the Registrar-General of Land must register the order; and 10
 - “(b) any documentation required by the Surveyor-General, to the Surveyor-General, for updating the cadastral record map of the relevant land district; and 15
 - “(c) payment of a fee (if any) prescribed, for registration or updating under **paragraphs (a) and (b)**.”

New (unanimous)

- | | |
|--|----|
| <p>17A All land to have particular status for purposes of Act
Section 129(2)(c) of the principal Act is amended by omitting the words “more than 4”, and substituting the words “a Maori or by a group of”.</p> | 20 |
|--|----|

Amendments relating to status of land

- 18 Change from General land to Maori freehold land by status order** 25
- (1) Section 133(1) of the principal Act is amended by inserting, after the words “General land”, the words “or General land owned by Maori”.
 - (2) The section heading of section 133 of the principal Act is amended by inserting, after the words “**General land**”, the words “**or General land owned by Maori**”. 30

Amendments relating to alienation of Maori land

- 19 Alienation of whole or part of block**
Section 147(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraphs:
- “(c) the owners in common of a block of Maori freehold land have the capacity to alienate the whole or any part of the land in accordance with **section 150C**; and 5
 - “(d) the trustees of a trust constituted under Part XII have the capacity to alienate the whole or any part of Maori freehold land vested in them, in accordance with **section 150A**; and 10
 - “(e) a Maori incorporation has the capacity to alienate the whole or any part of Maori freehold land vested in it, in accordance with **section 150B**.”
- 20 New section 147A inserted** 15
The principal Act is amended by inserting, after section 147, the following section:
- “147A **Right of first refusal for sale or gift**
A person referred to in section 147 who seeks to alienate any Maori freehold land by sale or gift must give the right of first refusal to prospective purchasers or donees who belong to 1 or more of the preferred classes of alienees, ahead of those who do not belong to any of those classes.” 20
- 21 Manner of alienation of undivided interests**
Section 150 of the principal Act is amended by repealing subsections (3), (4), and (5). 25
- 22 New sections 150A to 150D inserted**
The principal Act is amended by inserting, after section 150, the following sections:
- “150A **Alienation by trustees** 30
- Struck out (unanimous)**
- “(1) The trustees of a trust constituted under Part XII must not alienate Maori freehold land, vested in them as trustees, by

Struck out (unanimous)

way of sale, gift, or long-term lease unless the sale, gift, or long-term lease has the consent of—

- “(a) at least three-quarters of the owners, where no owner has a defined share in the land; or
- “(b) the persons who together own at least 75% of the beneficial freehold interest in the land.

5

New (unanimous)

“(1) The trustees of a trust constituted under Part XII must not alienate Maori freehold land vested in them as trustees—

“(a) by sale or gift, unless the sale or gift has the consent of—

10

“(i) at least three-quarters of the owners, if no owner has a defined share in the land; or

“(ii) the persons who together own at least 75% of the beneficial freehold interest in the land:

“(b) by long-term lease, unless the Court, in its discretion, approves and the long-term lease has the consent of—

15

“(i) at least half of the owners, if no owner has a defined share in the land; or

“(ii) the persons who together own at least 50% of the beneficial freehold interest in the land.

20

“(2) **Subsection (1)** and **section 147A** do not apply if the Court is satisfied that it is necessary for the trustees to sell part of the Maori freehold land to make minor boundary adjustments.

“(3) The trustees of a trust constituted under Part XII who execute an instrument of alienation of Maori freehold land must,—

25

“(a) if the alienation is by way of sale or gift, get the instrument confirmed by the Court under Part VIII; and

“(b) if the alienation is by way of lease, licence, or forestry right, for a term of more than 21 years (including any term or terms of renewal), or mortgage, send a copy of the instrument to the Registrar for noting; and the Registrar must note the contents of that instrument.

30

“150B Alienation by Maori incorporation

Struck out (unanimous)

- “(1) A Maori incorporation must not alienate Maori freehold land vested in it by way of sale, gift, or long-term lease unless the sale, gift, or long-term lease is authorised by a special resolution passed by shareholders holding 75% or more of the total shares in the incorporation. 5

New (unanimous)

- “(1) A Maori incorporation must not alienate Maori freehold land vested in it—
- “(a) by sale or gift, unless the sale or gift is authorised by a special resolution passed by shareholders holding 75% or more of the total shares in the incorporation: 10
 - “(b) by long-term lease, unless the Court, in its discretion, approves and the long-term lease is authorised by a resolution passed by shareholders holding 50% or more of the total shares in the incorporation. 15
- “(2) **Subsection (1)** and **section 147A** do not apply if the Court is satisfied that it is necessary for the Maori incorporation to sell part of the Maori freehold land to make minor boundary adjustments.
- “(3) A Maori incorporation that executes an instrument of alienation of Maori freehold land must,— 20
- “(a) if the alienation is by way of sale or gift, get the instrument confirmed by the Court under Part VIII; and
 - “(b) if the alienation is by way of lease, licence, or forestry right, for a term of more than 21 years (including any term or terms of renewal), or mortgage, send a copy of the instrument to the Registrar for noting; and the Registrar must note the contents of that instrument. 25

“150C Alienation by other owners

Struck out (unanimous)

- “(1) The owners in common of a block of Maori freehold land must not alienate Maori freehold land owned by them—
- “(a) by way of sale, gift, or long-term lease unless the sale, gift, or long-term lease has the consent of—
“(i) at least three-quarters of the owners, where no owner has a defined share in the land; or
“(ii) the persons who together own at least 75% of the beneficial freehold interest in the land; and
 - “(b) in any other way except—

New (unanimous)

- “(1) The owners in a common of a block of Maori freehold land must not alienate Maori freehold land owned by them—
- “(a) by sale or gift, unless the sale or gift has the consent of—
“(i) at least three-quarters of the owners, if no owner has a defined share in the land; or
“(ii) the persons who together own at least 75% of the beneficial freehold interest in the land; and
 - “(b) by long-term lease, unless the Court, in its discretion, approves and the long-term lease has the consent of—
“(i) at least half of the owners, if no owner has a defined share in the land; or
“(ii) the persons who together own at least 50% of the beneficial freehold interest in the land; and
 - “(c) in any other way except—
“(i) by agreement of all the owners; or
“(ii) pursuant to a resolution carried at a meeting of assembled owners held under and in accordance with Part IX.
- “(2) **Subsection (1)** and **section 147A** do not apply if the Court is satisfied that it is necessary for the owners to sell part of the Maori freehold land to make minor boundary adjustments.

