

[AS REPORTED FROM THE COMMITTEE ON THE TREATY OF
WAITANGI (STATE ENTERPRISES) BILL]

House of Representatives, 5 May 1988.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Right Hon. Geoffrey Palmer

TREATY OF WAITANGI (STATE ENTERPRISES)

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No. 27—2

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A BILL INTITULED

An Act—

- (a) To give effect to an agreement entered into between the New Zealand Maori Council and Graham Stanley Latimer and the Crown in settlement of an application for judicial review made by the New Zealand Maori Council and Graham Stanley Latimer; and 5
- (b) To make to the Treaty of Waitangi Act 1975, the State-Owned Enterprises Act 1986, and the Legal Aid Act 1969 the amendments proposed in that agreement; and 10
- (c) To protect existing and likely future claims before the Waitangi Tribunal relating to land presently in Crown ownership; and 15
- (d) To give better effect to the objects of the State-Owned Enterprises Act 1986, and to ensure compliance with section 9 of that Act

Whereas—

- (a) The Crown intended, following the establishment of certain State enterprises under the State-Owned Enterprises Act 1986, to transfer certain land to those enterprises; and 20
- (b) The New Zealand Maori Council and Graham Stanley Latimer and the Iwi represented by them believed that the transfer of some or all of that land would constitute a breach by the Crown of section 9 of the State-Owned Enterprises Act 1986, which provides that nothing in that Act permits the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi; and 25 30
- (c) The New Zealand Maori Council and Graham Stanley Latimer, in furtherance of that belief, filed in the High Court at Wellington on the 30th day of March 1987 an application for judicial review; and 35
- (d) By order of the High Court the application for judicial review was, on the 1st day of April 1987, removed into the Court of Appeal; and
- (e) The Court of Appeal, on the 29th day of June 1987,—

- 5 (i) Made a declaration that the transfer of assets to State enterprises without establishing any system to consider in relation to particular assets or particular categories of assets whether such transfer would be inconsistent with the principles of the Treaty of Waitangi would be unlawful; and
- 10 (ii) Gave certain directions concerning the preparation by the Crown of a scheme of safeguards, which was to be lodged in the Court of Appeal after it had been submitted to the New Zealand Maori Council for agreement or comment; and
- 15 (iii) Made a further declaration (which might be varied or discharged at any time on the motion of the Crown) that in the meantime the Crown ought not to take any further action affecting any of the assets referred to in the statement of claim, by way of transfer of assets or long-term agreement or arrangement, that is or would be consequential on the exercise of statutory powers conferred by the State-Owned Enterprises Act 1986; and
- 20 (f) After extensive negotiations between the New Zealand Maori Council and Graham Stanley Latimer and the Crown, there has not been agreement on a system, of the type described in paragraph (e) (i) of this Preamble, to apply, as was contended for by the New Zealand Maori Council and Graham Stanley Latimer, before the transfer of assets to State enterprises but there has been agreement on an alternative system of safeguards, to apply after the transfer of assets to State enterprises, so that, in the public interest, the transfers authorised by the State-Owned Enterprises Act 1986 may take place as soon as practicable; and
- 25 (g) It is essential, in order to protect the position of Maori claimants and to ensure compliance with section 9 of the State-Owned Enterprises Act 1986, that there be safeguards—
- 30 (i) Including power for the Waitangi Tribunal to make a binding recommendation for the return to Maori ownership of any land or interests in land transferred to State enterprises under that Act; and
- 40 (ii) Requiring the Waitangi Tribunal to hear any claim relating to any such land or interests in land as if it or they had not been so transferred; and
- 45 (iii) Precluding State enterprises and their successors in title from being heard by the Waitangi

Tribunal on claims relating to land or interests in land
so transferred; and

- (h) The New Zealand Maori Council and Graham Stanley Latimer and the Crown have agreed that amendments to the Treaty of Waitangi Act 1975, the State-Owned Enterprises Act 1986, and the Legal Aid Act 1969 are required in order to allow the transfers and to protect existing or likely future claims before the Waitangi Tribunal; and 5
- (i) The Crown has agreed to submit for the consideration of Parliament a Bill containing the amendments agreed on; and 10
- (j) The New Zealand Maori Council and Graham Stanley Latimer and the Crown have informed the Court of Appeal of the nature of those amendments; and 15
- (k) The Court of Appeal has, by consent of the parties to the application for judicial review, discharged both the directions given by it to the Crown and the consequential interim declaration made by it in relation to those directions; and 20
- (l) It is desirable that the agreement between the New Zealand Maori Council and Graham Stanley Latimer and the Crown be given effect to and that the amendments proposed in that agreement to the Treaty of Waitangi Act 1975, the State-Owned Enterprises Act 1986, and the Legal Aid Act 1969 be made: 25

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

1. Short Title and commencement—(1) This Act may be cited as the Treaty of Waitangi (State Enterprises) Act 1987. 30

(2) This Act shall be deemed to have come into force on the 9th day of December 1987.

PART I

AMENDMENTS TO TREATY OF WAITANGI ACT 1975 35

2. This Part to be read with Treaty of Waitangi Act 1975—This Part of this Act shall be read together with and deemed part of the Treaty of Waitangi Act 1975* (in this Part referred to as the principal Act).

