

Te Pire Whakatikatika Te Ture Whenua Maori (Tauatanga, Whakataunga Tautohe, me ngā Take e Pā ana)

Pire Kāwanatanga

E ai ki tērā nā Te Komiti Whiriwhiri Take Māori i pūrongo

Ngā Kōrero

Tūtohutanga

Kua tirohia e Te Komiti Whiriwhiri Take Māori Te Pire Whakatikatika Te Ture Whenua Maori (Tauatanga, Whakataunga Tautohe, me ngā Take e Pā ana), ā, e tūtohu ana kia whakamanatia i te taha o ngā menemana kua whakaaturia.

E pā ana ki te pire nei

E rapu ana Te Pire Whakatikatika Te Ture Whenua Maori (Tauatanga, Whakataunga Tautohe, me ngā Take e Pā ana) ki te whakatūturu ka pai ake ngā ture whakahaere i te whenua Māori mō ngā kaupuri, ō rātou whānau, ō rātou hapū hoki. Ka rapu te pire ki te tīni i ētahi āhuatanga whaikiko, āhuatanga hangarau hoki kia māmā ake ai, ā, kia māmā ake hoki ngā hiahia i runga i ngā tāngata Māori e uru ana ki ngā mahi a te kōti mō ō rātou whenua Māori te take.

Tērā ētahi menemana ki Te Ture Whenua Maori 1993 ka oti i te pire nei. Ka whakatū te Ture i te poutarāwaho ā-ture mō te puritanga whenua Māori, ā, ka tautoko i ngā kaupuri whenua Māori ki te pupuri tonu, ki te whakamahi hoki i ō rātou whenua.

Ka rapu te pire ki te whakapai atu i te hātepe tauatanga ki ngā pānga whenua Māori, ā, ka whakarite i te wāhi mō tētahi hātepe whakatau tautohe hou. Ka whakamanatia hoki te Kōti Whenua Māori ki te pā atu ki ētahi atu take huhua e pā ana ki te whenua Māori, ā, ka whakatūturu i te whaikiko, i te whaitake o ngā rongoā e wātea ana ki te kōti. Ka rapu hoki te pire ki te whakatūturu i te pai o te pūnaha pupuri whenua Māori e ai ki tana pūtake, ā, ki te whakatūturu i tōna pai mō ngā tau e heke mai nei.

Mā ngā tīninga e marohitia nei e māmā ake ai ka tutuki i ngā kaipupuri whenua Māori ō rātou wawata mō ō rātou whenua Māori, e piki ai hoki te oranga o ngā whānau mō ngā whakatupuranga e haere ake nei.

Ngā kōrero

Ka noho te pire nei hei wāhanga o te Hōtaka Whenua Māori a te Kāwanatanga, te arahina tahitia nei e Te Puni Kōkiri me Te Tāhu o te Ture. Ko ngā whāinga o te hōtaka nei ko te tūhono i te Māori ki ōna whenua, ā, ko te hoatu ki ngā kaipupuri whenua Māori i ngā rawa kia pai ai te whakahaere, te whakarite, te whakawhanake hoki i ōna whenua. Whai ai te hōtaka ki te tautoko hoki i ngā whānau ki te whakawhānui i te haumako o ō rātou whenua, ko te whāinga ia kia ora ai, kia tōnui ai rātou i te whenua.

Hopukina ai ki te hōtaka nei ko te panonitanga ā-ture, ā, ko te pire nei tētahi wāhanga ōna. Ko tētahi atu wāhanga ko te Local Government (Rating of Whenua Māori) Amendment Bill, te whakaaroarotia nei e tēnei komiti i tēnei wā. E whakaarohia ana te whakaurunga o ētahi atu panonitanga whakatureture mō te tau 2020.

Ngā menemana i marohitia

Kapi ai e tēnei kōrero ngā menemana matua nā mātou i tūtohu ki te pire i whakaurua rā. Kīhai mātou e matapaki menemana ririki, menemana hangarau rānei.

Tauatanga

I roto i te Ture, ko te mea nei te tauatanga te whakawhitinga pānga whenua Māori i tētahi kaipupuri kua mate ki ōna uri, ki ōna kaiwhaipainga. E whiwhi pānga whenua Māori ai te tangata, me tono ki te Kōti Whenua Māori. Ko te tohutohu ki a mātou he wāhi nui aua tono o ngā mahi a te kōti. Me rongo rawa ngā tono i tētahi nōhanga o te kōti, me te aha he nui pea te moni, he nui te wā ka pau i taua hātepe mō te whānau.

Tuku ai te wāhanga hou o te Ture, arā 113A te whakaurua nei e te rārangi 26 o te pire, kia whakawāngia e te Kairēhita o te Kōti Whenua Māori ngā tono tauatanga māmā, ngā tono kīhai i tautohea. Ehara i te mea me rongo i tētahi nōhanga tūturu o te kōti.

E rua tekau mā iwa ngā kaitāpae i tuku kōrero mō te marohitanga nei. I waenga i a rātou, 16 i tautoko i te marohitanga, tokorima i ātete. Hei tā ngā kaitautoko, ka māmā atu te hātepe tauatanga, ka poto atu te tātaritanga o ngā tono, ka māmā atu ngā utu, ka whai wā hoki te kōti ki te whai i ētahi take taumaha kē atu, i runga i te whakataunga o aua tono e te kairēhita kē. Hei tā ngā kaiātete, e whakapono ana rātou me waiho mā te kaiwhakawā rawa ngā tono tauatanga e whakatau, he take ā-ture taumaha nō aua tono.

I te mutunga iho, ki ō mātou whakaaro me ka taea ngā tono māmā, ngā tono kīhai i tautohea te whakatau e te kairēhita o te kōti, ka māmā atu te hātepe mō ngā whānau. Heoi, tērā ētahi menemana e tūtohua nei e mātou.

I raro i te wāhanga 113A hou i whakaurua rā, ka hiahiatia kia inoi te kaitono kia whakatauria te tono e tētahi kairēhita. Ka tūtohu mātou kia menemanatia te rārangi 26 o te

wāhanga 113A(1) hou kia kaua te kaitono e mate ki te inoi i te kairēhita. Ka whakawāngia e tētahi kairēhita māna ka inoi kia kaua e pērā. Mā tā mātou menemana e āhei ai te kaitono ki te kōwhiri kia kaua e whakawāngia e te kairēhita, ina ka hiahia ia kia whakawāngia e te kaiwhakawā.

I kōrerohia e ngā kaitāpae ngā kupu nei te “māmā” me te “kīhai i tautohea”, ā, i kimi whakamāramatanga anō rātou. Ka tūtohu mātou kia menemanatia te wāhanga hou e marohitia ana, arā 113A(8). Ka rīwhi ngā kōwae (a) me te (b) ki ā mātou menemana, kia whakawhānuitia ai ngā tauira o te tauatanga “māmā”. Waihoki ka whakaurua he whakamāramatanga mārama atu o te kupu “kīhai i tautohea”. E whakapono ana mātou ka āwhina ā mātou menemana ki te whakamārama i te tikanga o te kōrero “he tauatanga māmā, kīhai i tautohea”.

Ngā tarāti

Ka tūtohu mātou kia tāruatia ki te rārangi 41, i te wāhanga hou 235A(9) o te Ture, ko ngā menemana i runga nei e pā ana ki te tikanga o te “māmā” me te “kīhai i tautohea” kia mārama ai. Ka whakatakoto taua rārangi kia āhei te kairēhita ki te whakatau i ngā take tarāti māmā kīhai i tautohea.

Whāngai

Ka whakatakoto te rārangi 27 me te rārangi 28 o te pire i ngā ritenga e pā ana ki ngā tamariki whāngai. Ko te whāngai he tangata i whāngaia i raro i ngā tikanga Māori, kaua i raro i te ture, arā te Adoption Act 1955. I tēnei wā, ka whiwhi te whāngai ki te tauatanga pānga whenua mehemea ka whakatau te Kōti Whenua Māori i whakamanatia ōkawatia ia hei whāngai o te kaipupuri mate. Kāore te Ture e whakatakoto i ngā kaupapa hei whiriwhiri mā te kōti i te whakataunga o te take nei.

Ka whakarite te pire kia whakatauria te mana o te whāngai e pā ana ki te tauatanga o te mana whenua Māori i raro i ngā tikanga a te iwi, a te hapū rānei e tika ana. E aroā ana mātou ki te āwangawanga e pā ana ki te tukunga ki te whāngai o te whenua aha-koa kāore ōna pānga whakapapa. Kāore mātou e whakapono e tika ana kia riro mā te pire nei e hāpai ake te uri whakaheke ki runga ake i te whāngai, ā, kīhai mātou e tūtohu whakarerekētanga ki te pire i tēnei āhuatanga.

Ka tūtohu mātou i ētahi rerekētanga ririki, ētahi rerekētanga hangarau hoki ki te rārangi 28, te wāhanga hou 116(1)(b), me te wāhanga 116(3)(b). Ka whakamārama te tuatahi o aua menemana ka taea tētahi ōta te whakatau kia whiwhi ai te whāngai ki te whiwhinga moni katoa o te whenua Māori, ki tētahi wāhi rānei o taua moni. Ka whakatūturu tā mātou menemana i te āheinga ki te tohatoha i te whiwhinga moni i waenga i ngā whāngai me ētahi atu uri (hei tauira ngā tamariki tonu). Ka whakatūturu tā mātou menemana tuarua i te aronga o taua wāhanga ki te mana o te Kōti Whānau, ki te Kōti Teitei hoki, kia hāngai ai ki ngā Ture e kōrerohia ana i roto i taua wāhanga.

Ngā hoa rangatira mōrehu

I raro i te Ture, i te matenga o tētahi kaipupuri whenua, ka whakawhiwhia pea tētahi pānga orange ki tana hoa rangatira e mōrehu mai ana, e pā ana ki te pupuritanga o ngā pānga whenua Māori o te tangata i mate. Me te aha e wātea ana rātou ki te whiwhinga

moni, te karāti rānei mai i aua pānga; e wātea ana ki te noho ki roto i te kāinga o te whānau i runga i taua whenua; ā, e whai wāhi ana ki ngā whakataunga e pā ana ki te whenua (hei tauira mā te pōti). Tukuna ai aua pānga puritanga ki ngā uri o te kaipupuri i muri anake i te matenga o te hoa rangatira, i tana piringa ki tētahi tangata kē atu, i te whakahaurarotanga o ōna pānga rānei.

Ka whakamana te pire i ngā uri ki te rīwhi wawe i ngā pānga, ahakoa e mōrehu ana te hoa rangatira o te tangata mate. Ka wātea te hoa rangatira ki ngā tikanga mō te roanga o tana oranga, ki ngā whiwhinga moni me ngā karāti mai i ngā pānga o te tangata mate, ā, me te noho hoki ki roto i te whare o te whānau mehemea kei runga taua whare i te whenua. Heoi anō, ka kore te hoa rangatira mōrehu e wātea ki te pōti mō ngā whakataunga e pā ana ki te whenua.

Ki ō mātou whakaaro, me pupuri, me whakahou hoki te Kōti Whenua Māori i ngā rōpū mauhanga hou mō ngā tikanga noho, tikanga whiwhinga moni mō ngā hoa rangatira mōrehu me ngā whāngai. Nō reira ka tūtohu mātou kia whakarerekētia te rārangi 29, te wāhanga 127(1) me te (2). Ka herea te kairēhita e tā mātou menemana ki te āta tuhi i ngā rōpū hou o ngā tikanga noho, tikanga whiwhinga moni mō ngā hoa rangatira hou, me ngā whāngai. E mārama ana ki a mātou ka hiahiatia ētahi panonitanga whakahaerenga a te kōti me ngā tarāti. Engari e pupuri tonu ana mātou ki tā mātou, arā, he tino tikanga tā te whakatūturu i te tika me te hou rawa o ēnei kōrero.

Te whakataunga tautohe

Ka whakarite te rārangi 19 i te hātepe takawaenga hei āwhina i te tangata ki te whakatau tautohe e pā ana ki ngā kaupapa nō te Kōti Whenua Māori te mana. Ka noho mai ngā tikanga Māori hei kaupapa mō te hātepe whakatau tautohe. Ka mōhio mātou ko te takunetanga kaupapa here ia kia kore he utu mō te hātepe whakatau tautohe. Ka whakakato te rārangi 87(2) ka whakarerekētia ngā Waeture Utu a te Kōti Whenua Māori hei whakakore i te utu tonu mō te hātepe nei.

Ko te tohutohu ki a mātou ka tūwhera te hātepe nei ki ngā whakawānga kei mua kē i te aroaro o te Kōti Whenua Māori, ā, ki ngā tautohe kāore anō kia rapua he whakawānga kōti, kāore anō kia tīmata rānei. Ka āhei te kaitono ki te kōwhiri i tōna ake kaitakawaenga hei āwhina ki te whakatau tautohe. Heoi, i te tīmatanga ka noho mai ngā kaiwhakawā o te Kōti Whenua Māori hei kaitakawaenga. Mā reira e mārama ake ai ki Te Tāhu o te Ture te hiahia ki ngā ratonga, te āhua o ngā tautohe hoki, ā, ka āhei ki te whakaemi mai i ngā kaitakawaenga pai.

Ka tūtohu mātou i tētahi menemana iti ki te rārangi 19, arā te wāhanga 98N(1) hou, hei whakamārama i te wāhi ki te kaiwhakawā i ngā mahi takawaenga. Manohi anō, ka kore te kaiwhakawā e wātea ki te noho ki ngā whakawānga a te kōti mō tētahi take e pā ana ki ngā kaupapa i noho ai ia hei kaitakawaenga.