- “(3) A person referred to in section 147(1)(a), (b), **or (c)** who executes an instrument of alienation of Maori freehold land must,—
- “(a) if the alienation is by way of sale or gift, get the instrument confirmed by the Court under Part VIII; and 5
- “(b) if the alienation is by way of lease, licence, forestry right, profit, mortgage, charge, or encumbrance, get a certificate of confirmation issued and noted by the Registrar under section 160.
- “150D **Life interests** 10
- A person with a life interest or a determinable life interest in Maori freehold land—
- “(a) is not capable of alienating the Maori freehold land in which the life interest is held without the consent of all persons entitled in remainder; and 15
- “(b) holds that interest as a kaitiaki in accordance with tikanga Maori.”
- Amendments relating to duties and powers of Court in relation to alienations of Maori freehold land*
- 23 New section 152 substituted** 20
- The principal Act is amended by repealing section 152, and substituting the following section:
- “152 **Court to grant confirmation if satisfied of certain matters**
- “(1) The Court must grant confirmation of an alienation of Maori freehold land if it is satisfied— 25
- “(a) that,—
- “(i) in the case of an instrument of alienation, the instrument has been executed and attested in the manner required by the rules of Court; or 30
- “(ii) in the case of a resolution of assembled owners, the resolution was passed in accordance with this Act or regulations made under this Act; and
- “(b) that the alienation is not in breach of any trust to which the land is subject; and 35
- “(c) that the value of all buildings, all fixtures attached to the land, all things growing on the land, all minerals in the land, and all other assets or funds relating to the land,

- has been properly taken into account in assessing the consideration payable; and
- “(d) that, having regard to the relationship (if any) of the parties and to any other special circumstances of the case, the consideration (if any) is adequate; and 5
- “(e) that the purchase money (if any) has been paid to, or secured to the satisfaction of, the Maori Trustee or Court appointed agent or trustees in accordance with section 159; and
- “(f) that, if **section 147A** applies to the alienation, the alienating owners have discharged the obligation in that section. 10
- “(2) Before granting confirmation, the Court may, with the consent of the parties, vary the terms of the instrument of alienation or resolution. 15
- “(3) In considering an application for confirmation of an alienation to a person who is an overseas person (within the meaning of the Overseas Investment Act 1973) of any land that, if it were General land, could be acquired by that person only in accordance with that Act or regulations made under that Act, the Maori Land Court— 20
- “(a) must, as far as possible, act in conformity with the relevant provisions of that Act and those regulations; and
- “(b) must have regard to the matters that any person is required by that Act or those regulations to consider in relation to applications under that Act or those regulations.” 25
- 24 New section 155 substituted**
- The principal Act is amended by repealing section 155, and substituting the following section: 30
- “155 **Manner of confirmation**
- “(1) If the Court is satisfied that it should grant confirmation, it must,—
- “(a) for an instrument of alienation, endorse the instrument with an appropriate certificate of confirmation; or 35
- “(b) for a resolution of owners, make an order accordingly.

- “(2) A certificate or order under **subsection (1)** has full force and effect even though there has been *(an)* a minor error or irregularity in the procedure followed in making or granting the application for confirmation.”
- 25 Certain instruments require only certificate of confirmation by Registrar** 5
- (1) Section 160 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:
- “(1) This section applies to the instruments of alienation specified in **section 150C (3)(b)**. 10
- “(2) An instrument of alienation to which this section applies has no force or effect (unless confirmed by the Court under subsection (6)) until a certificate of confirmation—
- “(a) has been issued by the Registrar under this section; and 15
- “(b) has been noted by the Registrar in the records of the Court.”
- (2) Section 160(3)(d) of the principal Act is amended by inserting, after the word “Act” in both places where it occurs, the words “or regulations made under this Act”. 20
- (3) Section 160 of the principal Act is amended by adding the following subsection:
- “(10) The Registrar may correct accidental clerical errors made in certificates of confirmation under this section whether or not the relevant certificate of confirmation has become effective.” 25
- 26 Transfer of land or undivided interest by Court vesting orders**
- Section 164(3) of the principal Act is amended by omitting the expression “to 154”.

Amendments relating to trusts 30

Struck out (unanimous)

- 27 Putea trusts in respect of land interests**
- (1) Section 212 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

Struck out (unanimous)

- “(1) A putea trust may be constituted in respect of—
- “(a) any interests in Maori land or General land owned by Maori; or
 - “(b) any shares in a Maori incorporation, subject to any minimum share unit fixed by the constitution of the Maori incorporation.” 5
- (2) Section 212(5) of the principal Act is amended by omitting the words “The Court shall not grant an application made under this section by or on behalf of the trustees of the land or the incorporation unless it is satisfied”, and substituting the words “A putea trust must be constituted if the applicant shows”. 10

28 Whanau trusts

- (1) Section 214 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) A whanau trust may be constituted in respect of— 15
- “(a) any beneficial interests in Maori land or General land owned by Maori; and
 - “(b) any shares in a Maori incorporation, subject to any minimum share unit fixed by the constitution of the Maori incorporation.” 20
- (2) Section 214(4) of the principal Act is amended by omitting the words “either on the constitution of a whanau trust or on application at any time thereafter”, and substituting the words “on application by trustees appointed or to be appointed”.