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

3. Functions of Tribunal—Section 5 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraphs:

5 “(a) To inquire into and make recommendations upon, in accordance with this Act, any claim submitted to the Tribunal under section 6 of this Act:

“(aa) To make recommendations, in accordance with **section 8c** of this Act, that land or interests in land be no longer subject to resumption under **section 27B** of the State-Owned Enterprises Act 1986.”.

4. New sections inserted—The principal Act is hereby amended by inserting, after section 8, the following sections:

15 “**8A. Recommendations in respect of land transferred to or vested in State enterprise**—(1) This section applies in relation to (*land*) any land or interest in land transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in a State enterprise by an Order in Council made under section 28 of that Act, whether or not the land or interest in land is still vested in a State enterprise.

20 “(2) Subject to **section 8B** of this Act, where a claim submitted to the Tribunal under section 6 of this Act relates in whole or in part to land or an interest in land to which this section applies, the Tribunal may—

25 “(a) If it finds—

“(i) That the claim is well-founded; and

30 “(ii) That the action to be taken under section 6 (3) of this Act to compensate for or remove the prejudice caused by the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission that was inconsistent with the principles of the Treaty, should include the return to Maori ownership of the whole or part of that land or of that interest in land,—

35 include in its recommendation under section 6 (3) of this Act, a recommendation that that land or that part of that land or that interest in land be returned to Maori ownership (which recommendation shall be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom that land or that part of

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that land is or that interest in land to be returned);
or

“(b) If it finds—

“(i) That the claim is well-founded; but

“(ii) That a recommendation for return to Maori 5
ownership is not required, in respect of that land or
any part of that land or that interest in land, by
paragraph (a) (ii) of this subsection,—

recommend to the Minister of Survey and Land
Information that that land or that part of that land 10
or that interest in land be no longer subject to
resumption under **section 27B** of the State-Owned
Enterprises Act 1986; or

“(c) If it finds that the claim is not well-founded, recommend 15
to the Minister of Survey and Land Information that
that land or that part of that land or that interest in
land be no longer subject to resumption under
section 27B of the State-Owned Enterprises Act 1986.

“(3) In deciding whether to recommend the return to Maori
ownership of any land or interest in land to which this section 20
applies, the Tribunal shall not have regard to any changes that,
since immediately before the date of the transfer of the land or
interest in land from the Crown to a State enterprise, have
taken place in—

“(a) The condition of the land or of the land in which the 25
interest exists and any improvements to it; or

“(b) Its ownership or possession or any other interests in it.

“(4) Nothing in **subsection (2)** of this section prevents the
Tribunal making in respect of any claim that relates in whole or
in part to *(land)* any land or interest in land to which this 30
section applies any other recommendation under subsection (3)
or subsection (4) of section 6 of this Act.

New

“(5) Notwithstanding section 24 (4) of the State-Owned
Enterprises Act 1986, on the making of a recommendation for 35
the return of any land or interest in land to Maori ownership
under **subsection (2)** of this section, sections 40 and 41 of the
Public Works Act 1981 shall cease to apply in relation to that
land or that interest in land.

“(6) Where any interest in land exists in respect of any land 40
to which this section applies (being an interest in land which
was in existence immediately before the land was transferred

New

to the State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in the State enterprise by an Order in Council made under section 28 of that Act but which was not so transferred to, or so vested in, the State enterprise), no recommendation under this section shall relate to that interest in land.

“8B. Interim recommendations in respect of land transferred to or vested in State enterprise—(1) Where the recommendations made by the Tribunal include a recommendation made under **section 8A (2) (a)** or **section 8A (2) (b)** of this Act, all of those recommendations shall be in the first instance interim recommendations.

Struck Out

“(2) The Tribunal shall cause copies of the interim recommendations to be served on the parties to the inquiry.

New

“(2) The Tribunal shall cause copies of its interim findings and interim recommendations to be served on the parties to the inquiry.

“(3) Subject to **subsection (5)** of this section, the Tribunal shall not, without the written consent of the parties, confirm any interim recommendations that include a recommendation made under **section 8A (2) (a)** or **section 8A (2) (b)** of this Act, until at least 90 days after the date of the making of the interim recommendations.

“(4) Where any party to the inquiry is served with a copy of any interim recommendations that include a recommendation made under **section 8A (2) (a)** or **section 8A (2) (b)** of this Act, that party—

“(a) May, within 90 days after the date of *(service)* the making of the interim recommendations, offer to enter into negotiations with the other party for the settlement of the claim; and

“(b) Shall, within 90 days after the date of (*service*) the making of the interim recommendations, inform the Tribunal—

“(i) Whether the party accepts or has implemented the interim recommendations; and 5

“(ii) If the party has made an offer under **paragraph (a)** of this subsection, the result of that offer.