Te mana o te Kōti Whenua Māori

Kāore i te Kōti Whenua Māori te mana ki te whakawā i ētahi take e pā ana ki ngā whenua Māori, ahakoa koirā te wāhi ture e tika ana. Ka whakahoki te pire i whakaurua i te mana o te Kōti Whenua Māori i raro i te Family Protection Act 1955, ā, ka

whakamana i a ia ki te whakawā i ngā kerēme ōhāki i raro i te Law Reform (Testamentary Promises) Act 1949. Ka whakawhānuitia hoki te mana o te kōti e pā ana ki ētahi kaupapa i raro i te Government Roding Powers Act 1989, te Local Government Act 1974, me te Property Law Act 2007. Ka rite tahi te mana o te kōti ki ō ētahi atu kōti ki te whakawā i aua take.

I rongo mātou ka pai atu te whakamahinga o te mātauranga o ōna kaiwhakawā i te tukunga o te Kōti Whenua Māori ki te whakawā i ētahi kaupapa whānui atu. Arā he kaiwhakawā e tino mārāma ana ki te āhuatanga o te whānau, o te ao Māori whānui, me te hononga o te Māori ki te whenua.

E mōhio ana mātou ka hoatu te pire i whakaurua he herenga kia tukuna ki te Kōti ā-Rohe ngā tono i raro i te Property Law Act 2007, arā ko ngā tono e pā ana ki ngā tikanga whakamahi, ki ngā kawenata rānei, mehemea ka pā atu aua tono ki te whenua whirīhoura Māori me ētahi atu whenua hoki. Heoi anō, ka mōhio hoki mātou e whakawāngia kētia ana e te Kōti Whenua Māori ngā tono ki te whakatū, ki te whakarerekē, ki te whakakore rānei i te tikanga whakamahi e pā ana ki te whenua whirīhoura Māori me te whenua Whānui hoki. Ka tūtohu mātou kia whakarerekētia te rārangi 8, te wāhanga 22B(1) hou me te wāhanga (2), kia āhei ai te whakawānga o ngā tono e te Kōti ā-Rohe, e te Kōti Whenua Māori hoki, ahakoa ka pā atu te tono ki te whenua whirīhoura Māori anake rānei, ki te whenua whirīhoura Māori me ētahi atu momo whenua rānei.

Te mana ōta o te Kōti Whenua Māori

Ka whakatakoto te rārangi 6, te whakarerekē nei i te wāhanga 19, i te mana o te kōti e pā ana ki ngā ōta. Ka tono ana te whānau mō te ōta, ka whakarite te pire i te āheinga o te Kōti Whenua Māori ki te whakahau i tētahi tangata ki te tango, ki te whakahoki rānei i tētahi rawa, i tētahi whare rānei, ā, ki te whakatika i ngā whakakinonga o te whenua.

Ka hoatu te pire nei i te āheinga kia pā te ōta ki te whenua Māori, te whenua rāhui Māori, te whenua Whānui nō te Māori rānei. I tēnei wā, ka taparere te mana ōta o te kōti ki te whenua whirīhoura Māori e te Ture. E aroā ana mātou ki te āwangawanga kei taumaha ake ngā ritenga tautukunga mō ngā hinonga Māori, i te whakawhānuitanga o ngā mana ōta o te kōti ki te whenua Whānui nō te Māori. Tā te mea kua whakaurua te whenua e puritia ana e ngā hinonga ō muri i te whakataunga ki roto ki te whenua Whānui nō te Māori hoki. Nā konei, ka tūtohu mātou kia whakarerekētia te rārangi nei, ka tangohia te kōrero mō “te whenua Whānui nō te Māori” i te rārangi 6 o te pire. Ko te tohutohu ki a mātou ka whiriwhiria pea te take nei i roto i ngā mahinga kaupapa here o te Ture ā muri nei.

Te mana hoko tuatahi

Ka hoatu te wāhanga 147A o te Ture te herenga i te kaupuri o te whenua whirīhoura Māori e hiahia ana ki te tuku i taua whenua mā te hoko, mā te takoha rānei. Arā me tuku i te mana hoko tuatahi ki ngā mema o ngā rōpū kaitango e paitia rawatia ana (ko

ngā rōpū tāngata e tino whai wāhi ana ki ngā whakatau e pā ana ki te whenua Māori, hei taura ko te whānau, ko te hapū rānei o te kaupupuri).

Ka tūtohu mātou kia whakarerekētia te rārangi 36, te wāhanga 147A(4), kia whakahaua te kaihoko, te kaitakoha rānei ki te ngana mārika ki te kimi i te wāhi noho o ngā mema o ngā rōpū kaitango e paitia rawatia ana, nōna i whakamōhio atu ki a rātou. Me tā rawa hoki te pānui ki tētahi pae tukutuku e kore utu ai te toronga atu a ngā mema, ā, ki tētahi niupepa hoki e whakaputaina ana ki te rohe kei reira te whenua. Ka āwhina tā mātou menemana ki te whakatūturu ka aroā ngā whānau ki te hokonga, ki te takohanga rānei o ētahi whenua e whai pānga ai rātou.

Ka tūtohu hoki mātou kia whakaurua te wāhanga 147A(7) hei whakamārama i te āheinga o te kaihoko, o te kaitakoha rānei ki te tono ki te kōti, rapu ai i tētahi whakataunga e pā ana ki ngā mea e hiahia ana kia tutuki ai ōna herenga i raro i tēnei wāhanga.

Te whenua Māori e karapotia ana

Ka aro te pire i whakaurua ki ētahi o ngā taumahatanga i tautohua, me ngā tono kia pai tonu ai te whātoro ki ngā whenua Māori e karapotia ana. Ka whakaaroahia ana tēnei momo tono, ka whakarite te pire kia whai whakaaro te kōti ki te hononga o te kaitono ki te whenua, ā, ki te ahurea me ngā tikanga a te kaitono e pā ana ki te whenua.

Ka tūtohu mātou i tētahi menemana ki te rārangi 55, te wāhanga 326B(4)(a). Ka whakaaroahia ana tētahi tono mō te whātoro ki ngā whenua e karapotia ana, ka whakarite te wāhanga nei kia whai whakaaro te Kōti Whenua Māori ki te āhua, ki te māmā hoki o te whātoro ki te whenua e karapotia ana, i te wā i hokona te whenua e te kaitono, i riro ai te whenua rānei (waihoki i te wā i whiwhi ā-rīwhi nei ki tētahi pānga whenua). Ki ō mātou whakaaro he uua pea ki te whakaatu i te puritanga tonutanga o te whenua e ngā uri o ōna kaupupuri taketake. Nā reira mātou i tūtohu ai kia rīwhitia te wāhanga 326B(4) ki te āta whakatakoto, ka pā tēnei ritenga mehemea i hoko te kaitono i te whenua. Ka whakamāmā tā mātou menemana i te hātepe mō ngā tāngata Māori e ngana nei ki te whātoro ki ngā whenua e karapotia ana.

Te rūri i te whenua Māori

I raro i te Ture, e āhei ana te Kōti Whenua Māori ki te whakahau i te Kairūri Mataamua, māna e whakarite kia rūritia tētahi poraka whenua Māori. E āhei ana ia ki te āki utu hoki ki runga i te poraka kia whakautua mārikatia ai te utu o te rūritanga. I ngā wā ō mua, nā konei i riro atu ai te whenua o te kaupupuri i te korenga ōna e taea te utu rūri te whakautu. Ka tango te pire i whakaurua i te mana o te kōti ki te whakahau i te rūritanga o te whenua Māori, ā, ki te āki utu mō te utu rūri.

E whakaae ana mātou me kaua e āhei te kōti ki te āki utu ki runga i te whenua Māori hei whakautu i te utu rūri. Heoi anō, ki ō mātou whakaaro me mau tonu te mana ki te whakahau rūritanga. Te tangohanga o te mana nei, ka hua ake pea ētahi take tūturu mō te kaupupuri e whakaaro ana ki te whakarerekē, ki te whakapai rānei i tōna taitara whenua. Ka kite hoki mātou ka karapotia ana te whenua, ka mate ngā kaupupuri ki te

rūri anō i te whenua kia mārama ai te takotoranga o tētahi rori, o tētahi ara whai tika-nga rānei ki runga i ngā whenua kei ngā tahataha e piri ana. Ka whakaaro hoki mātou e tika ana kia āhei te kōti anō rā ki te whakahau rūritanga, ā, kāore he take kia whaka-whitia atu te ōta ki te Kairūri Matua.

Ka tūtohu ētahi o mātou kia whakarerekētia te rārangi 58, te 59 hoki, ka whakaurua te rārangi 58A, te 59A, te 59B hoki. Ka rīwhitia te wāhanga 332 o te Ture ki ēnei rerekētanga, ka whakakore te wāhanga 333 me te 336, ā, ka whakarerekētia te wāhanga 334, me te 335.

Mā ā mātou menemana e mana ai te Kōti Whenua Māori ki te whakahau tonu i te rūritanga o te whenua Māori (māna anō, kaua mā te Kairūri Matua). Heoi anō ka whakatūturu hoki ia ka kore te utu e ākina ki runga i te whenua kia riro ai te utu rūritanga. Ka taukī te wāhanga 332(3) ka kore e āhei te ōta te tuku, māna e ea ana ngā whakaaro o te kōti i te mea kua whakautua, kua pungatia paitia rānei te utu o te rūritanga e marohitia ana. Te whakakorenga o te wāhanga 333, ka unuhia te mana o te kōti ki te tuku ōta whakautu ki runga i te whenua e pā ana ki tētahi rūritanga.

Ka tūtohu hoki mātou i tētahi menemana ririki, menemana hangarau hei whakahou i te reo puta noa i te Ture, ka rīwhitia te kupu “Kairūri Mataamua” ki te kupu “Kairūri Matua”. Ka hāngai tēnei āhuatanga ki ngā whakarerekētanga o ngā kupu i te whakakorenga o te Survey Act 1986, ka rīwhitia ki te Cadastral Survey Act 2002.

Ngā tarāti Māori me ngā kaporeihana Māori

Ka whakahau te pire i whakaurua i ngā kaporeihana Māori ki te hanga, ki te whakahou hoki i tētahi rēhita pānga mō ngā mema o tana komiti whakahaere. Me pupuri te rēhita i ngā pānga pai, i ngā hinonga pai i te whenua whirīhoura Māori e puritia ana e te kaporeihana.

Ka tūtohu mātou kia whakarerekētia te rārangi 48, te wāhanga 274B(3) hou, ka taukī me pupuri rawa te rēhita pānga, ā-kikokiko rānei, ā-matihiko rānei. Ka tūtohu hoki mātou kia whakahoutia te wāhanga 274B(3), te wāhanga e pā ana ki te tirotirohanga o te rēhita pānga, kia takoto mai he kōrero mō te rēhita kikokiko me te rēhita matihiko i hua ake i tēnei rerekētanga. Waihoki, ka tūtohu mātou kia whakaurua te wāhanga 274B(5), ka taukī ka wātea pea ki runga pae tukutuku e wātea ana ki te iwi tūmatanui ko te rēhita pānga mehemea he matihiko te rēhita.

Ka whakamāmā ā mātou menemana i te toronga atu ki ngā kōrero i roto i te rēhita pānga, ā, ka whakapakari hoki i te tirotirohanga o mahi a ngā komiti whakahaere. Ka tūtohu hoki mātou kia whakarerekētia te wāhanga 274B(4), me te (5) hoki, ki te āta whakatakoto me kore utu te toronga atu ki ngā rēhita.

Tāpiritanga

Hātepe komiti

I tukuna te Pire Whakatikatika Te Ture Whenua Maori (Tauatanga, Whakataunga Tautohe, me ngā Take e Pā ana) ki te komiti i te 15 Whiringa-a-Nuku 2019. Ko te 26 Whiringa-ā-Rangi 2019 te rā katinga mō ngā tāpaetanga. E 73 ngā tāpaetanga i whiwhi, ā, i whakaarohia e mātou mai i ngā rōpū whai pānga me te hunga takitahi. I rongo taunakitanga ā-waha mātou mai i ngā kaitāpae e 19 i ngā whakawānga i Te Whanganui-a-Tara.

I whiwhi kupu tohutohu mātou mai i Te Puni Kōkiri me Te Tāhu o te Ture.

Mematanga komiti, ko

Rino Tirikatene (Heamana)

Dan Bidois

Marama Davidson

Joanne Hayes

Matt King

Adrian Rurawhe

Hōnore Nicky Wagner

Hōnore Meka Whaitiri

Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation

The Māori Affairs Committee has examined Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill and recommends that it be passed with the amendments shown.

About the bill

Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill seeks to ensure that the laws governing Māori land (whenua) work better for land owners, their whānau, and their hapū. The bill seeks to make practical and technical changes to reduce the complexity and compliance requirements that Māori encounter when engaging with the courts about their Māori land.

The bill would make a number of amendments to Te Ture Whenua Maori Act 1993. The Act provides the legislative framework for Māori land tenure and supports owners of Māori land to retain and use their land.

The bill seeks to improve the process for succeeding to interests in Māori land and provides for a new dispute resolution process. It would also enable the Māori Land Court to deal with a greater range of matters relating to Māori land, and would ensure that the remedies available to the court are practical and effective. The bill also seeks to ensure that the Māori land tenure system is fit for purpose and future-proofed.