29 Ahu whenua trusts 25

- (1) Section 215 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) An ahu whenua trust may be constituted in respect of any Maori land or General land owned by Maori.”
- (2) Section 215(2) of the principal Act is amended by omitting the words “the Court is satisfied that”. 30
- (3) Section 215(4) of the principal Act is amended by omitting the words “The Court shall not grant an application made under this section unless it is satisfied”, and substituting the words

Struck out (unanimous)

- “An ahu whenua trust must be constituted if the applicant shows”.
- (4) Section 215(6) of the principal Act is amended by omitting the words “either on the constitution of an ahu whenua trust or on application at any time thereafter”, and substituting the words “on application by trustees appointed or to be appointed”. 5
- 30 Whenua topu trusts**
- (1) Section 216 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) A whenua topu trust may be constituted in respect of any Maori land or General land owned by Maori.” 10
- (2) Section 216(2) of the principal Act is amended—
- (a) by omitting the words “the Court is satisfied that”;
- (b) by omitting the word “substantial”.
- (3) Section 216(4) of the principal Act is amended by omitting the words “The Court shall not grant an application made under this section unless it is satisfied”, and substituting the words “A whenua topu trust must be constituted if the applicant shows”. 15
- (4) Section 216(5) of the principal Act is amended— 20
- (a) by omitting the words “the Court may specify either on the constitution of the trust or on application at any time thereafter”, and substituting the words “are specified in the ota kaitiaki”;
- (b) by omitting the words “ordered by the Court”, and substituting the words “specified in the ota kaitiaki”. 25
- (5) Section 216(7) of the principal Act is amended by omitting the words “either on the constitution of a whenua topu trust or on application at any time thereafter”, and substituting the words “on application”. 30

New (unanimous)

30 Whenua topu trusts

Section 216(2) of the principal Act is amended by repealing the words “that the interests in land to which the application relates constitute the whole or a substantial part of the total interests in land owned by members of any iwi or hapu, and”.

5

31 Maori community purposes

Section 218(2)(b)(iii) of the principal Act is amended by omitting the word “maraes”, and substituting the word “marae”.

Struck out (unanimous)

32 New sections inserted

The principal Act is amended by repealing section 219, and substituting the following sections:

10

“219 Meanings in certain sections

In this section and **sections 219A, 220A, and 222**, unless the context otherwise requires,—

15

“**applicant** means the person or group who applies to constitute an intended trust:

“**beneficiaries** means the persons beneficially entitled to the property of an intended trust:

“**intended trust** means a trust, except a kai tiaki trust, for which an application for constitution under this Part is made but not decided.

20

“219A Ota kaitiaki

“(1) An applicant may prepare an ota kaitiaki, with the content required or authorised by **subsection (2)**, and apply to the Court to confirm it.

25

“(2) An ota kaitiaki prepared by an applicant—

“(a) must specify the terms of the intended trust; and

“(b) may nominate trustees for the intended trust, or specify a process for their appointment.

30

Struck out (unanimous)

- “(3) The Court must, by order, confirm an ota kaitiaki if it is satisfied,—
- “(a) in relation to **subsection (2)(a)**, that the terms specified for the intended trust satisfy the requirements of this Part that apply to the constitution of the intended trust; and 5
- “(b) in relation to **subsection (2)(b)**, that **section 222(2) and (4)** is satisfied.
- “(4) The Governor-General may, by Order in Council, specify model terms for different kinds of intended trust for use or adaptation by applicants in preparing an ota kaitiaki. 10
- “(5) An order made by the Court under **subsection (3)** is not capable of registration under the Land Transfer Act 1952, despite anything in this Act or that Act.”

33 New section 220A inserted

The principal Act is amended by inserting, after section 220, the following section: 15

“220A Registration of land in name of trust or tipuna

- “(1) This section applies to land or an interest in land that constitutes the whole or part of the property of a trust.
- “(2) The trustees of a trust may give a direction that land that is registered or registrable under the Land Transfer Act 1952— 20
- “(a) be registered in the name of—
- “(i) the trust applying to that land; or
- “(ii) a tipuna; or 25
- “(b) no longer be registered in the name of the trust applying to that land, or a tipuna, and instead be registered in the names of the trustees.
- “(3) The Registrar-General of Land must implement a direction under **subsection (2)** if the Registrar-General of Land receives—
- “(a) a copy of the direction from the Registrar; and 30
- “(b) a certificate of the Registrar confirming the direction.
- “(4) To give a direction under **subsection (2)**, the trustees must present to the Registrar—
- “(a) a direction in writing, addressed to the Registrar-General of Land, executed by the trustees, saying 35

- whether the direction is given under **paragraph (a) or (b) of subsection (2)**; and
- “(b) a certificate executed by the trustees identifying the beneficiaries of the trust; and
 - “(c) evidence of a resolution of beneficiaries approving the direction. 5
- “(5) **Subsections (2) and (3)** apply despite anything in the Land Transfer Act 1952 or any other Act or rule of law.
- “(6) If the documents received under **subsection (4)** comply with that subsection, the Registrar must— 10
- “(a) issue a certificate to the Registrar-General of Land confirming the direction; and
 - “(b) forward a copy of the direction and that certificate to the Registrar-General of Land.
- “(7) Trustees who give a direction under **subsection (2)**— 15
- “(a) retain the rights, duties, and powers of the registered proprietor of the land even though the land may not be registered in their name; and
 - “(b) must exercise those rights, duties, and powers in their own names. 20
- “(8) The Registrar-General of Land—
- “(a) is entitled to rely on the Registrar’s certificate issued under **subsection (6)(a)** as sufficient evidence that the direction has been given properly, unless there is evidence to the contrary; and 25
 - “(b) must have regard to **subsection (7)**.

New (unanimous)

- “(9) The Registrar may issue a certificate stating the names of the trustees of land registered in the name of a trust or a tipuna, and the Registrar-General of Land is entitled to rely on that certificate as sufficient evidence that the persons named are those trustees. 30
- “(10) A certificate under **subsection (9)** must accompany an instrument that is—

New (unanimous)

- “(a) executed by the trustees of land registered in the name of a trust or a tipuna; and
- “(b) lodged for registration with the Registrar-General of Land.”