“(5) If, before the confirmation of any interim recommendations that include a recommendation made under **section 8A (2) (a)** or **section 8A (2) (b)** of this Act, the claimant and the Minister of Maori Affairs settle the claim, the Tribunal shall, as the case may require, cancel or modify the interim recommendations and may make, if necessary, a final recommendation under **section 8A (2) (a)** or **section 8A (2) (b)** of this Act. 10 15

“(6) If **subsection (5)** of this section does not apply in relation to any interim recommendations that include a recommendation made under **section 8A (2) (a)** or **section 8A (2) (b)** of this Act, upon the expiration of the 90th day after the date of the making of the interim recommendations, the interim recommendations shall take effect as final recommendations. 20

“(7) Notwithstanding anything in **subsections (1) to (6)** of this section, if any interim recommendations contain a clerical mistake or an error arising from any accidental slip or omission, whether the mistake, error, slip, or omission was made by an officer of the Tribunal or not, or if any interim recommendations are so drawn up as not to express what was actually decided and intended, the interim recommendations may be corrected by the Tribunal, either of its own motion or on the application of any party. 25 30

New

“(8) Where the interim recommendations are corrected under **subsection (7)** of this section,—

“(a) The Tribunal shall cause copies of the corrected interim recommendations to be served on the parties to the inquiry as soon as practicable; and 35

“(b) The period that applies for the purposes of **subsections (3), (4), and (6)** of this section shall expire on the 90th day after the date of the making of the corrected interim recommendations. 40

“8c. **Right to be heard on question in relation to land transferred to or vested in State enterprise**—(1) Where, in the course of any inquiry into a claim submitted to the Tribunal under section 6 of this Act, any question arises in relation to
 5 **(land) any land or interest in land** to which **section 8A** of this Act applies, the only persons entitled to appear and be heard on that question shall be—

“(a) The claimant:

Struck Out

10 “(b) The Minister of Maori Affairs and any other Minister of the Crown who has an interest in the claim:

New

15 “(b) The Minister of Maori Affairs:
 “(ba) Any other Minister of the Crown who notifies the Tribunal in writing that he or she wishes to appear and be heard:

20 “(c) Any Maori who satisfies the Tribunal that he or she, or any group of Maori of which he or she is a member, has an interest in the inquiry apart from any interest in common with the public.

25 “(2) Notwithstanding anything in clause 7 of the Second Schedule to this Act or in section 4A of the Commissions of Inquiry Act 1908 (as applied by clause 8 of the Second Schedule to this Act), no person other than a person designated in **paragraph (a) or paragraph (b) or paragraph (ba) or paragraph (c) of subsection (1) of this section shall be entitled to appear and be heard on a question to which subsection (1) of this section applies.**

30 “(3) Nothing in **subsection (2) of this section affects the right of any person designated in paragraph (a) or paragraph (b) or paragraph (ba) or paragraph (c) of subsection (1) of this section to appear, with the leave of the Tribunal, by—**

“(a) A barrister or solicitor of the High Court; or

“(b) Any other agent or representative authorised in writing.

New

35 “(4) Nothing in this section affects the right of the Tribunal to hear testimony from any person pursuant to clause 6 of the

New

Second Schedule to this Act or affects in any other way the provisions of that clause.

“8D. Special power of Tribunal to recommend that land be no longer liable to resumption—(1) The Tribunal may, in its discretion, on the application of a State enterprise or other owner of any land or interest in land to which **section 8A** of this Act applies, recommend to the Minister of Survey and Land Information that the whole or part of that land or that that interest in land be no longer subject to resumption under **section 27B** of the State-Owned Enterprises Act 1986 if—

“(a) Public notice has been given, in accordance with **section 8G** of this Act, of the making of an application under this section in respect of that land or interest in land; and

“(b) Either—

“(i) No claim in relation to that land or interest in land has been submitted to the Tribunal under **section 6** of this Act before the date specified in the notice; or

“(ii) All the parties to any claim submitted to the Tribunal under **section 6** of this Act in relation to that land or interest in land have informed the Tribunal in writing that they consent to the making of the recommendation.

“(2) The Tribunal may make a recommendation pursuant to **subsection (1) (b) (ii)** of this section without being obliged to determine first whether or not the claim is well-founded.

New

“(3) The Tribunal may, where it considers it appropriate, consult with a Judge of the Maori Land Court about—

“(a) The directions to be given under **section 8F** of this Act; or

“(b) The public notice to be given under **section 8G** of this Act,—

in relation to any application under this section.

“8E. Issue of certificate on recommendation of Tribunal—(1) The Minister of Survey and Land Information

shall, on receiving in respect of any land or interest in land a recommendation under—

Struck Out

“(a) **Section 8A (2) (b)** or **section 8A (2) (c)** of this Act; or

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New

“(a) **Section 8A (2) (a)** or **section 8A (2) (b)** or **section 8A (2) (c)** of this Act; or

“(b) **Section 8D (1)** of this Act,—

10 issue a certificate to the effect that the land or interest in land is no longer subject to resumption under **section 27B** of the State-Owned Enterprises Act 1986.

Struck Out

15 “(2) The Minister of Survey and Land Information shall cause a copy of the certificate to be lodged with the District Land Registrar.

New

20 “(2) Where the land or the land in which the interest in land exists is subject to the Land Transfer Act 1952, the Minister of Survey and Land Information shall cause a copy of the certificate to be lodged with the District Land Registrar of the land registration district within which the land is situated.

“(3) The District Land Registrar shall, without fee,—

25 “(a) Register the certificate against the certificate of title to the land or interest in land; and
“(b) Take all steps necessary to discharge or cancel any memorials or entries showing that the land or interest in land is subject to resumption under **section 27B** of the State-Owned Enterprises Act 1986.