The proposed changes would make it easier for Māori landowners to achieve their aspirations in regard to their Māori land, and help improve the intergenerational well-being of whānau.

Background

This bill forms part of the Government's Whenua Māori Programme, co-led by Te Puni Kōkiri and the Ministry of Justice. The programme's aim is to connect Māori with their whenua and provide Māori land owners with tools to govern, manage, and develop their land. The programme also aims to support whānau to increase the productivity of their whenua with a goal of having the land positively affect their wellbeing and prosperity.

The programme includes legislative reform, of which this bill forms one part. Another part is the Local Government (Rating of Whenua Māori) Amendment Bill, which is currently being considered by this committee. Further legislative reform is expected to be introduced in 2020.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We generally do not discuss minor or technical amendments.

Succession

In the Act, succession refers to the transfer of interests in Māori land from a deceased owner to their descendants and beneficiaries. To succeed to Māori land interests, a person must apply to the Māori Land Court. We were advised that these applications represent a large part of the court's business. The applications need to be heard at a sitting of the court, which means the process can be costly and time-consuming for whānau.

New section 113A of the Act, to be inserted by clause 26 of the bill, would allow simple and uncontested succession applications to be determined by a Māori Land Court Registrar, rather than requiring a full court hearing.

Twenty-nine submitters commented on this proposal. Of these, 16 support the proposal and 5 oppose it. Those who support the proposal said having applications determined by a registrar would simplify the succession process, shorten the time to deal with applications, reduce costs, and free up judicial time for more complex issues. Those who oppose the proposal told us they believe that succession applications should always be handled by a judge because they are complex matters of law.

On balance, it is our view that if simple and uncontested applications could be considered by a court registrar, it would make the process easier for whānau. However, we recommend some amendments.

As introduced, new section 113A would require an applicant to request that their matter be determined by a registrar. We recommend amending clause 26, new section 113A(1) so that the applicant would not need to request a registrar. They would be heard by a registrar unless they requested otherwise. Our amendment would also allow the applicant to opt out of being heard by a registrar if their preference was to be heard by a judge.

Submitters also discussed the terms “simple” and “uncontested” and sought further clarification. We recommend amending proposed new section 113A(8). Our amendments would replace paragraphs (a) and (b) to expand the examples of a “simple” succession, and include a clearer definition of the term “uncontested”. We believe that our amendments would help to clarify what a “simple and uncontested succession” means.

Trusts

For clarity, we recommend that the above amendments relating to the meaning of “simple” and “uncontested” be mirrored in clause 41, new section 235A(9) of the Act. This clause sets out that a registrar may determine simple and uncontested trust matters.

Whāngai

Clauses 27 and 28 of the bill set out the provisions relating to whāngai. A whāngai is a person adopted in accordance with Māori customary values and practices rather than by legal adoption under the Adoption Act 1955. Currently, whāngai are only entitled to succeed to interests in Māori land if the Māori Land Court determines that they have been formally recognised as the whāngai of the deceased owner. The Act does not set out what the court should consider when making this determination.

The bill as introduced provides that the eligibility of whāngai to succeed to ownership of Māori land would be determined by the tikanga of the relevant iwi or hapū. We are aware of concern about whāngai succeeding to land to which they do not have a whakapapa connection. We do not consider that the bill should provide that biological descendants have precedence over whāngai, and do not recommend any changes to the bill in this regard.

We recommend minor and technical changes to clause 28, new section 116(1)(b) and 116(3)(b). The first of these amendments would clarify that an order may be made giving whāngai the right to receive the whole or any part of the income from Māori land. Our amendment would ensure flexibility so that income could be shared between whāngai and other descendants (birth children, for example). Our second amendment would ensure that this section refers to the jurisdiction of the Family Court as well as the High Court, for consistency with the Acts referenced in the section.

Surviving spouses

Under the Act, after the death of a land owner their surviving spouse or partner may receive a life interest in the ownership of the deceased’s Māori land interests. This means they can receive income and grants from the interests, can occupy a family home situated on the land, and can participate (for instance, by voting) in decision-making about the land. These ownership interests only pass to the deceased owner’s descendants after the spouse or partner has died, entered a new relationship, or surrendered the rights.

The bill would enable descendants to succeed to their interests immediately, even when the deceased is survived by their spouse or partner. The spouse or partner would be entitled to lifetime rights to income and grants from the deceased owner's interests, as well as to occupy the family home if it is on the land. However, the surviving spouse or partner would no longer be able to vote in decisions about the land.

We consider that the Māori Land Court would need to keep and maintain records of the new categories of occupation and income rights for surviving spouses and whāngai. We therefore recommend amending clause 29, section 127(1) and (2). Our amendment would require the registrar to record the new categories of occupation and income rights for surviving spouses, partners, and whāngai. We understand that this would require some operational adaptation by the court and trusts, but maintain that keeping this information accurate and up to date is necessary.

Dispute resolution

Clause 19 would establish a mediation process to help people to resolve disputes about matters over which the Māori Land Court has jurisdiction. The dispute resolution process would draw on tikanga Māori. We note that the policy intent is that the dispute resolution process would be free. Clause 87(2) provides that Māori Land Court Fees Regulations would be changed so there would be no application fee to access the process.

We were advised that this process would be available for proceedings that are already before the Māori Land Court, as well as disputes for which court proceedings have not been sought or started. Applicants would be able to choose their own mediator to assist with the resolution of disputes. However, initially only Māori Land Court judges would act as mediators. This would allow the Ministry of Justice to better understand the demand for the services and the nature of the disputes, and to build a pool of suitable mediators.

We recommend a minor amendment to clause 19, new section 98N(1), to clarify a judge's role in mediation. Our amendment would make it clear that a judge could not act as a mediator on an issue that has already arisen from a matter they may be hearing in court and have referred to mediation. Conversely, a judge could not sit on court proceedings about a matter relating to issues for which they have acted as a mediator.

Powers of the Māori Land Court

The Māori Land Court does not have jurisdiction to hear certain matters relating to Māori land, even though it is the most appropriate judicial forum to do so. As introduced, the bill would restore the Māori Land Court's jurisdiction under the Family Protection Act 1955 and grant jurisdiction to deal with testamentary promises claims under the Law Reform (Testamentary Promises) Act 1949. It would also extend the court's jurisdiction relating to certain matters under the Government Roadway Powers Act 1989, the Local Government Act 1974, and the Property Law Act 2007. The court's jurisdiction would be concurrent with that of other courts.

We heard that allowing the Māori Land Court to hear a wider range of matters would better use the expertise of its judges who have a close understanding of the dynamics of whānau, the wider Māori community, and the Māori connection to whenua.

We note that the bill as introduced provides that applications under the Property Law Act 2007 that relate to easements or covenants must be made to the District Court if they relate to both Māori freehold land and other land. However, we also note that the Māori Land Court already considers applications to establish, modify, or cancel an easement that involves both Māori freehold land and General land. We recommend that clause 8, new section 22B(1) and (2) be amended to allow applications to be heard by either the District Court or the Māori Land Court whether the application relates wholly to Māori freehold land or to both Māori freehold land and other land.

Injunction powers of the Māori Land Court

Clause 6, which would amend section 19, sets out the court's jurisdiction in respect of injunctions. The bill provides that when whānau apply for an injunction, the Māori Land Court would be able to require a person to remove or reinstate any object or structure, or repair any damage to the land.

The bill also provides that an injunction could apply to Māori land, Māori reservation land, or General land owned by Māori. At present, the Act generally limits the court's injunctive powers to Māori freehold land. We are aware of concern that expanding the court's injunctive powers to include General land owned by Māori could increase compliance requirements for Māori entities, as General land owned by Māori has been held to include land held by post-settlement governance entities. Because of this, we recommend amending this clause to remove the reference to "General land owned by Māori" in clause 6 of the bill. We were advised that this issue may be considered in future policy work on the Act.

Right of first refusal

Section 147A of the Act provides that an owner of Māori freehold land who wishes to alienate it by selling or gifting it must give the right of first refusal to members of the preferred classes of alienees (key groups of people who are at the centre of decisions made about Māori land, such as the whānau or hapū of the landowner).

We recommend amending clause 36, section 147A(4), to provide that when notifying members of the preferred classes of alienees, the seller or donor must make reasonable efforts to locate their addresses. Notice would also need to be published on an internet site to which the members would have free access and a newspaper that circulates in the district the land is in. Our amendment would help to ensure that whānau would be aware of the sale or gifting of any land in which they may have an interest.

We also recommend inserting section 147A(7) to explain that the seller or donor may apply to the court to seek a direction about what is required to fulfil their obligations under this section.

Landlocked Māori land

The bill as introduced would address some difficulties that have been identified with applications for reasonable access to landlocked Māori land. The bill provides that, when considering such an application, the court must have regard to the relationship of the applicant with the land and the culture and traditions of the applicant with respect to the land.

We recommend an amendment to clause 55, section 326B(4)(a). This section provides that, when considering an application for reasonable access to landlocked land, the Māori Land Court must have regard to the nature and quality of the access to the landlocked land that existed when the applicant purchased or otherwise acquired the land (including when they succeeded to an interest in the land). We consider that this could be difficult to demonstrate when the land has been in the continued possession of the descendants of its original owners. We therefore recommend replacing section 326B(4) to specify that this provision would only apply if the applicant had purchased the land. Our amendment would make the process easier for Māori trying to gain access to landlocked land.

Surveying Māori land

Under the Act, the Māori Land Court may direct the Chief Surveyor to arrange for a block of Māori land to be surveyed. It may also impose a charge on the block to secure payment of the cost of the survey. In the past, this has led to owners losing their land when they cannot pay the costs of the survey. As introduced, the bill would remove the court's ability to require a survey of Māori land and to impose a charge for the costs of the survey.

We agree that the court should not be able to impose a charge on Māori land to cover the costs of the survey. However, we consider that the power to order a survey should be retained. Removing this power could create practical issues for owners seeking to alter or improve their land title. We note that where land has been landlocked, the owners often require a new survey to determine the positioning of a roadway or easement across adjoining land. We also think that the court should be able to require a survey directly, without transferring the order to the Surveyor-General.

We recommend amending clauses 58 and 59, and inserting clauses 58A, 59A, and 59B. These changes would replace section 332 of the Act, repeal sections 333 and 336, and amend sections 334 and 335.

Our amendments would allow the Māori Land Court to continue to order a survey of Māori land (directly and not through the Surveyor-General) but would ensure that a charge could not be imposed on the land to secure payment of the survey costs. Section 332(3) would state that an order could not be made unless the court was satisfied that the cost of the proposed survey had been paid or sufficiently secured. The repealing of section 333 would remove the power of the court to make charging orders on land in respect of a survey.

We also recommend a minor and technical amendment that would update the language throughout the Act by replacing the term “Chief Surveyor” with “Surveyor-General”. This would reflect the terminology changes made when the Survey Act 1986 was repealed and replaced by the Cadastral Survey Act 2002.

Māori trusts and incorporations

The bill as introduced would require Māori incorporations to establish and maintain a register of interests for members of their committee of management. The register would need to contain the beneficial interests and dealings in the Māori freehold land held by the incorporation.

We recommend amending clause 48, new section 274B(3) to state that the interests register must be held in either physical or electronic form. We also recommend updating section 274B(4), which relates to the inspection of the interests register, to refer to both a physical and electronic register as a result of this change. Further, we recommend inserting section 274B(5) to state that if the interests register is kept in electronic form, it may be made available for inspection on a publicly accessible web page.

Our amendments would improve the accessibility of the information contained in the register of interests and enhance the accountability of committees of management. We also recommend amending section 274B(4) and (5) to specify that any viewing of the registers would be free of charge.

Appendix

Committee process

Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Bill was referred to the committee on 15 October 2019. The closing date for submissions was 26 November 2019. We received and considered 73 submissions from interested groups and individuals. We heard oral evidence from 19 submitters at hearings in Wellington.

We received advice from Te Puni Kōkiri and the Ministry of Justice.

Committee membership

Rino Tirikatene (Chairperson)

Dan Bidois

Marama Davidson

Joanne Hayes

Matt King

Adrian Rurawhe

Hon Nicky Wagner

Hon Meka Whaitiri

**Te Ture Whenua Maori (Succession, Dispute Resolution,
and Related Matters) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nanaia Mahuta

Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill

Government Bill

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79	Section 446 amended (Council may cover in watercourse so as to make it a public drain)	44
	<i>Amendments to Maori Assembled Owners Regulations 1995</i>	
80	<u>Amendments to Maori Assembled Owners Regulations 1995</u>	<u>44</u>
81	<u>Regulation 2 amended (Interpretation)</u>	<u>45</u>
82	<u>Regulation 32 amended (Quorum at meetings generally)</u>	<u>45</u>
83	<u>Regulation 35 revoked (Quorum for resolution to incorporate)</u>	<u>45</u>
	<i>Amendment to Maori Incorporations Constitution Regulations 1994</i>	
84	<u>Amendment to Maori Incorporations Constitution Regulations 1994</u>	<u>45</u>
85	<u>Schedule 1 amended</u>	<u>45</u>
	<i>Amendments to Māori Land Court Fees Regulations 2013</i>	
86	<u>Amendments to Māori Land Court Fees Regulations 2013</u>	<u>45</u>
87	<u>Schedule amended</u>	<u>45</u>
	Schedule	46
	New Part 2 inserted into Schedule 1AA	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act **2019**.
- 2 Commencement** 5
 - (1) This Act comes into force on the later of the following:
 - (a) **1 October 2020**;
 - (b) immediately after the 6-month period that starts on the date of Royal assent.
 - (2) However, **section 19**, as it relates to **section 98M(2) to (5)** of the principal Act, comes into force on a single date set by Order in Council, which must be on or after the date on which the rest of this Act comes into force. 10

Part 1
Amendments to Te Ture Whenua Maori Act 1993

- 3 Principal Act** 15
This Part amends Te Ture Whenua Maori Act 1993 (the **principal Act**).