- 34 Power of Court to amalgamate trusts** 5
- Section 221 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) The Court may order the amalgamation of 2 or more trusts (other than kai tiaki trusts) constituted under this Part, if—
- “(a) all trustees of the trusts to be amalgamated apply for the order; and 10
- “(b) the Court is satisfied that—
- “(i) the beneficiaries of the trusts to be amalgamated have had sufficient notice of the proposal to amalgamate and sufficient opportunity to discuss and consider it; and 15
- “(ii) there is a sufficient degree of support for the application among the beneficiaries of the trusts to be amalgamated.”

Struck out (unanimous)

- 35 Appointment of trustees** 20
- The principal Act is amended by repealing section 222, and substituting the following section:
- “222 **Appointment of trustees**
- “(1) Every trust—
- “(a) must have 1 or more responsible trustees; and 25
- “(b) may have 1 or more advisory trustees; and
- “(c) may have 1 or more custodian trustees.
- “(2) A trustee appointed by an applicant or the Court—
- “(a) may be an individual, a body corporate, a Maori incorporation, the Maori Trustee, the Public Trustee, a Maori Trust Board under the Maori Trust Boards Act 1955, or a trustee company under the Trustee Companies Act 1967; and 30

Struck out (unanimous)

- “(b) must consent to being appointed.
- “(3) The trustees of an intended trust—
- “(a) may be appointed by an applicant in accordance with **section 219A**; or
- “(b) must be appointed by the Court if beneficiaries apply to the Court for the Court to do so. 5
- “(4) An applicant must obtain a sufficient degree of support from beneficiaries to nominees for trusteeship, or to any process for appointment of trustees, before appointing trustees under **subsection (3)(a)**. 10
- “(5) Before appointing a trustee under **subsection (3)(b)** the Court must—
- “(a) have regard to the ability, experience, and knowledge of the proposed appointee; and
- “(b) be satisfied that the proposed appointee is broadly acceptable to the beneficiaries.” 15

36 New section 227A inserted

The principal Act is amended by inserting, after section 227, the following section:

- “227A **Interested trustees** 20
- “(1) A person is not disqualified from being elected or from holding office as a trustee because of that person’s employment as a servant or officer of the trust, or interest or concern in any contract made by the trust.
- “(2) A trustee must not vote or participate in the discussion on any matter before the trust that directly or indirectly affects that person’s remuneration or the terms of that person’s employment as a servant or officer of the trust, or that directly or indirectly affects any contract in which that person may be interested or concerned other than as a trustee of another trust.” 25 30

37 New section 231 substituted

The principal Act is amended by repealing section 231, and substituting the following section:

- 231 Review of trusts**
- “(1) The trustees or a beneficiary of a trust (other than a kai tiaki trust) constituted under this Part may apply to the Court to review the terms, operation, or other aspect of the trust.
- “(2) There can be no more than 1 review of a trust within a period of 24 consecutive months. 5
- “(3) The Court may, on any review,—
- “(a) confirm the (*ota kaitiaki*) trust order for the trust without variation; or
- “(b) exercise its powers under **section 244**; or 10
- “(c) terminate the trust if the Court is satisfied that there is a sufficient degree of support for termination among the beneficiaries.”
- 38 New section 239 substituted**
- The principal Act is amended by repealing section 239, and substituting the following section: 15
- 239 Addition, reduction, and replacement of trustees**
- “(1) The Court may at any time, on application, in respect of any trust to which this Part applies, add to or reduce the number of trustees or replace 1 or more of the trustees. 20
- “(2) The Court may amend the Court’s records for a trust if a trustee dies and the Court receives a death certificate for the deceased trustee.
- “(3) In exercising the powers in **subsections (1) and (2)**, the Court may order the vesting of land or other assets of the trust in any person or persons (with the consent of that person or those persons) upon the terms of the trust, whether or not that person was previously a trustee.” 25
- 39 New section 244 substituted**
- The principal Act is amended by repealing section 244, and substituting the following section: 30
- 244 Variation of trust**
- “(1) The trustees of a trust to which this Part applies may apply to the Court to vary the trust.
- “(2) The Court may vary the trust by varying or replacing the (*ota kaitiaki or other*) order constituting the trust, or in any other manner the Court considers appropriate. 35

- “(3) The Court may not exercise its powers under this section unless it is satisfied—
- “(a) that the beneficiaries of the trust have had sufficient notice of the application by the trustees to vary the trust and sufficient opportunity to discuss and consider it; 5
and
 - “(b) that there is a sufficient degree of support for the variation among the beneficiaries.”

Amendments relating to Maori incorporations

- 40 Qualification, disqualification, and removal of members** 10
Section 272(2)(b) of the principal Act is amended by omitting the word “fulfilled”, and substituting the word “fulfilled”.

- 41 New section 274A inserted**
The principal Act is amended by inserting, after section 274, the following section: 15

“274A Interested members

- “(1) A person is not disqualified from being elected or from holding office as a member of the committee of management because of that person’s employment as a servant or officer of the incorporation, or interest or concern in any contract made by the incorporation. 20
- “(2) A member of a committee of management must not vote or participate in the discussion on any matter before the committee that directly or indirectly affects that person’s remuneration or the terms of that person’s employment as a servant or officer of the incorporation, or that directly or indirectly affects any contract in which that person may be interested or concerned other than as a member of another committee of management.” 25

- 42 Accounts and balance sheet** 30
Section 276 of the principal Act is amended by repealing subsection (7), and substituting the following subsections:

- “(7) The committee of management of a Maori incorporation must ensure that copies of the *(balance sheet, profit and loss account, and other documents are filed in Court)* statement of financial position, statement of financial performance, and other documents are filed with the Registrar in whose court 35

district the land is situated, for the purpose of public inspection, within 14 days after their submission to a general meeting of shareholders.