New

30 “(4) Where—

“(a) The land or the land in which the interest in land exists is not subject to the Land Transfer Act 1952; and

New

“(b) Instruments relating to the land or the interest in land are not registerable under the Deeds Registration Act 1908,—

the Minister of Survey and Land Information shall cause a copy of the certificate to be lodged in the office of the Chief Surveyor, and the Chief Surveyor shall note the certificate upon the proper plans and records of the district affected. 5

“8F. **Directions as to service**—(1) Where an application is made under **section 8b** of this Act, the applicant shall apply to the Tribunal *ex parte* for directions as to service. 10

Struck Out

“(2) In support of the application under this section, the applicant shall furnish to the Tribunal (by affidavit or otherwise) such information as may be necessary to enable the Tribunal to decide what tribes, Maori authorities, persons, or classes of persons are interested in or may be adversely affected by the making, under **section 8b** of this Act, of the recommendation sought. 15

“(3) The application under this section shall specify the directions that are considered appropriate and shall be accompanied by a memorandum by the applicant’s solicitor or counsel giving the reasons therefor. 20

New

“(2) The applicant shall furnish with the application under this section a description of the land or interest in land to which the application under **section 8b** of this Act relates, which description— 25

“(a) Shall include a full legal description of the land or interest in land; and 30

“(b) Shall be sufficient to enable the Tribunal to decide which persons may be adversely affected by the making, under **section 8b** of this Act, of the recommendation sought.

“(3) The application under this section— 35

“(a) Shall specify the directions considered appropriate; and

“(b) Shall be accompanied by a memorandum—

New

“(i) By the applicant’s solicitor or counsel; or
 “(ii) By any other agent or representative
 authorised in writing by the applicant,—
 giving the reasons for the directions considered
 appropriate.

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“(4) On an application under this section the Tribunal shall give such directions for service as it deems proper.

“8c. **Public notice**—(1) Where an application is made under **section 8b** of this Act, the applicant shall, in addition to complying with the directions given under **section 8f (4)** of this Act, give, in accordance with the directions of the Tribunal, public notice of the application.

“(2) The public notice shall be published both—

15 “(a) In the *Gazette*; and

“(b) In such newspapers circulating in the district in which the land or interest in land is situated as the Tribunal directs.

“(3) The public notice shall—

20 “(a) Describe the land or interest in land and its location; and

“(b) State that an application has been made under **section 8b** of this Act in respect of the land or interest in land; and

25 “(c) Indicate that the land or interest in land has been or was transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in a State enterprise by an Order in Council made under section 28 of that Act; and

30 “(d) Invite any Maori who considers that he or she, or any group of Maori of which he or she is a member, has grounds for a claim under section 6 of this Act in relation to the land or interest in land, to submit that claim to the Tribunal before a date specified in the notice (which date shall be not less than 90 days after the first or only publication of the notice in the

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Gazette); and

“(e) Describe briefly any claims already submitted under section 6 of this Act in respect of the land or interest in land; and

40 “(f) Where no claim has been submitted under section 6 of this Act in respect of the land or interest in land, state that if no claim in relation to the land or

interest in land is submitted to the Tribunal under section 6 of this Act before the date specified in the notice, the Tribunal may recommend that the land or interest in land be no longer liable to resumption under section 27B of the State-Owned Enterprises Act 1986; and

“(g) Contain such other information as the Tribunal directs.

“8H. **Service of decision**—The Tribunal shall cause a sealed copy of its decision and recommendation (if any) with regard to any application under section 8D of this Act to be served on—

“(a) The applicant; and

“(b) The Minister of Survey and Land Information; and

“(c) The Minister of Maori Affairs; and

“(d) Such other persons as the Tribunal thinks fit. 15

“8I. **Annual report on implementation of recommendations**—The Minister of Maori Affairs shall in each year prepare and lay before the House of Representatives a report on the progress being made in the implementation of recommendations made to the Crown by the Tribunal.” 20

5. Power of Tribunal to commission research and receive report in evidence—The Second Schedule to the principal Act is hereby amended by repealing clause 5A (as inserted by section 7 of the Treaty of Waitangi Amendment Act 1985), and substituting the following clause: 25

“5A. (1) The Tribunal may commission, or authorise a claimant to commission at the expense of the Tribunal, any person (whether or not a member of its staff appointed under clause 9 of this Schedule)—

“(a) To investigate— 30

“(i) Any matter relating to a claim under section 6 of this Act; or

“(ii) Any matter relating to an application under section 8D of this Act; or

“(iii) Any other matter relating to the functions of the Tribunal; and 35

“(b) To prepare a report on any matter investigated under paragraph (a) of this subsection and to submit that report for consideration by the Tribunal.

“(2) The Tribunal may receive any such report in evidence. 40

“(3) (Where the Tribunal receives any such report in evidence,) every party to the proceedings shall be entitled—

“(a) To receive a copy of the report; and

“(b) To make submissions on it to the Tribunal.

“(4) Any party to the proceedings may, with the leave of the Tribunal, cross-examine the person by whom the report was made.”

5 **6. Director**—The Second Schedule to the principal Act is hereby amended by inserting in clause 9 (1) (as substituted by section 9 of the Treaty of Waitangi Amendment Act 1985), after the words “State Services Act 1962”, the words “a Director of the Tribunal,”.