4 Section 4 amended (Interpretation)

- (1) In section 4, repeal the definition of **Chief Surveyor**.
- (2) In section 4, insert in its appropriate alphabetical order:

Maori reservation means a Maori reservation set apart under section 338 or the corresponding provisions of any former enactment
- (3) In section 4, replace the definition of **Surveyor-General** with:

Surveyor-General has the meaning given by section 4 of the Cadastral Survey Act 2002

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4A Section 16 amended (Seal of court)

- After section 16(1), insert:
- (1A) The seal may be applied to a document physically or electronically.

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5 Section 18 amended (General jurisdiction of court)

- After section 18(1)(b), insert:
- (ba) to determine whether a person is a member of a class of persons who are or will be beneficial owners of, or beneficiaries of a trust whose trustees are owners of, land that is or will become Maori freehold land:

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6 Section 19 amended (Jurisdiction in respect of injunctions)

- (1) In section 19(1)(a), replace “Maori freehold land, Maori reservation, or wahi tapu” with “Maori land, Maori reservation, or General land owned by MaoriMaori land or Maori reservation”.
- (2) After section 19(1)(b), insert:

- (ba) requiring any person to—
 - (i) remove any structure or object from any ~~Maori land, Maori reservation, or General land owned by Maori~~ Maori land or Maori reservation; or
 - (ii) reinstate any structure or object that has been removed from any ~~Maori land, Maori reservation, or General land owned by Maori~~ Maori land or Maori reservation; or
 - (iii) restore any ~~Maori land, Maori reservation, or General land owned by Maori~~ Maori land or Maori reservation to the condition it was in before it was modified by any infrastructure work, earthwork, or other means; or
 - (iv) remedy any damage done to any ~~Maori land, Maori reservation, or General land owned by Maori~~ Maori land or Maori reservation; or
- (3) In section 19(1)(c), replace “Maori freehold land” with “~~Maori land or General land owned by Maori~~”.

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- (4) In section 19(1)(d), replace “alienation of land” with “alienation of ~~Maori land, a Maori reservation, or General land owned by Maori~~ Maori land or a Maori reservation”.

7 New section 20A inserted (Jurisdiction in relation to mortgages)

After section 20, insert:

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20A Jurisdiction in relation to mortgages

- (1) An application for a court order under Part 3 of the Property Law Act 2007 (mortgages) must be made to—
- (a) the Maori Land Court, if the application relates only to Maori freehold land; or
 - (b) whichever of the High Court or District Court has jurisdiction, if the application relates to Maori freehold land and other land.
- (2) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to another court described in **subsection (1)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.
- (3) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
- (4) The Maori Land Court has jurisdiction under, and must apply, Part 3 of the Property Law Act 2007 in relation to any application made to it, or any proceedings or question referred to it, in accordance with this section.
- (5) For those purposes, Part 3 of the Property Law Act 2007 applies as if—
- (a) the Maori Land Court were the High Court under that Part; and
 - (b) a Registrar of the Maori Land Court were the Registrar under that Part.
- (6) Any appeal from an order of the Maori Land Court made under Part 3 of the Property Law Act 2007 must be made to the High Court.

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8 New section 22B inserted (Power of court in relation to easements and covenants over Maori freehold land)

After section 22A, insert:

22B Power of court in relation to easements and covenants over Maori freehold land

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- (1) This section applies to any application for a court order to be made, or a direction to be given, under section 313, 317, or 318(3) of the Property Law Act 2007 that relates to Maori freehold land, even if it also relates to other land.
- (2) ~~The application must be made to—~~
- ~~(a) the Maori Land Court, if the application relates only to Maori freehold land; or~~

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- (b) ~~the District Court, if the application relates to Maori freehold land and other land.~~
- (2) The application may be made to the Maori Land Court or the District Court.
- (3) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (2)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 5
- (4) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
- (5) The Maori Land Court has jurisdiction under sections 313, 314, 317, and 318(3) of the Property Law Act 2007 in relation to any application made to it, or any proceedings or question referred to it, in accordance with this section. 10
- (6) Any appeal from an order of the Maori Land Court made under section 313 or 317 of the Property Law Act 2007 must be made to the High Court.
- 9 New section 24C inserted (Equitable relief) 15**
After section 24B, insert:
- 24C Equitable relief**
- (1) The court may make an order for equitable relief under this section—
- (a) for the purposes of or as a result of exercising jurisdiction conferred on it by or under ~~any Act~~ this Act or any other Act; and 20
- (b) to the extent that the order is not inconsistent with that Act.
- (2) The court may make ~~an order for equitable relief~~ the order if it is satisfied that, in the particular circumstances of the case,—
- (a) the order is necessary to achieve a just outcome; and
- (b) any other available relief is insufficient to achieve a just outcome. 25
- (3) The court may make the order on the application of a party to a proceeding or of the court's own motion.
- 10 Section 32 amended (Additional members in relation to matter of tikanga Maori)**
- Replace the heading to section 32 with “**Additional members for purposes of inquiry in relation to matter of tikanga Maori**”. 30
- 11 New section 32A inserted (Additional members who know relevant tikanga Maori or whakapapa for proceedings about Maori land)**
- After section 32, insert:

32A Additional members who know relevant tikanga Maori or whakapapa for proceedings about Maori land

- (1) In any proceedings before the Maori Land Court that relate to Maori land and are specified by the rules of court, 1 or 2 additional members ~~with~~ who have knowledge and experience of tikanga Maori or whakapapa that is relevant to the proceedings may be appointed to the court by—
 - (a) the Judge hearing the proceedings; or
 - (b) the Chief Judge, if a Judge has not yet been assigned to the proceedings.
- (2) The additional members must not be Judges of the court.
- (3) The Judge or Chief Judge may make the appointment of their own motion or at the request of any party to the proceedings.
- (4) The proceedings and processes of the court cannot be challenged on appeal, or in any other proceedings, on the grounds that an additional member appointed under this section had a tribal affiliation or other relationship with any of the parties unless it is shown that the additional member acted in bad faith.

12 Section 34 amended (Oath to be taken by additional member)

In section 34, replace “section 26E(4) or section 26F(4) or section 26G(5) or section 26S(4) or section 26T(4) or section 26U(5) or section 28(1) or section 31(1) or section 33(1)” with “section 26E(4), 26F(4), 26G(5), 26S(4), 26T(4), 26U(5), 28(1), 31(1), **32A(1)**, or 33(1)”.

13 Section 35 amended (Fees and allowances)

In section 35, replace “section 26E(4) or section 26F(4) or section 26G(5) or section 26S(4) or section 26T(4) or section 26U(5) or section 28(1) or section 31(1) or section 33(1)” with “section 26E(4), 26F(4), 26G(5), 26S(4), 26T(4), 26U(5), 28(1), 31(1), **32A(1)**, or 33(1)”.

14 Section 36 amended (Quorum and decisions)

- (1) In section 36(1), replace “section 26E(4) or section 26F(4) or section 26G(5) or section 26S(4) or section 26T(4) or section 26U(5) or section 28(1) or section 31(1) or section 33(1)” with “section 26E(4), 26F(4), 26G(5), 26S(4), 26T(4), 26U(5), 28(1), 31(1), **32A(1)**, or 33(1)”.
- (2) In section 36(2), replace “tikanga Maori” with “tikanga Maori or whakapapa”.

15 New section 40A inserted (Judge may convene judicial settlement conference)

After section 40, insert:

40A Judge may convene judicial settlement conference

- (1) A Judge may convene a judicial settlement conference.

- (2) The purpose of a judicial settlement conference is to give the parties to a proceeding before the court an opportunity to negotiate the settlement of a claim or an issue.
- (3) A Judge who convenes a judicial settlement conference may assist the parties in their negotiations, but the Judge must not preside at the hearing of the proceeding (if any) unless—
 - (a) all parties taking part in the conference consent; or
 - (b) the only matter for resolution at the hearing is a question of law.

15A Section 43 amended (Rehearings)

In section 43(2), replace “28 days” with “20 working days”. 10

15B Section 53 amended (Seal)

After section 53(1), insert:

(1A) The seal may be applied to a document physically or electronically.

16 New section 81A inserted (Enforcement of orders for recovery of land)

After section 81, insert: 15

81A Enforcement of orders for recovery of land

- (1) If the court makes an order for the recovery of land, it may, on the application of any party or of its own motion, transmit a sealed copy of the order to whichever of the High Court or District Court may enforce the order (the **enforcing court**). 20
- (2) The Registrar of the enforcing court must file the copy as a record of the enforcing court, and the order then—
 - (a) is treated as having been made by the enforcing court; and
 - (b) may be enforced by the enforcing court.
- (3) The court may also transmit a certificate to the enforcing court that sets out any matter relating to the order and the related proceedings, including any person’s breach of or compliance with the order. 25
- (4) The certificate is sufficient evidence of the matters it contains, unless the contrary is proved.
- (5) The filing of the copy of the order does not limit or affect any right or power of rehearing, appeal, amendment, or cancellation in respect of the order. 30

17 Section 95 amended (Rules of court)

(1) After section 95(3)(f), insert:

(fa) prescribing the class or classes of proceedings that relate to Maori land for which 1 or 2 additional members with relevant knowledge and 35

Part 1 cl 18	Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill	
	experience of tikanga Maori or whakapapa may be appointed to the court under section 32A :	
(2)	After section 95(3)(i), insert:	
(ia)	prescribing any matters relating to the resolution of disputes under Part 3A , such as criteria for the court, Judge, or Registrar to consider in deciding whether to refer a matter to a mediator under that Part:	5
(3)	After section 95(3)(k), insert:	
(ka)	providing for any matter of practice or procedure for the purposes of section 113A(5) or 235A(6) :	
18	Section 98 amended (Maori Land Court Special Aid Fund) In section 98(4), delete “by post”.	10
19	New Part 3A inserted After section 98G, insert:	
	Part 3A Dispute resolution	15
98H	Matters to which this Part applies	
(1)	This Part applies to any matter over which the Maori Land Court has jurisdiction other than—	
(a)	a matter to which section 26B or 26C applies (which relates to the Maori Fisheries Act 2004); or	20
(b)	a matter to which section 26P or 26Q applies (which relates to the Maori Commercial Aquaculture Claims Settlement Act 2004); or	
(c)	a matter to which section 30(1) applies (which relates to the most appropriate representatives of a class or group of Maori).	
(2)	In this Part, parties or parties to a dispute means the parties between which there is a disputed issue.	25
98I	Purpose of this Part The purpose of this Part is to assist the parties to a dispute (including owners of Maori land) to quickly and effectively resolve any disputed issues—	
(a)	between themselves; and	30
(b)	in accordance with the law; and	
(c)	as far as possible, in accordance with the relevant tikanga of the whanau or hapu with whom they are affiliated, for both the process and the substance of the resolution.	

98J Mediation is always voluntary

- (1) An issue may be referred to mediation only if all the parties agree to mediation.
- (2) An issue may be mediated only while all the parties still agree to mediation.
- (3) This section overrides the rest of this Part (for example, **sections 98L, 98Q(3)(a), and 98R(3)**).

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98K Powers of Judge or Registrar subject to rules of court

If there are any relevant rules of court, a Judge or Registrar may exercise a power under this Part only in accordance with those rules.

98L Dispute may be referred to mediation

- (1) If there are court proceedings about a matter, the Judge hearing the proceedings may refer any issue arising from the matter to a mediator—
 - (a) at the Judge’s initiative; or
 - (b) on the request of any party to the disputed issue who is a party to the proceedings.
- (2) If there are not court proceedings about a matter, any party to a disputed issue arising from the matter may apply to a Registrar to have the issue referred to a mediator.
- (3) The Registrar may refer the issues—
 - (a) to a mediator, if the Registrar is satisfied that mediation is likely to be effective; or
 - (b) to a Judge to decide whether to refer it to a mediator, in any other case.
- (4) In deciding whether to refer an issue to a mediator, the Judge or Registrar may hold a conference of the parties to the dispute.