- “(8) Copies filed under **subsection (7)** must be available for inspection by the public during the office hours of the Court on payment of the fee (if any) prescribed for that purpose.” 5
- 43 Appointment and duties of auditor**
- (1) Section 277(1) of the principal Act is amended by inserting, after the words “Maori incorporation”, the words “(except the Maori incorporations referred to in **subsection (1A)**)”. 10
- (2) Section 227 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) This section does not apply to a Maori incorporation that had gross revenue of \$25,000 or less for its most recently completed financial year unless the shareholders of that Maori incorporation resolve by special resolution that the accounts of the Maori incorporation should be audited under this section.” 15
- 44 Investigation of incorporation’s affairs**
- Section 280(3) of the principal Act is amended— 20
- (a) by omitting from paragraph (b) the expression “; or”:
- (b) by repealing paragraph (c).
- 45 Power of Court to require officers to attend to explain non-compliance with statutory requirements**
- Section 281(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph: 25
- “(aa) failure to comply with **section 274A(2)**.”.

*Amendments relating to title reconstruction
and improvement*

- 46 Matters to be considered** 30
- (1) Section 288 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) The Court must not make a partition order unless it is satisfied that the partition order—

- “(a) is necessary to facilitate the effective operation, development, and utilisation of the land; or
“(b) effects an alienation of land, by gift, to a member of the donor’s whanau, being a member who is within the preferred classes of alienees.”

5

New (unanimous)

- (2) Section 288(1) of the principal Act is amended by omitting the words “Subject to”, and substituting the words “In addition to the requirements of”.

47 (Papanga wharenoho) Dwelling sites

Struck out (unanimous)

- (1) Section 296(1) and (4) of the principal Act is amended by omitting the words “site for a dwelling” in each place where they occur, and substituting in each case the words “papanga wharenoho”.

10

Section 296 of the principal Act is amended by repealing subsections (5) and (6), and substituting the following subsections:

15

- “(5) On cancelling a vesting order under subsection (4), the Court may order—
“(a) that the land be held again under the former instrument of title as if the vesting order had not been made; or
“(b) that the land is vested in any other person whom the Court considers to be justly entitled to it.
“(6) If an order under **subsection (5)(a)** is made, all orders of the Court and all alienations affecting interests in the land made or effected since the date of the order cancelled are to be treated as relating to the former title and the interests under it.
“(7) On cancelling a vesting order under subsection (4), the Court may, if it considers it necessary, make an order under section 128.”

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Struck out (unanimous)

- (3) The section heading of section 296 of the principal Act is amended by omitting the words “**Dwelling sites**”, and substituting the words “**Papanga wharenoho**”.

- 48 Compliance with provisions of Resource Management Act 1991 relating to subdivisions** 5
Section 301(3)(b) of the principal Act is amended by omitting the words “Planning Tribunal”, and substituting the words “Environment Court”.
- 49 Contributions for reserve purposes**
- (1) Section 302(2) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs: 10
- “(a) the Court must not impose any condition requiring a contribution of land for reserve purposes or in lieu of reserves from land that is of special historical significance or spiritual or emotional association with the Maori people or any group or section of the Maori people, which includes all land that is a wahi tapu; and 15
- “(b) the Registrar-General of Land and Registrar of Deeds must not require, under Part X of the Resource Management Act 1991, the deposit of a survey plan for the partition.” 20
- (2) Section 302 of the principal Act is amended by repealing subsection (3).
- 50 Subdivision consent and conditions of subdivision consent** 25
- (1) Section 303 of the principal Act is amended by repealing subsections (2) to (5), and substituting the following subsections:
- “(2) The Court must— 30
- “(a) make such orders as it considers necessary, having regard to Part X of the Resource Management Act 1991, to ensure that, in respect of any conditions of the

- subdivision consent that have not been complied with, adequate provision is made for such compliance; and
- “(b) have regard to sections 229 to 237H of the Resource Management Act 1991 in respect of every partition of land to which section 301 applies. 5
- “(3) Any land that would be required to be set apart, reserved, or vested in another person, because of **subsection (2)**, must be set apart as a (*wahi rahui*) Maori reservation, for the common use and benefit of the people of New Zealand, despite anything in the Resource Management Act 1991. 10
- “(4) Land to which **subsection (3)** applies must be treated—
- “(a) as if it were land set apart under **section 338(1)** and section 340(1); and
- “(b) As if the procedural requirements of those subsections had been satisfied. 15
- “(5) The Court may declare that any land set apart under **subsection (3)** be dedicated for the construction of roads, if the Court considers that to be necessary to satisfy a condition or requirement of a subdivision consent.”
- (2) Section 303 of the principal Act is amended by repealing subsection (8). 20
- (3) Section 303 of the principal Act is amended by repealing subsection (9), and substituting the following subsection:
- “(9) On the completion of any vesting order made by the Court for the purposes of this section, the Registrar must forward the order to the Registrar-General of Land who must register the order.” 25
- 51** *(Power to impose restrictions in respect of other partitions)*
Power to impose restrictions on sales of hapu partitions to non-hapu members 30
- (1) Section 304(2) of the principal Act is amended by omitting the word “alienated”, and substituting the word “sold”.
- (2) Section 304 of the principal Act is amended by repealing subsections (3) to (7), and substituting the following subsections: 35
- “(3) If an application (*to which this section applies*) is made to the Court to confirm a sale of Maori land to which this section