10 **7. New clauses inserted**—The Second Schedule to the principal Act is hereby amended by inserting, after clause 9 (as substituted by section 9 of the Treaty of Waitangi Amendment Act 1985), the following clauses:

“**9A. Power of Tribunal to refer claim for mediation**—

15 (1) The Tribunal may from time to time refer to any member of the Tribunal or the Director of the Tribunal or any other person any claim submitted to the Tribunal under section 6 of this Act.

20 “(2) Where a claim is referred to a member of the Tribunal under subsection (1) of this section, that member shall not sit as a member of the Tribunal for the purposes of the inquiry into that claim.

25 “**9B. Duties in relation to claim referred for mediation**—The person to whom a claim is referred under clause 9A of this Schedule shall use his or her best endeavours to bring about a settlement of that claim.

“**9C. Settlement of claim referred for mediation**—

30 (1) Where a claim referred under clause 9A of this Schedule is settled, the person to whom the claim was referred shall record in writing the terms of the settlement, which shall be signed and dated by the representatives of the parties.

“ (2) The terms of settlement shall be given to the Tribunal by the person to whom the claim was referred.

35 “(3) When the Tribunal has received the terms of settlement, the Tribunal may include those terms in a recommendation under section 6 (3) of this Act.

“**9D. Reference back to Tribunal of unsettled claim**—

40 (1) If a claim that has been referred under clause 9A of this Schedule has not been settled, the person to whom the claim was referred shall refer the claim back to the Tribunal if—

“ (a) That person considers the claim unlikely to be settled; or

“ (b) The Tribunal requires that person to do so.

“(2) Where a claim is referred back to the Tribunal under subsection (1) of this section, the person to whom the claim was referred shall deliver to the Tribunal a written record showing separately—

“(a) Those matters on which agreement is reached between the parties; and 5

“(b) Those matters on which no agreement is reached between the parties.”

8. Repeals—(Sections 3 and 7) Section 7 of the Treaty of Waitangi Amendment Act 1985 (are) is hereby consequentially repealed. 10

PART II

AMENDMENTS TO STATE-OWNED ENTERPRISES ACT 1986

9. This Part to be read with State-Owned Enterprises Act 1986—This Part of this Act shall be read together with and deemed part of the State-Owned Enterprises Act 1986* (in this Part referred to as the principal Act). 15

*1986, No. 124
Amendment: 1987, No. 117

10. New sections substituted—(1) The principal Act is hereby amended by repealing section 27, and substituting the following sections: 20

“27. **Maori land claims—**The submission in respect of any land or interest in land of a claim under section 6 of the Treaty of Waitangi Act 1975 does not prevent the transfer of that land or of any interest in that land or of that interest in land—

“(a) By the Crown to a State enterprise; or 25

“(b) By a State enterprise to any other person.

“27A. **District Land Registrar to register necessary memorial—**(1) Where (land) any land or interest in land is transferred to a State enterprise under section 23 of this Act or vested in a State enterprise by an Order in Council made under section 28 of (that) this Act, the District Land Registrar shall, without fee, note on the certificate of title the words ‘Subject to section 27B of the State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation)’. 30 35

“(2) **Subsection (1)** of this section shall not apply in relation to any piece of land or interest in land that is excluded from **section 27B** of this Act by **subsection (2)** or **subsection (3)** of that section.

5 “**27B. Resumption of land on recommendation of Waitangi Tribunal**—(1) Where the Waitangi Tribunal has, under **section 8A (2) (a)** of the Treaty of Waitangi Act 1975, recommended the return to Maori ownership of any land or
10 interest in land transferred to a State enterprise under **section 23** of this Act or vested in a State enterprise by an Order in Council made under **section 28** of (*that Act*) this Act, that land or interest in land shall, if the recommendation has been confirmed with or without modifications under **section 8B** of that Act, be resumed by the Crown in accordance with **section 27C** of
15 this Act and returned to Maori ownership.

“**(2)** This section shall not apply in relation to any piece of land that, at the date of its transfer to a State enterprise under **section 23** of this Act or the date of its vesting in a State enterprise by an Order in Council made under **section 28** of this
20 Act, was subject to—

“**(a)** A deferred payment licence issued under the Land Act 1948; or

“**(b)** A lease under which the lessee had the right of acquiring the fee simple.

25 “**(3)** This section shall not apply in relation to any piece of land or interest in land in respect of which a certificate issued under **section 8D (1)** of the Treaty of Waitangi Act 1975 has been registered.

“**27C. Resumption of land to be effected under Public Works Act 1981**—(1) Where **section 27B** of this Act requires any land or interest in land to be resumed by the Crown, the Minister of Works and Development shall acquire that land or interest in land under Part II of the Public Works Act 1981 as if
30 it were land or an interest in land required for both
35 Government work and a public work and Parts II, IV, V, VI, and VII of that Act and the First, Third, Fourth, and Fifth Schedules to that Act shall, subject to the modifications set out in Schedule 2A to this Act and to all other necessary modifications, apply accordingly.