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98M Appointment of mediator

- (1) Either 1 or 2 persons must be appointed as the mediator, each with the skills and experience to mediate the issues referred to them.
- (2) The chief executive must record a list of persons whom the chief executive has approved as mediators under this Part.
- (3) The parties to a dispute may appoint the mediator by agreement—
 - (a) from the list of approved persons; or
 - (b) from beyond that list if—
 - (i) the parties consider that it is justified in the circumstances; and
 - (ii) the appointment is approved by the chief executive and the Judge or Registrar who referred the issues to a mediator.
- (4) If the parties do not agree on the mediator, the Judge or Registrar who referred the issues to a mediator must, after consulting the parties, appoint the mediator—

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- (a) from the list of approved persons; or
- (b) from beyond that list if the appointment is approved by the chief executive.
- (5) In this section, **chief executive** means the chief executive of the Ministry of Justice. 5
- 98N Judge appointed as mediator**
- (1) ~~A Judge may act as a mediator, but must not sit as a Judge on court proceedings about a matter relating to the issues referred to mediation.~~
- (1) A Judge may act as a mediator but—
 - (a) must not act as a mediator for any issue arising from a matter for which they have sat on court proceedings; and 10
 - (b) must not sit on court proceedings about a matter relating to any issue for which they have acted as mediator.
- (2) However, a Judge acting as a mediator is to be treated as acting judicially and retains the same immunities as when acting as a Judge. 15
- 98O Conduct of mediation**
- (1) The Judge or Registrar who referred issues to a mediator may advise the mediator of the issues that need to be addressed at mediation.
- (2) The following persons are entitled to attend and participate in a mediation:
 - (a) the parties and their representatives; and 20
 - (b) any other person who is approved by—
 - (i) the Judge or Registrar who referred the issues to a mediator; or
 - (ii) the mediator.
- (3) A mediator may—
 - (a) follow the procedures (structured or unstructured), and do the things, that the mediator considers appropriate to promptly and effectively resolve the issues referred to the mediator; and 25
 - (b) receive any information, statement, admission, document, or other material in any way or form that the mediator thinks fit, whether or not it would be admissible in judicial proceedings. 30
- (4) However, a mediator must try to give effect to the purpose of this Part in mediating the issues.
- (5) Written and oral material presented at or for the mediation must be kept confidential by the mediator and participants in the mediation, unless the person who produces the material consents to its disclosure. 35
- (6) No person may be sued for defamation for statements made in mediation.

- (7) Statements made and material presented at a mediation are admissible in a subsequent mediation of the same issues but are not admissible in other proceedings before a person acting judicially, unless the persons participating in the mediation consent to the admission of the statement or material.
- (8) The mediator must provide written reports to keep the Registrar informed of progress in the mediation, unless the mediator is a Judge. 5
- 98P Successful mediation**
- (1) If some or all of the issues referred to mediation are resolved at mediation, the mediator must—
- (a) record the terms of the resolution; and 10
- (b) report them to the Judge or Registrar who referred the issues to a mediator.
- (2) If a Judge referred the issues to a mediator, the Judge may make an order that includes the terms of the resolution.
- (3) If a Registrar referred the issues to a mediator,— 15
- (a) the Registrar must include the terms of the resolution in a proposed order and provide the proposed order to a Judge; and
- (b) the Judge may make that order, or a different order, that includes the terms of the resolution.
- (4) However, the Registrar or Judge must not propose or make an order under this section unless they are satisfied that the issues were resolved in compliance with **section 98I(b) and (c)**. 20
- (5) If the Judge is not satisfied of that compliance, the Judge may refer the terms of the resolution back to the mediator with directions about what is required for an order to be made under this section. 25
- 98Q Unsuccessful mediation of issues from court proceedings**
- (1) This section applies to issues referred to mediation that arose from a matter for which there were court proceedings (*see section 98L(1)*).
- (2) If some or all of the issues are not resolved by mediation and the mediator believes that those issues are unlikely to be resolved, the mediator must— 30
- (a) report that lack of resolution to the Judge; and
- (b) state the issues that are unresolved.
- (3) On receiving the report, the Judge may refer some or all of the unresolved issues to—
- (a) a mediator (whether or not the earlier mediator), but only if satisfied that mediation is the most appropriate way to resolve the issues; or 35
- (b) the court to hear and determine or to advise on.

- (4) The Judge who refers unresolved issues to the court may be the Judge who hears the matter or gives the advice.

98R Unsuccessful mediation of other issues

- (1) This section applies to issues referred to mediation that arose from a matter for which there were not court proceedings (*see section 98L(2)*). 5
- (2) If some or all of the issues are not resolved by mediation, any party may apply to the court—
- (a) to refer some or all of the unresolved issues to a mediator; or
 - (b) to hear and determine some or all of the unresolved issues.
- (3) The court, on application under **subsection (2)(a)**, may decide to refer an issue to a mediator (whether or not the earlier mediator) only if satisfied that mediation is the most appropriate way to resolve the issue. 10
- (4) In deciding whether to refer an issue to a mediator, the court may hold a conference of the parties.

98S Orders 15

In making an order under this Part, the Judge or the court may do 1 or more of the following:

- (a) incorporate or restate the terms of an agreement reached by the parties to a dispute:
- (b) incorporate the terms that express the outcome of mediation: 20
- (c) specify that the order applies for general or specific purposes:
- (d) specify the purpose or purposes for which the order is made:
- (e) specify a date after which the order ceases to have effect:
- (f) make other orders not inconsistent with this Part, as the Judge or court considers appropriate. 25

20 New section 107A inserted (Succession when class of persons are beneficial owners or beneficiaries)

Before section 108, insert:

107A Succession when class of persons are beneficial owners or beneficiaries

- (1) This section applies to Maori freehold land that is vested in trustees by an order made under section 132(6) (for which a class of persons, including all descendants, are the beneficial owners or beneficiaries). 30
- (2) If a member of the class of persons dies, the member's descendants remain beneficial owners or beneficiaries and there is no succession to the interest under this Part. 35

21 Section 108 amended (Disposition by will)

- (1) In section 108(1), replace “subsections (2) and (3)” with “this section”.
- (2) Repeal section 108(2)(e).
- (3) In section 108(2)(f), replace “(e)” with “(d)”.
- (4) After section 108(2), insert: 5
(2AA) *See **section 114A*** for whether a child who is a whangai or another person has a relationship of descent for the purposes of subsection (2).
- (5) Repeal section 108(3).
- (6) Replace section 108(4) with: 10
(4) A beneficial interest may be left by will under subsection (2) subject to a gift to the owner’s spouse, civil union partner, or de facto partner that is granted in accordance with **section 108A**.
- (7) In section 108(5),—
(a) replace “subsection (2) or subsection (4)” with “this section”; and
(b) replace “either of those subsections” with “this section”. 15

22 New section 108A inserted (Disposition by will of spouse’s or partner’s rights to occupy and receive income)

After section 108, insert:

- 108A Disposition by will of spouse’s or partner’s rights to occupy and receive income** 20
- (1) An owner of a beneficial interest in Māori freehold land may leave that interest by will under section 108 subject to the gift to the owner’s spouse, civil union partner, or de facto partner of 1 or both of the rights specified in **subsection (2)**.
 - (2) The rights are— 25
(a) the right to occupy the principal family home if it is on the land:
(b) the right to receive any income or discretionary grants from the interest.
 - (3) A right may be gifted for—
(a) a specified period; or
(b) the life of the spouse or partner. 30
 - (4) A right ends if—
(a) the specified period (if any) ends; or
(b) the spouse or partner dies; or
(c) the spouse or partner gives it up in writing.
 - (5) A right— 35
(a) cannot be transferred or disposed of by the spouse or partner; and

- (b) does not give the spouse or partner an ownership interest in the land.
- (6) The person or persons who receive the beneficial interest in Maori freehold land—
 - (a) are the owners of the interest (who may be assembled owners under Part 9); and
 - (b) if the right to receive any income or discretionary grants was gifted, are entitled to receive the income or discretionary grants when the right ends.

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23 Section 109 amended (Succession to Maori freehold land on intestacy)

Replace section 109(2) to (4) with:

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- (2) A beneficial interest to which subsection (1) applies is subject to any rights of the owner's spouse, civil union partner, or de facto partner under **section 109AA**.

24 New section 109AA inserted (Succession on intestacy subject to spouse's or partner's rights to occupy and receive income)

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After section 109, insert:

109AA Succession on intestacy subject to spouse's or partner's rights to occupy and receive income

- (1) This section applies if—
 - (a) the owner of a beneficial interest in Maori freehold land dies intestate; and
 - (b) the owner is survived by a spouse, civil union partner, or de facto partner; and
 - (c) at the date on which the owner dies, the marriage, civil union, or de facto relationship has not ended (within the meaning of section 2A(2), 2AB(2), or 2D(4) of the Property (Relationships) Act 1976, as applicable).
- (2) The spouse or partner has—
 - (a) the right to occupy the principal family home if it is on the land; and
 - (b) the right to receive any income or discretionary grants from the interest.
- (3) The rights end if the spouse or partner—
 - (a) marries or enters a new civil union or de facto relationship; or
 - (b) dies; or
 - (c) gives them up in writing.
- (4) The rights—
 - (a) cannot be transferred or disposed of by the spouse or partner; and
 - (b) do not give the spouse or partner an ownership interest in the land.

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- (5) The person or persons who receive the beneficial interest in Maori freehold land—
- (a) are the owners of the interest (who may be assembled owners under Part 9); and
 - (b) are entitled to receive the income or discretionary grants when the spouse's or partner's rights end. 5

25 Section 113 amended (Maori Land Court to determine beneficial entitlements to Maori land)

Replace the heading to section 113 with “**Maori Land Court to determine succession to beneficial entitlements to Maori freehold land**”. 10

26 New section 113A inserted (Registrar may determine succession to interests in Maori freehold land and make related orders)

After section 113, insert:

- 113A Registrar may determine succession to interests in Maori freehold land and make related orders** 15
- (1) A Registrar may ~~receive and determine~~ the following ~~at the applicant's request unless the applicant requests otherwise~~:
- (a) an application for simple and uncontested succession under section 113 (to beneficial freehold interests in Maori freehold land); and
 - (b) any related application for an order vesting a freehold interest in General land under section 111, or a beneficial interest in Maori freehold land under section 112, 117, or 118, including any order that may be made under section 242 (because of section 117(8) or 118(5)). 20
- (2) For that purpose,—
- (a) those provisions apply as if the Registrar were the court, except as modified by this section; and
 - (b) section 119 applies with any necessary modifications; but
 - (c) the Registrar does not have the powers described in section 117(3)(a) (including as applied by section 118(5)). 25
- (3) The Registrar must determine the applications without a hearing. 30
- (4) The Registrar may at any time refer the applications to the court for determination if the Registrar decides that an application is not for a simple and uncontested succession.
- (5) Any determination or order made by the Registrar in accordance with this section must be treated as an order of the court for the purposes of this Act, including section 42 (commencement of orders), but excluding— 35
- (a) sections 41 (orders pronounced in open court) and 43 (rehearings); and

- (b) any matter of practice or procedure that is instead provided for by the rules of court.
- (6) The determination or order may be reviewed as follows:
- (a) any person affected by the determination or order may apply to the court for a review—
- (i) within ~~28 days~~ 20 working days after the determination or order is made; or
- (ii) within any longer period allowed by a Judge if the Judge is satisfied that the person could not reasonably have applied sooner:
- (b) a Judge must conduct the review on the papers unless the Judge considers that a hearing is necessary:
- (c) the Judge may affirm, vary, or annul the determination or order, and may exercise any jurisdiction the court has in relation to an application for succession under this Part (the **Judge's review decision**).
- (7) A person must obtain the leave of the court to apply under section 43 for a rehearing of the Judge's review decision, which is treated as if it were an order of the court.
- (8) ~~In this section, **simple and uncontested succession** means succession that the Registrar is satisfied is simple, such as the following examples, and uncontested:~~
- (a) ~~succession by will, whether or not probate has been granted, where all successors belong to a preferred class of alienee:~~
- (b) ~~further succession based on evidence heard in court for a previous succession:~~
- (8) In this section, **simple and uncontested succession** means succession that the Registrar is satisfied is—
- (a) simple, such as the following examples:
- (i) succession by will or on intestacy, whether or not probate or administration has been granted, where all successors belong to the same preferred class of alienee and succeed to equal shares:
- (ii) further succession based on evidence heard in court for a previous succession; and
- (b) uncontested because—
- (i) the application has been notified or consulted on as required by the rules of court, if the rules require that; and
- (ii) no one has objected to the application.

27 New section 114A inserted (Descent relationships for whangai determined by tikanga Maori)

After section 114, insert:

114A Descent relationships for whangai determined by tikanga Maori

- (1) This section applies to a provision of this Act or the Family Protection Act 1955 that depends on there being a relationship of descent between people for the purposes of—
 - (a) succession under this Part; or 5
 - (b) a claim under the Family Protection Act 1955 that relates to Maori freehold land (as defined by **section 3A(6)** of that Act).
- (2) This section applies, for example, to a provision of that type that refers to—
 - (a) a child, whangai, grandchild, issue, brother, sister, or parent; or
 - (b) being descended or related by blood; or 10
 - (c) members of the hapu associated with land.
- (3) For any child who is a whangai, the tikanga of the relevant iwi or hapu determines whether there is a relationship of descent between the child and one or both of the following types of parent for the purposes of that provision:
 - (a) the child's birth parents (as defined by section 2 of the Adult Adoption Information Act 1985): 15
 - (b) the child's new parents after the child became a whangai.
- (4) This section prevails over section 19 of the Adoption Act 1955.

28 Sections 115 and 116 replaced

Replace sections 115 and 116 with: 20

115 Court may determine whangai and descent relationships of whangai

- (1) The court may determine whether, for the purposes of succession under this Part or a claim under the Family Protection Act 1955 that relates to Maori freehold land (as defined by **section 3A(6)** of that Act),—
 - (a) a child is a whangai of certain parents: 25
 - (b) a child who is a whangai has a relationship of descent with certain parents (*see* **section 114A(3)**).
- (2) The court's jurisdiction under this section may be exercised on the application of any person with an interest in the matter.
- (3) An order made by the court on a matter under this section is proof of the matter for the purposes of **section 114A**. 30
- (4) This section prevails over section 19 of the Adoption Act 1955.