applies, to persons who are not members of the same hapu, the Court—

- “(a) may, if it considers it appropriate, publicly notify the application and invite submissions from the territorial authority and any other person who is likely to be affected by the application; and 5
- “(b) may confirm or refuse to confirm the sale under **section 152**, having regard to sections 229 to 237H of the Resource Management Act 1991 and the fact that the land has previously been partitioned without a subdivision consent being obtained under that Act. 10
- “(4) If an application (*under this section*) involves the sale of land to persons who are not members of the same hapu, and the Court decides under **subsection (3)** that land is required to be set apart, reserved, or vested in another person, the Court must set that land apart as a (*wahi rahui*) Maori reservation, for the common use and benefit of the people of New Zealand, despite anything in the Resource Management Act 1991. 15
- “(5) Land to which **subsection (4)** applies must be treated— 20
- “(a) as if it were land set apart under **section 338(1)** and section 340(1); and
- “(b) as if the procedural requirements of those subsections had been satisfied.
- “(6) If the Court confirms the sale of land to persons who are not members of the same hapu,— 25
- “(a) the Court must not impose any condition requiring a contribution of land for reserve purposes or in lieu of reserves from land that is of special historical significance or spiritual or emotional association with the Maori people or any group or section of the Maori people, which includes all land that is a wahi tapu; and 30
- “(b) Any condition imposed by the Court requiring a contribution of land for reserve purposes or in lieu of reserves may only require any such land to be set aside from that part of the land that is to be sold.” 35

52 New section 315A inserted

The principal Act is amended by inserting, after section 315, the following section:

“315A Court may cancel or vary easements

“(1) The Court may, on application, vary or cancel an easement created under section 315 except an easement granted for the purpose stated in section 315(3).

“(2) The Court may vary or cancel an easement under this section even though the land subject to the easement has ceased to be land to which this Part applies.” 5

53 Required consents

Section 317(4) of the principal Act is amended by omitting the words “Director-General of Lands”, and substituting the words “Commissioner of Crown Lands”. 10

54 New section heading and sections 326A to 326D inserted

The principal Act is amended by inserting, after section 326, the following heading and sections:

“Landlocked Maori land” 15

“326A Meaning of certain terms

In this section and sections 326B, 326C, and 326D, unless the context otherwise requires,—

Struck out (unanimous)

“**landlocked land** means a piece of land that—

“(a) is Maori freehold land; and 20

“(b) has no reasonable access to it; and

“**owners** in relation to any landlocked land, means the legal or beneficial owners of the land; and

“**occupier** means the owners or occupier of the landlocked land; and 25

“**reasonable access** means physical access of such nature and quality as may be reasonably necessary to enable the occupier for the time being of the landlocked land to use and enjoy that land.

New (unanimous)

“**conservation area** has the same meaning as in section 2(1) of the Conservation Act 1987; and includes **national parks**, as defined in section 2 of the National Parks Act 1980; **reserves**, as defined in section 2(1) of the Reserves Act 1977; and **wildlife management reserves, wildlife refuges, and wildlife sanctuaries**, all as defined in section 2(1) of the Wildlife Act 1953

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Struck out

“**landlocked land** means a piece of land that—

- “(a) is Maori freehold land; and
- “(b) has no reasonable access to it; and
- “(c) General land owned by Maori that ceased to be Maori land under Part I of the Maori Affairs Amendment Act 1967

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New

“**landlocked land** means a piece of land that has no reasonable access to it and is either—

- “(a) Maori freehold land; or
- “(b) general land owned by Maori that ceased to be Maori land under Part I of the Maori Affairs Amendment Act 1967

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“**national park** has the same meaning as in section 2 of the National Parks Act 1980

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“**owners**, in relation to any landlocked land, means the legal or beneficial owners of the land

“**occupier** means the owners or occupier of the landlocked land

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“**public reserve** has the same meaning as in section 2(1) of the Reserves Act 1977

“**rail service operator** has the same meaning as in section 2 of the Railway Safety and Corridor Management Act 1992

New (unanimous)

“**railway line** has the same meaning as in section 2(1) of the New Zealand Railways Corporation Act 1981

“**reasonable access** means physical access of the nature and quality that may be reasonably necessary to enable the occupier for the time being of the landlocked land to use and enjoy that land. 5

“326B **Reasonable access may be granted in cases of landlocked Maori land**

“(1) The owners of landlocked land may apply at any time to the Court for an order in accordance with this section. 10

“(2) On an application made under this section,—

“(a) the owner of land adjoining the landlocked land that will or may be affected by the application must be joined as a party to the application; and

“(b) every person having an estate or interest in the landlocked land, or in any other piece of land (whether or not that piece of land adjoins the landlocked land), that will or may be affected if the application is granted, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract, or other instrument affecting or relating to any such land, and the local authority concerned, are entitled to be heard in relation to any application for, or proposal to make, any order under this section. 15 20

New

“(2A) The applicant must, as soon as practicable after filing an application in the Court, send a copy of the application to the local authority concerned. 25

“(3) For the purposes of **subsection (2)**, the Court may, if in its opinion notice of the application or proposal should be given to any person mentioned in that subsection, direct that such notice as it thinks fit must be given to that person by the applicant or by any other person. 30

- “(4) In considering an application under this section, the Court must have regard to—
- “(a) the nature and quality of the access (if any) to the landlocked land that existed when the applicant purchased or otherwise acquired the land; and 5
 - “(b) the circumstances in which the landlocked land became landlocked; and
 - “(c) the conduct of the applicant and the other parties, including any attempts that they may have made to negotiate reasonable access to the landlocked land; and 10
 - “(d) the hardship that would be caused to the applicant by the refusal to make an order in relation to the hardship that would be caused to any other person by the making of the order; and

Struck out (unanimous)

- “(e) such other matters as the Court considers relevant. 15

New (unanimous)

- “(e) the requirements of Part IIIB of the Conservation Act 1987, if the application affects a conservation area; and
- “(f) issues of public safety raised by a rail service operator, if the application affects a railway line; and
- “(g) such other matters as the Court considers relevant. 20

- “(5) If, after taking into consideration the matters specified in **subsection (4)**, and all other matters that the Court considers relevant, the Court is of the opinion that the applicant should be granted reasonable access to the landlocked land, it may make an order for that purpose— 25
- “(a) vesting in the owners of the legal estate in the landlocked land the legal estate in fee simple in any other piece of land (whether or not that piece of land adjoins the landlocked land) except land that is a national park, public reserve or railway line; or 30
 - “(b) attaching and making appurtenant to the landlocked land an easement over any other piece of land (whether or not that piece of land adjoins the landlocked land)

despite section 12 of the Railway Safety and Corridor
Management Act 1992.