New

“(2) The existence on the certificate of title to any land or interest in land acquired pursuant to **subsection (1)** of this section of a memorial under **section 27A** of this Act shall not be taken into account in any assessment of compensation made under the Public Works Act 1981 in relation to the acquisition of that land or interest in land. 5

“(3) The power conferred by this section does not include the power to acquire or take and to hold under section 28 of the Public Works Act 1981 any interest in land described in **section 8A (6)** of the Treaty of Waitangi Act 1975. 10

“**27D. Resumption of Wahi Tapu**—(1) Where the Governor-General is satisfied that any land or interest in land held by a State enterprise, being land or an interest in land transferred to that State enterprise under section 23 of this Act or vested in that State enterprise by an Order in Council made under section 28 of this Act, is Wahi Tapu, being land of special spiritual, cultural, or historical tribal significance, the Governor-General may, by Order in Council published in the *Gazette*, declare— 15 20

“(a) That that land or interest in land shall be resumed by the Crown on a date specified in the Order in Council; and

“(b) That, on the date of its resumption pursuant to the Order in Council, that land or interest in land shall be no longer liable to resumption under **section 27B** of this Act. 25

Struck Out

“(2) Where any land is to be resumed pursuant to **subsection (1) (a)** of this section,— 30

“(a) The State enterprise shall transfer the land to the Crown on the date specified in the Order in Council; and

“(b) The Crown shall pay to the State enterprise an amount equal to the value of the interest of the State enterprise in the land (including any improvements thereon). The amount of any such value shall be that agreed between the State enterprise and its shareholding Ministers or, failing agreement, that determined by a person approved for this purpose 35

Struck Out

by the State enterprise and its shareholding Ministers.

New

- 5 “(2) Where any land or interest in land is to be resumed pursuant to **subsection (1) (a)** of this section—
- “**(a)** The State enterprise shall transfer the land or interest in land to the Crown on the date specified in the Order in Council; and
- 10 “**(b)** The Crown shall pay to the State enterprise in respect of the land or interest in land the compensation that would have been payable to the State enterprise if, on the date specified in the Order in Council made under **subsection (1)** of this section, the land or interest
- 15 in land had, pursuant to **section 27c** of this Act, been acquired by the Minister of Lands under Part II of the Public Works Act 1981.

- “**(3)** Every memorandum of transfer executed pursuant to an Order in Council made under **subsection (1)** of this section—
- 20 “**(a)** Shall recite that it is so executed; and
- “**(b)** Shall give both the date of the Order in Council and the date of its publication in the *Gazette*.
- “**(4)** Upon its resumption pursuant to **subsection (1) (a)** of this section, the land or interest in land shall be dealt with in
- 25 accordance with an agreement made between the Crown and the relevant tribe or, if they fail to agree, in accordance with any recommendation of the Waitangi Tribunal pursuant to an application made under section 6 of the Treaty of Waitangi Act 1975.

New

“**(5)** A resumption of land or of an interest in land pursuant to **subsection (1) (a)** of this section is not a subdivision within the meaning of section 271 or section 272 of the Local Government Act 1974.”

- 35 (2) The rights conferred by **sections 27 to 27d** of the principal Act (as substituted by **subsection (1)** of this section) are in substitution for the rights conferred by section 27 of the

principal Act (as enacted in 1986) and no land or interest in land transferred to a State enterprise pursuant to this Act shall, after the commencement of this Act, be subject to paragraphs (b) and (c) of subsection (1) of the repealed section 27.

11. New Schedule 2A inserted—The principal Act is hereby amended by inserting, after the Second Schedule, the Schedule 2A set out in the Schedule to this Act.

New

11A. Amendments to Maori Affairs Act 1953—(1) Section 30 (1) of the Maori Affairs Act 1953 is hereby amended by adding the following paragraph:

“(m) To determine whether any land or interest in land to which section 8A of the Treaty of Waitangi Act 1975 applies should, under section 439A of this Act, be set aside as a reservation.”

(2) Section 439A (1) of the Maori Affairs Act 1953 (as inserted by section 60 of the Maori Affairs Amendment Act 1974) is hereby amended—

- (a) By inserting, after the words “Crown land”, the words “land or an interest in land to which section 8A of the Treaty of Waitangi Act 1975 applies,”; and
- (b) By adding, after the word “Secretary” (as substituted by section 8 of the Maori Purposes Act 1982), the words “or, in the case of land or an interest in land to which section 8A of the Treaty of Waitangi Act 1975 applies, to the Minister”.

PART III

AMENDMENTS TO LEGAL AID ACT 1969

12. This Part to be read with Legal Aid Act 1969—This Part of this Act shall be read together with and deemed part of the Legal Aid Act 1969* (in this Part referred to as the principal Act).

*Reprinted 1975, Vol. 3, p. 2111

Amendments: 1976, No. 99; 1980, No. 42; 1983, No. 79; 1986, No. 59; 1986, No. 95

13. Interpretation—Section 2 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:
“(2) Notwithstanding anything in the definition of the term ‘person’ in subsection (1) of this section, where a Maori submits a claim to the Waitangi Tribunal under section 6 of the Treaty

of Waitangi Act 1975, either on his or her own behalf or on behalf of any group of Maori of which he or she is a member, nothing in that definition prevents legal aid being made available to that Maori, for the purposes of the proceedings in relation to that claim.”