116 Court may provide for person to have rights to occupy and receive income despite no descent relationship of whangai

- (1) The court may make an order giving a person 1 or both of the following rights in relation to a beneficial interest in Maori freehold land: 35
 - (a) the right to occupy the principal family home if it is on the land:

- (b) the right to receive the whole or any part of any income or discretionary grants from the interest.
- (2) The court may make the order only in respect of a person who is not entitled to succeed to the beneficial interest under this Part solely because, under **section 114A**, the tikanga of the relevant iwi or hapu determines that there is no relationship of descent between a child who is a whangai and certain parents.

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- (3) The court may make the order only if it considers that—

 - (a) the order is required to prevent an injustice to the person; and
 - (b) the person’s claim is not within the jurisdiction of the High Court or the Family Court under the Law Reform (Testamentary Promises) Act 1949 or the Family Protection Act 1955.

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- (4) A right may be given for—

 - (a) a specified period; or
 - (b) the life of the recipient.
- (5) A right ends if—

 - (a) the specified period (if any) ends; or
 - (b) the recipient dies; or
 - (c) the recipient gives it up in writing.

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- (6) A right—

 - (a) cannot be transferred or disposed of by the recipient; and
 - (b) does not give the recipient an ownership interest in the land.

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- (7) The person or persons who receive the beneficial interest in Maori freehold land—

 - (a) are the owners of the interest (who may be assembled owners under Part 9); and
 - (b) if the right to receive the whole or any part of any income or discretionary grants was given, are entitled to receive the whole, or that part, of the income or discretionary grants when the right ends.

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28A Section 125A amended (Alteration to land appellation)

- (1) Replace section 125A(1)(b) with:

 - (b) if necessary, the composite record of cadastral parcels maintained under section 9(e) of the Cadastral Survey Act 2002.

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- (2) In section 125A(3)(b), replace “Chief Surveyor” with “Surveyor-General”.
- (3) In section 125A(5)(c), replace “section 11(1)(g) of the Survey Act 1986” with “section 7(1) of the Cadastral Survey Act 2002”.

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- (4) Replace section 125A(7)(b) with:

- (b) a copy of the order to the Surveyor-General, for updating any relevant records in the cadastre; and

29 Section 127 amended (Registrar of court to record ownership)

- (1) Replace section 127(2) with:

- (2) If the Registrar is satisfied that any interest for life or another limited period has ended in respect of any beneficial interest in Maori freehold land, the Registrar must note the ending of the interest in the ownership list. 5

- (1) Replace section 127(1) and (2) with:

- (1) The Registrar of a Maori Land Court district must establish and maintain a record (an **ownership list**) of the following for all Maori freehold land in the district: 10

- (a) the legal and beneficial ownership of the land;
- (b) any trusts affecting the land or any individual interest in the land;
- (c) any right to occupy a principal family home on the land;
- (d) any right to receive income or discretionary grants from an interest in the land. 15

- (2) If the Registrar is satisfied that any of the following interests or rights has ended in respect of a beneficial interest in Maori freehold land, the Registrar must note the ending of the interest or right in the ownership list:

- (a) any interest for life or another limited period; 20
- (b) any right to occupy a principal family home on the land;
- (c) any right to receive income or discretionary grants from an interest in the land.

- (2) Replace section 127(5) section 127(4) and (5) with:

- (4) In all proceedings, an ownership list under the signature of the Registrar and the seal of the court is prima facie evidence of the matters to which it relates, without production of any relevant order of the court or instrument of alienation. 25

- (5) Nothing in **subsection (1)** requires the Registrar—

- (a) to record the ownership of beneficial interests in land that, by virtue of this Act, remain vested in the several owners of the land despite the vesting of the legal estate in fee simple in a Maori incorporation; or 30
- (b) to record the individual members of a class of persons who are the beneficial owners of land.

30 Section 128 amended (Court may issue declaratory consolidated order) 35

After section 128(1), insert:

(1A) However, this section does not apply to Maori freehold land that is vested in trustees by an order made under section 132(6) (for which a class of persons are the beneficial owners or beneficiaries).

31 New section 131A inserted (Change from Crown land to Maori customary land by order) 5

After section 131, insert:

131A Change from Crown land to Maori customary land by order

- (1) This section applies to Crown land that was Maori customary land immediately before it became Crown land.
- (2) The following Minister of the Crown may apply to the Maori Land Court for an order for any of the land to become Maori customary land: 10
 - (a) for Crown land reserved for Maori, the Minister for Maori Development;
 - (b) for other Crown land, any Minister of the Crown.
- (3) The court must, on application,—
 - (a) determine the owners who, in accordance with tikanga Maori, held the land immediately before it became Crown land (the **previous owners**); 15
 and
 - (b) define the proposed owners of the land as the class of persons comprising the previous owners and all of their descendants (the **new owners**).
- (4) The court may then make an order— 20
 - (a) declaring the land to be Maori customary land; and
 - (b) defining the new owners as the class of persons who own the land.
- (5) The court must not make an order under this section unless it is satisfied that—
 - (a) the new owners have had sufficient notice of the proposal, including the change of status to Maori customary land, and sufficient opportunity to 25
 discuss and consider it; and
 - (b) there is a sufficient degree of support for the proposal among the ~~members~~ new owners.
- (6) The effect of the order is that—
 - (a) the land is freed from any trusts, restrictions, or conditions to which it 30
 was subject; and
 - (b) the land becomes Maori customary land; and
 - (c) the new owners are treated as the owners who hold the land in accordance with tikanga Maori.

32 Section 132 amended (Change from Maori customary land to Maori freehold land by vesting order) 35

- (1) In section 132(1), delete “the relative interests of”.

- (2) Replace section 132(3)(a) with:
- (a) the class of persons who it is claimed are the owners of the land when the application is made; and
- (3) Replace section 132(4) with:
- (4) On investigating the title and determining the current owners under this section, the court must define the owners as a class of persons. 5
- (5) The class of persons must include all descendants of the members of the class, and may or may not be an iwi or a hapu.
- (6) The court may then make an order defining the area dealt with and vesting the land in— 10
- (a) the trustees of an ahu whenua trust constituted under section 215 to hold in trust for the class of persons (who are the beneficial owners of the land); or
- (b) if the class of persons is an iwi or a hapu, the trustees of a whenua topu trust constituted under section 216, to be used or applied for the general benefit of the class of persons (who are the beneficiaries of the trust). 15
- (7) The vesting order may include any terms of trust that the court thinks fit.
- (8) The court must not make a vesting order under this section unless it is satisfied that—
- (a) the members of the proposed class of persons have had sufficient notice of the proposal, including the change of status to Māori freehold land, and sufficient opportunity to discuss and consider it; and 20
- (b) there is a sufficient degree of support for the proposal among the members.
- 32A Section 134 amended (Change to Māori freehold land by vesting order on change of ownership) 25**
- Replace section 134(3)(c)(ii) with:
- (ii) the chief executive within the meaning of section 4 of the Cadastre Survey Act 2002; or
- 33 Section 141 amended (Effect of vesting orders upon registration) 30**
- Replace section 141(1)(b) with:
- (b) vesting the land in the persons named in the order for a legal estate in fee simple, in the same manner as if the land had been granted to those persons by the Crown, and (where more than 1 person is named)—
- (i) as tenants in common in the shares specified in the order; or 35
- (ii) ~~for land vested in the trustees of a trust, as joint tenants; and~~

- (ii) for land vested in the trustees of an ahu whenua trust, as joint tenants (who hold the land in trust for the beneficial owners of the land); or
- (iii) for land vested in the trustees of a whenua topu trust, as joint tenants (who hold the land to be used or applied for the general benefit of the beneficiaries of the trust); and

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34 Section 144 replaced (Maori customary land deemed Crown land for certain purposes)

Replace section 144 with:

144 Recovery of, or trespass or injury to, Maori customary land

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- (1) This section applies to proceedings in the Maori Land Court or any other court—
 - (a) to recover possession of Maori customary land from any person; or
 - (b) to prevent, or recover damages for, trespass or injury to the land by any person.
- (2) The proceedings may be brought only by the Māori Trustee on behalf of the owners of the land.

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35 Section 145 replaced (Maori customary land inalienable)

Replace section 145 with:

145 Maori customary land cannot be alienated

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- (1) Maori customary land or an interest in that land cannot be—
 - (a) alienated; or
 - (b) disposed of by will; or
 - (c) vested or acquired under an Act.
- (2) However, this section does not prevent—
 - (a) any change in the owners who, in accordance with tikanga Maori, hold a parcel of Maori customary land, as long as the change is made in accordance with tikanga Maori:
 - (b) the reservation of Maori customary land as a Maori reservation, the exclusion of land from the reservation, the cancellation of the reservation, any vesting related to the reservation, exclusion, or cancellation, or the grant or assignment of any lease or occupation licence over the reservation:
 - (c) the change in status of Maori customary land to Maori freehold land:
 - (d) the creation, cancellation, or variation of an easement, or laying out of a roadway, over Maori customary land.

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36 Section 147A amended (Right of first refusal for sale or gift)

In section 147A, insert as subsections (2) to ~~(6)~~ (7):

- | | | |
|-------|---|----|
| (2) | A right of first refusal must be given in accordance with the rest of this section, unless the proposed sale or gift is to a member of a preferred class of alienees. | |
| (3) | The seller or donor must give a written notice that— | 5 |
| (a) | describes the land to be alienated, including— | |
| (i) | the name and area of the block; and | |
| (ii) | the street address, if applicable; and | |
| (iii) | the Māori Land Court district that the land is within; and | |
| (b) | requests tenders to buy the land (for a sale), or expressions of interest in being gifted the land (for a gift), only from members of the preferred classes of alienees. | 10 |
| (4) | The notice must be— | |
| (a) | sent to every member of the preferred classes of alienees whose physical or electronic address for notices is known to the seller or donor <u>after the seller or donor has made reasonable efforts to determine the addresses;</u> and | 15 |
| (b) | published in whichever of the following ways ensures as follows and so as to ensure that members of the preferred classes of alienees are reasonably likely to learn of the proposed alienation: | 20 |
| (i) | in a newspaper that circulates in the Māori Land Court district that the land is within, and in any other newspaper or newspapers; <u>and</u> | |
| (ii) | electronically. | |
| (ii) | <u>on an Internet site to which the members have access free of charge.</u> | 25 |
| (5) | The notice must specify a deadline for receiving tenders or expressions of interest that is— | |
| (a) | reasonable; and | |
| (b) | no less than 15 working days after the day on which the notice is first published. | 30 |
| (6) | For a sale,— | |
| (a) | the notice must specify the terms of sale but need not disclose the minimum sale price set for the land; but | |
| (b) | any of the terms of sale may instead be specified in a document located at a place or on an Internet site described in the notice. | 35 |
| (7) | <u>The seller or donor may apply to the court for a direction about what is required to satisfy their obligations under this section, and the court may give a direction on those matters.</u> | |

37 Section 150A amended (Alienation by trustees)

(1) After section 150A(1), insert:

(1A) However, for land vested in trustees by an order made under section 132(6) (for which a class of persons are the beneficial owners or beneficiaries), the trustees cannot alienate that Maori freehold land by sale or gift.

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(2) In section 150A(2), replace “Subsection (1)” with “Subsections (1) and (1A)”.

38 New section 150E inserted (Exclusion of interests in Maori land founded on adverse possession)

After section 150D, insert:

150E Exclusion of interests in Maori land founded on adverse possession

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(1) Despite any other enactment or rule of law, no person may claim an interest in Maori land on the ground of adverse possession.

(2) No relief may be claimed by any person for any loss or damage arising from this section.

38A Section 151 amended (Application for confirmation)

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In section 151(2)(b), replace “14 days” with “10 working days”.

39 Section 152 amended (Court to grant confirmation if satisfied of certain matters)

In section 152(1)(f), replace “obligation” with “obligations”.

39A Section 181 amended (Notice to owners of Maori land may be given to Registrar in certain cases)

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In section 181(4)(b), replace “14 days” with “10 working days”.

39B Section 201 amended (Valuations for revision of rent)

In section 201(2A) and (2B), replace “14 days” with “10 working days”.

39C Section 204 amended (Service of notices)

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Replace section 204(1) and (2) with:

(1) A notice given to a person under this Part must be given—

(a) by delivering it personally, or through someone else (such as a courier), to the person; or

(b) by sending it by email to the person at an email address that is used by the person.

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(2) In the absence of proof to the contrary,—

(a) a notice sent in accordance with **subsection (1)(b)** is treated as having been given to the person on the next working day after the date on which it was emailed; and

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(b) to prove that the notice was emailed, it is sufficient to prove that it was sent to the email address.

39D Section 207 amended (Compensation to be ascertained by valuation)

In section 207(1A) and (1B), replace “14 days” with “10 working days”.

40 Section 215 amended (Ahu whenua trusts)

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In section 215(5), after “the persons beneficially entitled to the land”, insert “and, except for land vested in trustees by an order made under section 132(6),”.

41 New section 235A inserted (Registrar may determine simple and uncontested trust matters)

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Before section 236, insert:

235A Registrar may determine simple and uncontested trust matters

(1) A Registrar may, ~~at the applicant’s request unless the applicant requests otherwise,—~~

(a) ~~receive and~~ determine an application for a simple and uncontested trust matter under a provision of this Part; and

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(b) exercise powers under section 241 in relation to that application.

(2) A Registrar may at any time exercise powers under section 239(2) and (3) (but only as it relates to section 239(2)).

(3) For the purposes of **subsections (1) and (2)**, the provisions that they refer to apply as if the Registrar were the court, except as modified by this section.