“326C Conditions and other matters

- “(1) Any order under **section 326B(5)** may be made upon such terms and subject to such conditions as the Court thinks fit in respect of— 5
- “(a) the payment of compensation by the applicant to any other person; and
 - “(b) the exchange of any land by the applicant and any other person; and 10
 - “(c) the fencing of any land and the upkeep and maintenance of any fence; and
 - “(d) the upkeep and maintenance of any land over which an easement is to be granted; and
 - “(e) the powers of the Court under Part XVI as to Maori land; and 15
 - “(f) the carrying out of any survey that may be required by the Registrar-General of Land before the Registrar-General of Land will issue, in respect of any piece of land affected by the order, a certificate of title free of any limitations as to title or parcels within the meaning of Part XII of the Land Transfer Act 1952; and 20
 - “(g) the time in which any work necessary to give effect to the order is to be carried out; and
 - “(h) the execution, stamping, and delivery of any instrument; and 25
 - “(i) such other matters as the Court considers relevant.
- “(2) Every order made under **section 326B(5)** must provide that the reasonable cost of carrying out any work necessary to give effect to the order is to be borne by the applicant for the order, unless the Court is satisfied(, *having regard to the matters specified in **section 326B(4)(b) and (c)***), that it is just and equitable to require any other person to pay the whole or any specified share of the cost of such work. 30
- “(3) If the Court makes an order under section 326B(5), the Court may, in the order,— 35
- “(a) declare any estate or interest in any piece of land affected by the order to be free of any mortgage, lease, easement, or other encumbrance affecting that piece of land, or vary, to such extent as it considers necessary in 40

the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to that piece of land; and

“(b) declare that the legal estate in fee simple in any piece of land to be vested in the owners of the landlocked land is to vest subject to the same terms, conditions, liabilities, and encumbrances as those on and subject to which the owners hold the estate in the landlocked land, and is subject in all respects to any instrument of mortgage, charge, lease, sublease, or other encumbrance affecting that estate in the landlocked land as if the piece of land to be vested had been expressly included in the instrument.

“(4) If the Court makes an order (in this subsection referred to as the ‘principal order’) under **section 326B(5)**, it may, at the same time or at any other time on an application made to it in that behalf, make—

“(a) an order authorising any person named in the order, or the agents, employees, and contractors of the named person, with or without animals, vehicles, aircraft, hovercraft, and any mode of conveyance and any equipment, to enter upon any piece of land specified in the order for the purpose of carrying out any work necessary to give effect to the principal order; and

“(b) such other consequential order as the Court may think necessary or desirable to give full effect to the principal order; and

New (unanimous)

“(c) an order requiring the applicant to maintain the land, or meet other obligations effecting the land, failing which the principal order may be revoked.

“326D **Additional provisions relating to orders under sections 326B or 326C**

“(1) Any order made under **section 326B(5)** must be registered as an instrument under the Land Transfer Act 1952, the Deeds Registration Act 1908, or Part I of the Crown Minerals Act 1991, as the case may require.

- “(2) This section and **sections 326A to 326C** bind the Crown.
- “(3) The High Court, and not the Maori Appellate Court, has jurisdiction to hear and determine appeals from any order made under **sections 326B or 326C** that affects General land.
- “(4) Every appeal to the High Court under **subsection (3)** is by way of rehearing. 5
- “(5) Nothing in Part X of the Resource Management Act 1991 applies to any transfer, exchange, or other disposition of any land required by an order of the Court made under **sections 326B or 326C**. 10
- “(6) The Court’s powers under this section and sections 326A to 326C are additional to, and not limited by or subject to, sections 315 to 317.

New (unanimous)

- “(7) The Court may appoint expert assessors or valuers, as additional members of the Court, to assist it to determine issues of valuation or compensation under sections 326A to 326D.” 15

Amendments relating to (ota whakanoho) occupation orders

Struck out (unanimous)

55 Ota whakanoho

- (1) The heading of Part XV of the principal Act is amended by omitting the words “Occupation Orders”, and substituting the words “Ota Whakanoho”. 20
- (2) Sections 329 and 330 of the principal Act are amended by omitting the words “occupation order” in each place where they occur, and substituting in each case the words “ota whakanoho”. 25
- (3) Section 328 of the principal Act is amended by repealing the section heading, and substituting the section heading “**Ota whakanoho**”.
- (4) The section heading of section 330 of the principal Act is amended by omitting the words “**occupation order**”, and substituting the words “**ota whakanoho**”. 30

New (unanimous)

55 Occupation orders

- (1) Section 328(1) of the principal Act is amended by adding the words “(including a house that has already been built and is located on that land when the order is made)”.
- (2) Section 328 of the principal Act is amended by adding the following subsection; 5
- “(4) In making an order under subsection (1), the Maori Land Court may specify—
- “(a) that the occupation order is for a specified period; or
- “(b) that the occupation order ends on the occurrence of a defined event.” 10

55A Matters to be considered

- (1) Section 329(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(aa) that the owners of the land to which the application relates understand that an occupation order— 15
- “(i) may pass by succession; and
- “(ii) may be for a specified term or until the occurrence of a defined event:”.
- (2) Section 329(2) of the principal Act is amended by adding the following paragraph: 20
- “(c) that, in the circumstances, the extent of the beneficial interest in the land held by the person in whose favour the occupation order is to be made, or to which that person is entitled to succeed, justifies the occupation order.” 25

55B New section 330A inserted

The principal Act is amended by inserting, after section 330, the following section:

- “330A **Review of occupation orders** 30
- “(1) The Maori Land Court may review an occupation order made before this section comes into force, on application by an owner of a beneficial interest in the land over which the occupation order has been made, or by the person in whom the occupation order is vested. 35

New (unanimous)

“(2) The Maori Land Court may conduct a review under **subsection (1)** as if it were exercising its jurisdiction to make the initial occupation order, and must have particular regard to the fact that, after it was made, the occupation order could pass by succession.”