14. Scope of legal aid—Section 15 (1) of the principal Act is hereby amended by inserting, after paragraph (h), the following paragraph:

Struck Out

10 “(ha) Proceedings before the Waitangi Tribunal in any case where the District Committee considering the application is of the opinion—

15 “(i) That the case is one that requires legal representation having regard to the nature of the proceedings and to the personal interest of the applicant or of any group of Maori of which the applicant is a member; and

20 “(ii) Subject to section 31A of this Act, the applicant or any group of Maori of which the applicant is a member would suffer substantial hardship if aid were not granted.”

New

“(ha) Proceedings before the Waitangi Tribunal.”

15. Applications in respect of claims before Waitangi Tribunal—The principal Act is hereby amended by inserting, after section 31, the following section:

“31A. (1) This section applies to every application for legal aid made in relation to a claim submitted or to be submitted by a Maori under section 6 of the Treaty of Waitangi Act 1975.

Struck Out

30 “(2) The District Committee shall refuse to grant an application to which this section applies if it is satisfied—

35 “(a) That the personal interest of the claimant or of the group of Maori on whose behalf the claim is submitted is sufficiently protected by any other claim or claims; or

Struck Out

- “(b) Where the claim is submitted by the claimant on behalf of a group of Maori of which the claimant is a member, that—
- “(i) The claimant has not supplied the District 5
Committee with sufficient information concerning the financial resources which are available, or which might reasonably be expected to be available, to the group; or
- “(ii) The financial resources which are available, 10
or which might reasonably be expected to be available, to the group are such that the group can afford to proceed without legal aid.

New

- “(2) Subject to **subsection (2A)** of this section, the District 15
Committee shall grant an application to which this section applies only if it is satisfied—
- “(a) That the case is one that requires legal representation having regard to the nature of the proceedings and to the personal interest of the applicant or of any 20
group of Maori of which the applicant is a member; and
- “(b) That the applicant or any group of Maori of which the applicant is a member would suffer substantial hardship if aid were not granted; and 25
- “(c) That the personal interest of the claimant or of the group of Maori on whose behalf the claim is submitted is not sufficiently protected by any other claim or claims.
- “(2A) Where the claim is submitted by the claimant on behalf 30
of a group of Maori of which the claimant is a member,—
- “(a) The District Committee may, in determining for the purpose of **subsection (2) (b)** of this section whether the group would suffer substantial hardship if aid were not granted, take account not only of the financial 35
resources of the group and its members but also of the extent to which persons who could be members of the group might reasonably be expected to contribute from their financial resources towards the costs of the proceedings; and 40

New

- 5 “(b) The District Committee shall refuse to grant the application made in relation to that claim if the claimant does not supply the District Committee with sufficient information concerning the financial resources of—
- “(i) The group and its members; and
- 10 “(ii) Any other persons who could be members of the group and who might reasonably be expected to contribute from their financial resources towards the costs of the proceedings.
- 15 “(3) An applicant under an application to which this section applies shall not be denied legal aid by reason of the provisions of section 17 (1) of this Act relating to disposable income and no such application shall be refused under section 23 (2) (b) of this Act.
- 20 “(4) Where a Maori receives, by virtue of an application to which this section applies, legal aid in connection with the proceedings on any claim—
- “**(a)** Nothing in subsections (1) and (3) of section 18 of this Act shall apply, in relation to that application, in respect of that Maori or the group on whose behalf the claim is submitted; but
- 25 “**(b)** That Maori and the group (if any) on whose behalf the claim is submitted shall, if the District Committee so directs, be required to make to the Crown a contribution of such amount as the District Committee determines (which amount shall be fair and reasonable having regard to the resources of that Maori or, in the case of a claim on behalf of a group of Maori, to the financial resources referred to in **(subsection (2) (b) (iii)) subsection (2A)** of this section, and to the likely costs of the proceedings), and the provisions of section 18 of this Act (other than those
- 30 of subsections (1) and (3)) shall apply, with all necessary modifications, as if the District Committee had granted legal aid not only to that Maori but also to the group; and
- 35 “**(c)** In relation to that Maori and to the group (if any) on whose behalf the claim is submitted,—
- 40 “(i) Section 17 (2) (c) of this Act shall have effect as if there were substituted for the words ‘up to the

limit specified in section 18', the words 'in accordance with **section 31A (4) (b)**'; and

“(ii) The first proviso to section 17 (2) (e) of this Act shall have effect as if there were substituted for the words ‘paragraph (c) of this subsection’, the words ‘**section 31A (4) (b)** of this Act’; and 5

“(d) If the contributions paid to the Crown by the group pursuant to a direction of the District Committee under **paragraph (b)** of this subsection exceed the aggregate amount of the sums referred to in 10 paragraphs (a) and (b) of section 18 (7) of this Act, the excess shall be repaid to the group in such proportions and in such manner as the District Committee directs.

“(5) For the purposes of an application to which this section 15 applies, it is hereby declared that, notwithstanding anything in section 19 of this Act,—

“(a) The disposable income of the applicant and of every member of the group shall include any rent derived from Maori land or interests in Maori land; but 20

“(b) The disposable capital of the applicant and of every member of the group shall not include any Maori land or any interests in Maori land.

“(6) Except as expressly provided in this section, nothing in this section limits the application of the other provisions of this 25 Act in respect of any application to which this section applies.”