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(4) The Registrar must determine the application without a hearing.

(5) The Registrar may at any time refer an application to the court for determination if the Registrar decides that the application is not for a simple and uncontested matter.

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(6) Any determination or order made by the Registrar in accordance with this section must be treated as an order of the court for the purposes of this Act, including section 42 (commencement of orders), but excluding—

(a) sections 41 (orders pronounced in open court) and 43 (rehearings); and

(b) any matter of practice or procedure that is instead provided for by the rules of court.

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(7) The determination or order may be reviewed as follows:

(a) any person affected by the determination or order may apply to the court for a review—

(i) ~~within 28 days~~ 20 working days after the determination or order is made; or

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- (ii) within any longer period allowed by a Judge if the Judge is satisfied that the person could not reasonably have applied sooner:
 - (b) a Judge must conduct the review on the papers unless the Judge considers that a hearing is necessary:
 - (c) the Judge may affirm, vary, or annul the determination or order, and may exercise any jurisdiction the court has in relation to an application for a trust matter under a provision of this Part (the **Judge's review decision**). 5
 - (8) A person must obtain the leave of the court to apply under section 43 for a rehearing of the Judge's review decision, which is treated as if it were an order of the court. 10
 - (9) ~~In this section, **simple and uncontested trust matter** means a trust matter that the Registrar is satisfied is simple and uncontested, such as the following:~~
 - ~~(a) having a whanau trust constituted under section 214 to hold only the applicant's beneficial interests or shares:~~
 - ~~(b) for a kai tiaki trust that was constituted for a minor, a determination or an order that the powers of the trustees ended under section 217(7)(b) when the minor became 20 years old:~~ 15
 - ~~(c) the appointment of a trustee to a whanau trust under section 239(1) if no objections are received within 28 days after notice is given of the proposed appointment.~~ 20
 - (9) In this section, **simple and uncontested trust matter** means a trust matter that the Registrar is satisfied is—
 - (a) simple, such as the following examples:
 - (i) having a whanau trust constituted under section 214 to hold only the applicant's beneficial interests or shares: 25
 - (ii) for a kai tiaki trust that was constituted for a minor, a determination or an order that the powers of the trustees ended under section 217(7)(b) when the minor became 20 years old:
 - (iii) the appointment of a trustee to a whanau trust under section 239(1); and 30
 - (b) uncontested because—
 - (i) the application has been notified or consulted on as required by the rules of court, if the rules require that; and
 - (ii) no one has objected to the application.
- 42 Section 240 amended (Removal of trustee)** 35
- (1) In section 240, after “satisfied”, insert “that”.
 - (2) Replace section 240(a) and (b) with:
 - (a) the trustee has lost the capacity to perform the functions of a trustee; or

- (b) the removal is desirable for the proper execution of the trust, and 1 or more of the following grounds for removal are met:
- (i) the trustee repeatedly refuses or fails to act as trustee:
 - (ii) the trustee becomes an undischarged bankrupt:
 - (iii) the trustee is a corporate trustee that is subject to an insolvency event: 5
 - (iv) the trustee is no longer suitable to hold office as trustee because of the trustee’s conduct or circumstances.
- (3) In section 240, insert as subsections (2) and (3):
- (2) A trustee has lost the capacity to perform the functions of a trustee, for example, if the trustee— 10
- (a) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or
 - (b) has a trustee corporation managing the trustee’s property under section 32 or 33 of that Act. 15
- (3) A person may no longer be suitable to hold office as trustee, for example, because of the following conduct or circumstances:
- (a) the trustee is convicted of an offence involving dishonesty:
 - (b) it is not known where the trustee is and the trustee cannot be contacted:
 - (c) the trustee is prohibited from being a director or promoter of, or being 20 concerned or taking part in the management of,—
 - (i) a company under the Companies Act 1993; or
 - (ii) an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993.
- 43 Section 241 amended (Termination of trust) 25**
- After section 241(1), insert:
- (1A) However, for land vested in trustees by an order made under **section 132(6)** (for which a class of persons are the beneficial owners or beneficiaries), the order must vest that Māori freehold land in the trustees of another trust under **section 132(6)**, and section 132 applies for that purpose, excluding **section 132(8)** and with any other necessary modifications. 30
- 43A Section 246 amended (Interpretation)**
- In section 246, definition of **special resolution**, replace “21 clear days’ notice” with “15 working days’ notice”.
- 44 Section 247 amended (Owners may be incorporated) 35**
- (1) Replace section 247(2)(b) with:
- (b) the court is satisfied that—

- (i) the owners of the land (or their trustees in the case of disability) have had sufficient notice of the proposal to incorporate and sufficient opportunity to discuss and consider it; and
- (ii) there is a sufficient degree of support for the proposal.
- (2) In section 247(4), replace “the court is satisfied that the owners of that other land have consented to their inclusion in the manner prescribed by paragraph (a) or paragraph (b) of subsection (2)” with “subsection (2)(a) or **(b)** is satisfied for those other owners”. 5

- 45 Section 259 amended (Application of revenues)** 10
 After section 259(4), insert:
 - (5) If a Maori incorporation pays any dividend to the shareholders (under subsection (1)(c)), the incorporation must keep a record of—
 - (a) the name of each shareholder to whom a dividend is paid; and
 - (b) the amount paid to each shareholder; and
 - (c) the date of each payment. 15

- 46 Section 269 amended (Committee of management)**
 After section 269(4)(b), insert:
 - (ba) the member is prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
 - (i) a company under the Companies Act 1993; or 20
 - (ii) an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993; or

- 47 Section 272 amended (Qualification, disqualification, and removal of members)** 25
 Replace section 272(2)(a) and (b) with:
 - (a) a person who—
 - (i) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or
 - (ii) has a trustee corporation managing the person’s property under section 32 or 33 of that Act; or 30
 - (b) an undischarged bankrupt; or

- 47A Section 273 amended (Election of chairman of committee and appointment of secretary)**
In section 273(3) and (4), replace “2 weeks” with “10 working days”.

- 48 New sections 274B and 274C inserted** 35
 After section 274A, insert:

274B Maori incorporation must maintain interests register

- (1) A Maori incorporation must establish and maintain an interests register for the holdings of, and dealings by, the members of its committee of management in beneficial interests in the Maori freehold land held by the incorporation.
- (2) The register must contain— 5
 - (a) details of the beneficial interests held by each member; and
 - (b) details of dealings in the beneficial interests by each member; and
 - (c) declarations made under **section 274C**.
- (3) ~~The Maori incorporation must keep the register at its registered office or principal place of business.~~ 10
- (4) ~~The interests register must be available for inspection, during normal business hours and at the place at which the register is kept, by—~~
 - (a) ~~any shareholder of the Maori incorporation;~~
 - (b) ~~any person authorised in writing by a shareholder.~~
- (3) The Maori incorporation must keep the interests register— 15
 - (a) in a physical form at its registered office or principal place of business;
or
 - (b) in an electronic form.
- (4) The Maori incorporation must make the (physical or electronic) interests register available for inspection at its registered office or principal place of business, during normal business hours and free of charge, by any shareholder of the Maori incorporation or any person authorised in writing by a shareholder. 20
- (5) If the Maori incorporation keeps the interests register in an electronic form, it may also make the register available for inspection on an Internet site, at all reasonable times and free of charge. 25

274C Members must make annual declaration for purpose of interests register

Promptly after the end of each financial year of a Maori incorporation, each member of its committee of management must make a declaration of their holdings as at the end of the financial year, and of their dealings during the financial year, in any beneficial interests in the Maori freehold land held by the incorporation. 30

48A Section 276B amended (Financial statements must be filed)

In section 276B(1), replace “14 days” with “10 working days”.

48B Section 279 amended (Register of Maori incorporations)

In section 279(3), replace “21 days” with “15 working days”. 35

49 Section 290 amended (Modes of partition)

After section 290(1)(d), insert:

- (e) into parcels for which a class of persons are the beneficial owners or beneficiaries (for land vested in trustees by an order made under section 132(6)).

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50 Section 297 amended (Partition orders may be made in respect of land held in trust)

After section 297(1), insert:

- (1A) However, for land vested in trustees by an order made under section 132(6), the beneficial owners or beneficiaries of the new parcels must be the same class of persons as for the land that was partitioned, despite any other provision relating to partition.

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51 Section 301 amended (Compliance with provisions of Resource Management Act 1991 relating to subdivisions)

After section 301(3), insert:

- (4) However, section 230(3) to (5) of the Resource Management Act 1991 does not apply to the subdivision (so that an esplanade reserve is not set aside and an esplanade strip is not created).

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52 Section 307 amended (Amalgamation orders)

After section 307(7), insert:

- (7A) However, if the land is vested in trustees by an order made under section 132(6), then, despite the rest of this section and section 309,—
 - (a) an amalgamation order may be made only if the same type of trust holds all the land (either an ahu whenua trust or a whenua topu trust); and
 - (b) the court must vest the new parcel in the trustees of a trust of that type for beneficial owners or beneficiaries that combine the classes of persons from the land being amalgamated, as if vesting it under section 132(6).

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53 Section 308 amended (Aggregation orders)

After section 308(2), insert:

- (2A) However, if the land is vested in trustees by an order made under section 132(6), then, despite the rest of this section and section 309,—
 - (a) an aggregation order may be made only if the same type of trust holds all the land (either an ahu whenua trust or a whenua topu trust); and
 - (b) the court must vest the areas of land in the trustees of a trust of that type for beneficial owners or beneficiaries that combine the classes of persons from the land whose ownership is being aggregated, as if vesting it under section 132(6).

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53A Section 322 amended (Court may cancel roadways)

Replace section 322(2) with:

- (2) The Registrar must give notice of the variation or cancellation of the order to the chief executive within the meaning of section 4 of the Cadastral Survey Act 2002.

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54 Section 326A amended (Meaning of certain terms)

In section 326A, replace the definition of **reasonable access** with:

reasonable access means physical access to land for persons or services that is of a nature and quality that are reasonably necessary to enable the owner or occupier to use and enjoy the land.

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55 Section 326B amended (Reasonable access may be granted in cases of landlocked Maori land)

- (1) In section 326B(4), replace “regard to” with “regard to,”.

- (2) Replace section 326B(4)(a) with:

- (a) if the applicant purchased the land, the nature and quality of the access (if any) to the landlocked land that existed when the applicant purchased the land; and

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- (3) After section 326B(4)(d), insert:

- (da) the relationship that the applicant has with the landlocked land and with any water, site, place of cultural or traditional significance, or other taonga associated with the land; and

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- (db) the culture and traditions of the applicant with respect to the landlocked land; and

56 Section 326D amended (Additional provisions relating to orders under sections 326B or 326C)

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- (1) In the heading to section 326D, replace “**sections 326B or 326C**” with “**section 326B or 326C**”.

- (2) Repeal section 326D(3) and (4).

- (3) In section 326D(5), replace “sections 326B or 326C” with “section 326B or 326C”.

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57 Section 328 amended (Occupation orders)

Replace section 328(1)(b) with:

- (b) any person who is entitled to succeed to the beneficial interests of any deceased person in that land; or
- (c) any beneficiary of a whanau trust that holds a beneficial interest in that land,—

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58 Sections 332, 333, and 336 repealed

Repeal sections 332, 333, and 336.

58 Section 332 replaced (Power to require surveys)

Replace section 332 with:

332 Power to require surveys

(1) The court may make an order requiring the survey of any Māori land if, in the court's opinion, the survey is necessary or expedient for—

- (a) the completion of any order of the court; or
- (b) the exercise of any powers or jurisdiction of the court in relation to the land.

(2) Alternatively, the court may make an order requiring the survey of any Māori land for any purpose—

- (a) on the application of an owner of any Māori land; but
- (b) only if the court is satisfied that—
 - (i) the owners of the land to be surveyed have had sufficient notice of the proposal for the survey and sufficient opportunity to discuss and consider it; and
 - (ii) there is a sufficient degree of support for the survey among the owners.

(3) However, an order must not be made under this section unless the court is satisfied that the cost of the proposed survey has been paid or has been sufficiently secured.

(4) An order may—

- (a) include any details about the nature or purpose of the survey; and
- (b) nominate a surveyor to carry out the survey.

58A Section 333 repealed (Power of court to make charging orders on land in respect of costs of survey)

Repeal section 333.

59 Section 334 amended (Interest on survey charges)

(1) In section 334(1), replace “Except as provided in section 336, the” with “The”. 30

(2) In section 334(2), replace “Chief Surveyor” with “Surveyor-General”.

59A Section 335 amended (Power of Minister of Lands to remit survey charges)

In section 335(2), replace “the Chief Surveyor of the district in which the land affected is situated and” with “the Surveyor-General”.

59B Section 336 repealed (Contribution from owners in respect of surveys)

Repeal section 336.