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Amendments relating to wahi rahui

Struck out (unanimous)

56 Part XVII heading amended

The heading of Part XVII of the principal Act is amended by omitting the words “Maori Reservations”, and substituting the words “Wahi Rahui”.

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57 (Wahi rahui) Maori reservations

Section 338 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The Chief Executive may, by notice in the *Gazette* issued on the recommendation of the Court, set apart as (*wahi rahui*) Maori reservation any Maori freehold land or any General land—

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“(a) for the purposes of a village site, marae, meeting place, recreation ground, sports ground, bathing place, church site, building site, burial ground, landing place, fishing ground, spring, well, timber reserve, catchment area or other source of water supply, or place of cultural, historical, or scenic interest, or for any other specified purpose; or

20

“(b) that is a wahi tapu, being a place of special significance according to tikanga Maori.”

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Struck out (unanimous)

(2) Section 338(2) of the principal Act is amended by omitting the words “Maori reservation” and the word “reservation”, and substituting in both cases the words “wahi rahui”.

Struck out (unanimous)

- (3) Section 338(3) to (9), (11), (12), and (16) of the principal Act is amended by omitting the words “Maori reservation” in each place where they occur, and substituting in each case the words “wahi rahui”.
- (4) Section 338(5), (a), (b), (c), and (d), (7), (9), (11), and (12) of the principal Act is amended by omitting the word “reservation” in each place where it occurs, and substituting in each case the words “wahi rahui”. 5
- (5) Section 338(16) and (17) of the principal Act is amended by omitting the words “Maori reservations” in each place where they occur, and substituting in each case the words “wahi rahui”. 10
- (6) The section heading of section 338 of the principal Act is amended by omitting the words “**Maori reservations**”, and substituting the words “**Wahi rahui**”. 15
- 58 Court may consider proposal for wahi rahui on application of Minister**
- (1) Section 339(1) of the principal Act is amended by omitting the words “Maori reservation”, and substituting the words “wahi rahui”. 20
- (2) Section 339(2)(a), (b), and (c) of the principal Act is amended by omitting the words “reservation” in each place where they occur, and substituting in each case the words “wahi rahui”.
- (3) The section heading of section 339 of the principal Act is amended by omitting the words “**Maori reservation**”, and substituting the words “**wahi rahui**”. 25
- 59 Wahi rahui not wahi tapu may be held for common use and benefit of people of New Zealand**
- (1) Section 340(1) of the principal Act is amended— 30
- (a) by omitting the words “Maori reservation”, and substituting the words “wahi rahui that is not a wahi tapu”:
- (b) By omitting the word “reservation” in both places where it occurs, and substituting in each case the words “wahi rahui that is not a wahi tapu”.

Struck out (unanimous)

- (2) Section 340(2) of the principal Act is amended by omitting the words “Maori reservation”, and substituting the words “wahi rahui that is not a wahi tapu”.
- (3) Section 340(3) of the principal Act is amended by omitting the words “Maori reservation”, and substituting the words “wahi rahui that is not a wahi tapu”. 5
- (4) The section heading of section 340 of the principal Act is amended by omitting the words “**Maori reservation**”, and substituting the words “**Wahi rahui not wahi tapu**”.

New (unanimous)

- 59 Maori reservation (not wahi tapu) may be held for common use and benefit of people of New Zealand** 10
- (1) Section 340(1) of the principal Act is amended—
- (a) by inserting, after the words “Maori reservation”, the words “(that is not a wahi tapu)”; and
- (b) by inserting, after the word “reservation” in both places where it occurs, the words “(that is not a wahi tapu)”. 15
- (2) Section 340(2) of the principal Act is amended by inserting, after the words “Maori reservation”, the words “(that is not a wahi tapu)”. 20
- (3) Section 340(3) of the principal Act is amended by inserting, after the words “Maori reservation”, the words “that is not a wahi tapu”.

Struck out (unanimous)

- 60 Further provisions relating to wahi rahui for marae or meeting place**
- (1) Section 341(1) and (2) of the principal Act is amended by omitting the words “Maori reservation” in both places where they occur, and substituting in each case the words “wahi rahui”. 25

Struck out (unanimous)

- (2) Section 341(3) of the principal Act is amended by omitting the word “reservation” in each place where it occurs, and substituting the words “wahi rahui”.
- (3) The section heading of section 341 of the principal Act is amended by omitting the words “**Maori reservation**”, and substituting the words “**wahi rahui**”.

New (unanimous)

- 60 Further provisions relating to Maori reservation for marae or meeting place**
- Section 341(1) of the principal Act is amended by inserting, after the words “marae or meeting place” where they first occur, the words “or as wahi tapu”.

Part 2**Consequential repeals and amendments**

- 61 Repeals**
- The following provisions of the principal Act are repealed:
- (a) section 3:
 - (b) section 147(2) and (3):
 - (c) section 153:
 - (d) section 154:
 - (e) section 161:

New (unanimous)

(ea) section 199(3) and (4):

- (f) section 228:
- (g) section 254:
- (h) section 255:
- (i) section 305.

62 Consequential amendments

Section 129B(14) of the Property Law Act 1952 is amended by inserting, after the expression “section 316”, the expression “**or sections 326A to 326D**”.

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Struck out (unanimous)

(2) Every reference in another Act to a Maori reservation must be read as a reference to wahi rahui.

Legislative history

5 October 2000	Introduction, first and second reading and referral to the Maori Affairs Committee (Bill 336-1)
30 November 2000	Reported from Maori Affairs Select Committee (Bill 336-2)
22 March 2001	Consideration of report
2 May 2002	Committee of the whole House (Bill 336-3)