SCHEDULE

Section 11

NEW SCHEDULE 2A TO STATE-OWNED ENTERPRISES ACT 1986

SCHEDULE 2A

Section 27c

MODIFICATIONS OF PROVISIONS OF PUBLIC WORKS ACT 1981 APPLICABLE
TO ACQUISITION OF LAND PURSUANT TO RECOMMENDATION OF
WAITANGI TRIBUNAL

1. For the purposes of section 27c of this Act, the following provisions of Part II of the Public Works Act 1981 and of the Third Schedule to that Act shall not apply, namely:

- (a) Section 23 (1) (b) (iv);
- (b) Section 23 (3);
- (c) Sections 24 and 25;
- (d) Form B in the Third Schedule.

2. For the purposes of section 27c of this Act, section 23 (1) (b) of the Public Works Act 1981 shall have effect as if, for subparagraphs (ii) and (iii), there were substituted the following subparagraph:

“(ii) A statement that the land is to be resumed under section 27c of the State-Owned Enterprises Act 1986 pursuant to a recommendation of the Waitangi Tribunal; and”.

3. For the purposes of section 27c of this Act, section 26 of the Public Works Act 1981 shall have effect as if, for subsection (1), there were substituted the following subsection:

“(1) After the expiration of the period of 20 working days specified in the notice served under section 23 (1) (c) of this Act, the land intended to be taken shall be taken in the following manner:

“(a) Subject to the provisions of section 32 of this Act—

“(i) A survey plan shall be prepared, in duplicate, showing accurately the position and extent of the land proposed to be taken; and

“(ii) Such plan shall be signed by the Chief Surveyor as evidence of its accuracy; and

“(iii) A duplicate print of the title plan shall be prepared; and

“(b) The Minister shall recommend the Governor-General to issue a Proclamation taking the land.”

4. For the purposes of section 27c of this Act, the First Schedule to the Public Works Act 1981 shall have effect as if, for the form set out in that Schedule, there were substituted the following form:

“NOTE OF INTENTION TO TAKE LAND IN [*Insert name of Borough, County, or District*] FOR THE PURPOSE OF GIVING EFFECT TO A RECOMMENDATION OF THE WAITANGI TRIBUNAL

To [*Full Name*] of [*Address*]

1. Take notice that the Minister of Works and Development proposes to take under the Public Works Act 1981 your interest in the land described in the Schedule to this notice.

2. The land is to be resumed under section 27c of the State-Owned Enterprises Act 1986 pursuant to a recommendation of the Waitangi Tribunal. That Tribunal recommended on [*Date*] that the land be returned to Maori ownership.

3. A copy of the recommendation of the Waitangi Tribunal is attached.

4. A plan of the land intended to be taken is attached.

[*May be deleted if all the land is in a surveyed lot.*]

SCHEDULE—*continued*NEW SCHEDULE 2A TO STATE-OWNED ENTERPRISES ACT 1986—*continued*SCHEDULE 2A—*continued*MODIFICATIONS OF PROVISIONS OF PUBLIC WORKS ACT 1981 APPLICABLE
TO ACQUISITION OF LAND PURSUANT TO RECOMMENDATION OF
WAITANGI TRIBUNAL—*continued*

OBLIGATION TO ACQUIRE LAND

5. Under section 27c of the State-Owned Enterprises Act 1986, the Minister of Works and Development is obliged to acquire your interest in the land.

6. Your interest in the land will not be acquired until at least 20 working days after the service of this notice on you.

YOUR RIGHT TO COMPENSATION

7. This notice relates to the taking of your interest in the land and not to your right to compensation. Under the Public Works Act 1981 you are entitled to full compensation for your interest in the land. If this compensation cannot be agreed between you and the Minister of Works and Development, it can be determined in separate proceedings before the Land Valuation Tribunal.

WARNING

THIS NOTICE CONCERNS YOUR RIGHTS OVER THE LAND REFERRED TO. IF YOU ARE IN ANY DOUBT ABOUT ITS EFFECT YOU SHOULD OBTAIN LEGAL ADVICE IMMEDIATELY.

Do not delay.

[*Insert name*] Land District

[*Give general description of the land required to be taken, including the postal address or some other readily identifiable description of the place where the land is situated.*]

[*Add legal description of land*]

Dated at this day of 19.....

[*Signature*]for Minister of Works and
Development”

6. For the purposes of section 27c of this Act, Form A in the Third Schedule to the Public Works Act 1981 shall have effect as if—

(a) For the words “or [*Name of local authority*] for the purpose of [*Insert name of public work mentioned in Proclamation or declaration*]”, there were substituted the words “so that it can be returned to Maori ownership pursuant to a recommendation of the Waitangi Tribunal”;

(b) For the words “said work”, there were substituted the words “taking of the land mentioned in Table A below”:

SCHEDULE—*continued*

NEW SCHEDULE 2A TO STATE-OWNED ENTERPRISES ACT 1986—*continued*

SCHEDULE 2A—*continued*

MODIFICATIONS OF PROVISIONS OF PUBLIC WORKS ACT 1981 APPLICABLE
TO ACQUISITION OF LAND PURSUANT TO RECOMMENDATION OF
WAITANGI TRIBUNAL—*continued*

- (c) For the words “said land and the construction of the said public work”, there were substituted the words “land mentioned in Table A below”.