60 Section 338 amended (Maori reservations for communal purposes)

- (1) In section 338(1) and (2), replace “The chief executive may, by notice in the *Gazette* issued on the recommendation of the court,” with “The court may make an order to”.
- (2) In section 338(3), replace “notice” with “order”.
- (3) In section 338(5), replace “On the recommendation of the court, the chief executive, by notice in the *Gazette*, may, in respect of any Maori reservation made under this section,” with “The court may make an order in respect of any Maori reservation to”.
- (4) Replace section 338(6) with:
 - (6) Land must not be set apart as a Maori reservation while it is subject to any mortgage or charge, and an order made under subsection (1), (2), or (5) does not affect any lease or licence.
- (5) Replace section 338(11) with:
 - (11) While land is set apart as a Maori reservation, the land or an interest in the land cannot be—
 - (a) alienated; or
 - (b) disposed of by will; or
 - (c) vested or acquired under an Act.
 - (11) While land is set apart as a Maori reservation,—
 - (a) the land or an interest in the land cannot be alienated, or vested or acquired under an Act; but
 - (b) the beneficial ownership of the land may continue to change by succession or otherwise (but this does not change the persons for whose common use or benefit the reservation is held, unless it is held for the beneficial owners).
- (6) In section 338(12), replace “The trustees” with “However, the trustees”.
- (7) Replace section 338(14) with:
 - (14) A lease or occupation licence may be granted under subsection (12) for a term exceeding 14 years (including any term or terms of renewal) if granted for the purposes of—
 - (a) education; or
 - (b) health; or
 - (c) papakāinga housing.

61 Section 339 amended (Court may consider proposal for Maori reservation on application of Minister)

(1) In section 339(1), delete “, and make a recommendation to the chief executive or, in the case of land or an interest in land to which section 8A or section 8HB of the Treaty of Waitangi Act 1975 applies, the Minister”.

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(2) Replace section 339(2) with:

(2) The court may then—

(a) make an order under section 338 to set aside the land as a Maori reservation; or

(b) recommend to the Minister that something else is done.

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(3) However, for land or an interest in land to which section 8A or section 8HB of the Treaty of Waitangi Act 1975 applies, the court may—

(a) recommend to the Minister that the Crown acquire the land so that it can be set aside as a Maori reservation and, if the Crown acquires the land, make an order under section 338 with that effect; or

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(b) recommend to the Minister that something else is done.

(4) For the purposes of this section, section 338 applies to land other than Maori freehold land or General land with any necessary modifications.

62 Section 340 amended (Maori reservation may be held for common use and benefit of people of New Zealand)

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Replace section 340(1) and (2) with:

(1) An order constituting a Maori reservation under section 338 may, at the court’s discretion, reserve the land for the common use and benefit of the people of New Zealand, as long as the land is not a wahi tapu (being a place of special significance according to tikanga Maori).

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(2) However, the court must be satisfied that reserving the land in that way—

(a) is in accordance with the views of the owners; and

(b) is consented to by the local authority.

63 Section 341 amended (Further provisions relating to Maori reservation for marae or meeting place)

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In section 341(3), replace “the chief executive shall, in the manner provided by section 338,” with “the court may make an order under section 338(5) to”.

64 New section 341A inserted (Orders about Maori reservations to be registered)

After section 341, insert:

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341A Orders about Maori reservations to be registered

(1) An order made under section 338(1), (2), or (5) must be registered—

- | | | |
|---|--|----|
| (a) | on the record of title for the land under the Land Transfer Act 2017; or | |
| (b) | if applicable, in accordance with the Deeds Registration Act 1908. | |
| (2) | The Registrar must lodge an order for registration as soon as practicable after it is made. | |
| (3) | No fee is payable for registration. | 5 |
| 65 Section 342 amended (Protection of Maori land against execution for debt) | | |
| Replace section 342(1) with: | | |
| (1) | The following cannot be enforced against a person's interest in Maori customary land or, subject to section 343, a person's beneficial freehold interest in Maori freehold land: | 10 |
| (a) | a judgment for payment of the person's debts or liabilities: | |
| (b) | a fine, penalty, or sentence of reparation that is imposed on the person: | |
| (c) | a requirement to pay money that is imposed on the person by an order or any other judicial process. | |
| 66 Schedule 1AA amended | | |
| In Schedule 1AA, after Part 1, insert the Part 2 set out in the Schedule of this Act. | | |

Part 2 Amendments to other Acts and regulations

Amendments to Family Protection Act 1955 20

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|---|--|----|
| 67 | Amendments to Family Protection Act 1955
Section 68 amends the Family Protection Act 1955. | |
| 68 Section 3A amended (Courts to have concurrent jurisdiction) | | |
| (1) | In section 3A(1), replace “the High Court and the Family Court” with “the High Court, the Maori Land Court, and the Family Court”. | 25 |
| (2) | After section 3A(2), insert: | |
| (2A) | An application under this Act must be made to— | |
| (a) | the Family Court or the High Court, unless paragraph (b) applies: | |
| (b) | the Maori Land Court, if the application relates only to Maori freehold land. | 30 |
| (3) | Replace section 3A(3) with: | |
| (3) | The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to any other court | |

- referred to in subsection (2A) if it considers that the proceedings or question would be more appropriately dealt with by the other court.
- (3A) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
- (4) In section 3A(4), after “Act in the Family Court”, insert “or the Maori Land Court”.
- (5) In section 3A(4), after “with in the Family Court”, insert “or the Maori Land Court (as the case may be)”.
- (6) After section 3A(4), insert:
- (5) Any appeal from a decision of the Family Court or the Maori Land Court under this Act must be made to the High Court.
- (6) In this section, **Maori freehold land**—
- (a) has the meaning given by section 4 of Te Ture Whenua Maori Act 1993; and
- (b) includes shares in a Maori incorporation under that Act; and
- (c) includes the proceeds of alienation of anything referred to in **paragraph (a) or (b)**.

Amendments to Government Roothing Powers Act 1989

- 69 Amendments to Government Roothing Powers Act 1989**
- Sections 70 to 75** amend the Government Roothing Powers Act 1989.
- 70 Section 48 amended (Powers of Minister over roads under Minister’s control)**
- (1) In section 48(6), replace “the office of the District Court nearest to the land concerned” with “the court”.
- (2) After section 48(6), insert:
- (6A) The application must be made to—
- (a) the District Court, unless **paragraph (b)** applies:
- (b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).
- (3) After section 48(7), insert:
- (7A) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (6A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.
- (7B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.

(7C) Any appeal from an order or a direction made under subsection (7) must be made to the High Court (even for an order or a direction of the Maori Land Court).

71 Section 50 amended (Owner or occupier of land not to cause damage to bridge by removal of stone, etc)

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(1) In section 50(3), replace “District Court” with “court”.

(2) After section 50(3), insert:

(3A) The appeal must be made to—

(a) the District Court, unless **paragraph (b)** applies:

(b) the Maori Land Court, if the appeal relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).

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(3) After section 50(5), insert:

(5A) The court to which an appeal is made may refer any proceedings resulting from the appeal, or any question in those proceedings, to the other court referred to in **subsection (3A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.

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(5B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.

(5C) Any further appeal from the court’s decision must be made to the High Court (even for a decision of the Maori Land Court).

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72 Section 55 amended (Removal of trees, hedges, etc, that obscure visibility or interfere with public work)

(1) In section 55(3), replace “the office of the District Court nearest to the land” with “the court”.

(2) After section 55(3), insert:

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(3A) The application must be made to—

(a) the District Court, unless **paragraph (b)** applies:

(b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).

(3) After section 55(6), insert:

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(6A) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (3A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.

(6B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.

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73	Section 61 amended (Powers and duties of Agency in relation to State highways)	
(1)	In section 61(8), replace “the office of the District Court nearest to the land concerned” with “the court”.	
(2)	After section 61(8), insert:	5
(8A)	The application must be made to—	
	(a) the District Court, unless paragraph (b) applies:	
	(b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).	
(3)	After section 61(9), insert:	10
(9A)	The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in subsection (8A) if it considers that the proceedings or question would be more appropriately dealt with by the other court.	
(9B)	The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.	15
(9C)	Any appeal from an order or a direction made under subsection (9) must be made to the High Court (even for an order or a direction of the Maori Land Court).	
74	Section 74 amended (Land may be temporarily occupied)	20
(1)	In section 74(3), replace “the office of the District Court nearest to the land concerned” with “the court”.	
(2)	After section 74(3), insert:	
(3A)	The application must be made to—	
	(a) the District Court, unless paragraph (b) applies:	25
	(b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).	
(3)	After section 74(4), insert:	
(5)	The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in subsection (3A) if it considers that the proceedings or question would be more appropriately dealt with by the other court.	30
(6)	The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.	
(7)	Any appeal from an order or a direction made under subsection (4) must be made to the High Court (even for an order or a direction of the Maori Land Court).	35

- 75 Section 76 amended (Access to land cut off from road or separated by motorway)**
- (1) In section 76(4), replace “the nearest office of the District Court” with “the court”.
 - (2) After section 76(4), insert: 5
 - (5) The matter must be referred to—
 - (a) the District Court, unless **paragraph (b)** applies:
 - (b) the Maori Land Court, if the matter relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).
 - (6) The court to which a matter is referred may refer any proceedings resulting from the matter, or any question in those proceedings, to the other court referred to in **subsection (5)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 10
 - (7) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings. 15

Amendments to Law Reform (Testamentary Promises) Act 1949

- 76 Amendments to Law Reform (Testamentary Promises) Act 1949**
- Section 77** amends the Law Reform (Testamentary Promises) Act 1949.
- 77 Section 5 amended (Courts to have concurrent jurisdiction)**
- (1) In section 5(1), replace “the High Court and the Family Court” with “the High Court, the Maori Land Court, and the Family Court”. 20
 - (2) After section 5(2), insert:
 - (2A) An application under this Act must be made to—
 - (a) the Family Court or the High Court, unless **paragraph (b)** applies:
 - (b) the Maori Land Court, if the application relates only to Maori freehold land. 25
 - (3) Replace section 5(3) with:
 - (3) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to any other court referred to in **subsection (2A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 30
 - (3A) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
 - (4) In section 5(4), after “Act in the Family Court”, insert “or the Maori Land Court”. 35
 - (5) In section 5(4), after “with in the Family Court”, insert “or the Maori Land Court (as the case may be)”.

- (6) After section 5(4), insert:
- (5) Any appeal from a decision of the Family Court or the Maori Land Court under this Act must be made to the High Court.
- (6) In this section, **Maori freehold land**—
- (a) has the meaning given by section 4 of Te Ture Whenua Maori Act 1993; 5
 - and
 - (b) includes shares in a Maori incorporation under that Act; and
 - (c) includes the proceeds of alienation of anything referred to in **paragraph (a) or (b)**.

Amendments to Local Government Act 1974 10

78 Amendments to Local Government Act 1974

Section 79 amends the Local Government Act 1974.

79 Section 446 amended (Council may cover in watercourse so as to make it a public drain)

- (1) In section 446(7), replace “District Court” with “court”. 15
- (2) After section 446(7), insert:
- (7A) The application must be made to—
- (a) the District Court, unless **paragraph (b)** applies:
 - (b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993). 20
- (3) After section 446(8), insert:
- (8A) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (7A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 25
- (8B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
- (8C) Any appeal from an order made under subsection (8) must be made to the High Court (even for an order of the Maori Land Court).
- (4) In section 446(9), replace “subsections (5) to (8)” with “subsections (5) to **(8C)**”. 30

Amendments to Maori Assembled Owners Regulations 1995

80 Amendments to Maori Assembled Owners Regulations 1995

Sections 81 to 83 amend the Maori Assembled Owners Regulations 1995.

- 81 Regulation 2 amended (Interpretation)**
In regulation 2(1), definition of **owners**, delete “as tenants in common”.
- 82 Regulation 32 amended (Quorum at meetings generally)**
In regulation 32(2), replace “regulation 33 or regulation 34 or regulation 35” with “regulation 33 or 34”. 5
- 83 Regulation 35 revoked (Quorum for resolution to incorporate)**
Revoke regulation 35.
Amendment to Maori Incorporations Constitution Regulations 1994
- 84 Amendment to Maori Incorporations Constitution Regulations 1994**
Section 85 amends the Maori Incorporations Constitution Regulations 1994. 10
- 85 Schedule 1 amended**
In Schedule 1, after clause 38, insert:
- 39 Interests register**
The incorporation’s interests register must be kept in a physical or an electronic form, and made available, in accordance with **section 274B** of the Act. 15
- Amendments to Māori Land Court Fees Regulations 2013*
- 86 Amendments to Māori Land Court Fees Regulations 2013**
Section 87 amends the Māori Land Court Fees Regulations 2013.
- 87 Schedule amended**
- (1) In the Schedule, Part 12, after item 23, insert: 20
Applications under Family Protection Act 1955 or Law Reform (Testamentary Promises) Act 1949
- | | | | |
|------------|--|---|---|
| 23A | Filing an application to the Maori Land Court under the— | | |
| | (a) Family Protection Act 1955 | = | 0 |
| | (b) Law Reform (Testamentary Promises) Act 1949 | = | 0 |
- (2) In the Schedule, Part 12, item 25, before paragraph (a), insert:
- | | | | |
|------|--|--|---------------------|
| (aa) | referral of a disputed issue to a mediator | | 98L or 98R 0 |
|------|--|--|---------------------|

Schedule
New Part 2 inserted into Schedule 1AA

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Part 2	
Provisions relating to Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2019	5
3 Meaning of commencement date	
In a provision of this Part, commencement date means the date on which the provision comes into force.	
4 Judges are mediators until other mediators provided for	10
(1) This clause applies until the commencement of section 98M(2) to (5) .	
(2) For the purposes of section 98M , the Judge or Registrar who referred the issues to a mediator must appoint either 1 or 2 Judges as the mediator.	
5 Existing Maori reservations	
A Maori reservation that, at the start of the commencement date, is set apart under section 338 must be treated as if it were set apart by an order of the court.	15

Legislative history

19 September 2019
15 October 2019

Introduction (Bill 179–1)
First reading and referral to Māori Affairs Committee