

Te Pire Whakatikatika a ngā Poutiaki, ko Papawai, ko Kaikokirikiri

Pire Tūmataiti

Te pūrongo a Te Komiti Whiriwhiri Take Māori

Ngā Kōrero

Tūtohutanga

Kua āta tirotirohia e Te Komiti Whiriwhiri Take Māori, Te Pire Whakatikatika a ngā Poutiaki, ko Papawai, ko Kaikokirikiri me tōna tūtohu kia whakaaetia me ngā whakatikatika kua oti te whakaatu.

Kupu whakataki

He pire tūmataiti Te Pire Whakatikatika a ngā Poutiaki, ko Papawai, ko Kaikokirikiri nā te mema Pāremata a Alastair Scott i tautoko. E whai ana te pire ki te whakatika i te *Papawai and Kaikokirikiri Trusts Act 1943* kia taea ai:

- te whakamārama pai ake i te hononga i waenganui i Te Poari o ngā kaitiaki o Papawai me Kaikōkirikiri, i Te Pihopa o Te Upoko o Te Ika, ā, i te tangata whenua o Wairarapa
- te whakatū hātepe kōharinga pakari ake mā ngā mema o Te Poari
- te hoatu wāhi tōkeke atu mō te tohatoha pūtea mō te tangata whenua o Wairarapa
- te tūā pā i te whanaketanga i ngā whenua mō te wā roa.

Te reo o te pire

I whakaaroaro mātou mehemea kia whakamanatia te pire ki roto i Te Reo Māori me te reo Ingarihi anō hoki. Ka tautokohia ā-mātāponohia e mātou tēnei me te tohutohu anō, ko te whakamana i ngā pire katoa ki roto i Te Reo Māori me te reo Ingarihi hoki tētahi tūmanako.

Heoi anō rā, ka whakaae mātou, he nui rawa ngā mahi uaua me ngā herenga wā kei runga i tēnei ake pire mō mātou ki te tūtohu kia whakamanatia he taha Reo Māori. I

pēnei ai ō mātou whakaaro nā te mea, kei roto kē Te Ture tuatahi nei i te reo Ingarihi anake. Nā runga i tērā, ko te huarahi anake e taea ai te whakamana i ngā reo e rua, ko te hoki anō ki te whakamana i te katoa o Te Ture tuatahi me te whakauru mai anō hei pire hou. Ka pēneitia ana, kua tino takaroatia ngā whakahounga e tūtuhitia ake nei e te pire o te wā nei.

Ka whakamanatia ana Te Pire nei i roto i te reo Ingarihi, ka kaha tonu Te Poari ki te takatū pire tūmataiti kia whakamanatia anōtia te katoa o Te Ture e tū nei ki roto i ngā reo e rua mō tētahi whakaurunga mai ā-tōmuri ake. Tua atu i tēnā, ka āhei te kaiwhakatairanga o te pire ki te tango mai i tēnei e pire ki wah, ā, mō Te Poari ki te takatū pire hou i roto i ngā reo e rua hei whakamana anō i te katoa o te *Papawai and Kaikōkīrīkī Trusts Act 1943* me ngā whakahounga kua whakaurua atu ki roto i te pire nei.

Ko tā mātou ka tūtuhu mō ngā wā kei te heke mai, kia whakaaroarohia e te hunga whakatairanga pire tūmataiti hou kia whakaurua mai aua pire hei pire rua reo.

Whakamāramatanga tangata whenua o Wairarapa

Ko tā mātou i whakatau mehemea kia whakatikaina te whakamāramatanga “*tangata whenua of Wairarapa*” i rara e 4 o te pire, kia āta whakaingoatia ngā iwi e rua (a Rangitāne me Ngāti Kahungunu) nā te mea pā ai te pire ki a rāua tahi. Whai ai te pire i te whakamāramatanga, “*tangata whenua of Wairarapa*” ēngari, kīhai tētahi o ngā iwi nei e whakahuatia.

Ki tō mātou mōhio, nā runga i tētahi rapunga whakamaherehere i te tau 2006, ka whakatau Te Poari, awhi pai ai ngā kupu i tūtuhungia i roto i te pire i ngā kohinga hononga taura here hītori o Wairarapa. Nā runga i tērā, kīhai mātou e tūtuhu kia whakarerekēngia te whakamāramatanga.

Te hārakiraki me te *New Zealand Bill of Rights Act 1990*

Ka whakanohoa a rara e 5 o te pire i te wāhi o tekiona e 5 o Te Ture. Whakatakoto āhuatanga ai taua tekiona i ngā āhuatanga e wātea mai te tūranga mō tetahi mema o Te Poari. Ka uru atu ngā āhuatanga ka whai ake e pā ana ki tētahi mema o Te Poari: kua

- herea i raro i Te Ture ki tētahi whakataunga maimoatanga
- noho mai hei tūroto motuhake i raro i te Mental Health (Compulsory Assessment and Treatment) Act 1992
- utaina he whakataunga ki runga i a rātou i raro i te *Property Rights Act 1998*.

Kua whakaputaina e Te Rōia Matua he pūrongo i raro i tekiona e 7 o te *New Zealand Bill of Rights Act 1990* e whakatau ana, me te mea nei e hārakiraki ana a rara e 5 o te pire i tekiona e 19(1): te tika o te noho wātea mai i te aukatinga. Whakapuaki ai a tekiona e 5 o te *New Zealand Bill of Rights Act*, ko ngā tika me ngā noho herekore kei roto i a ia, he āhua whāiti noa iho ngā herenga kei roto i a ia ka taea, he herenga i ētahi anake e ai ki ngā tepe whaitake ka taea te whakaatu tika, he porihanga manapori, he porihanga noho herekore.

Whakapuaki ai Te Rōia Matua, ēhara ngā āhuatanga i whakatakotoria i rara e 5 o te pire, i tētahi mea e whakawhāiti ana mō te tika kia noho herehore mai i te aukatinga nā te mea, whakamahia ai e rātou ngā whakataunga e tū ana i te wā nei i raro i ēnei Ture ki te pūtohe mehemea, e kaha ana tētahi kia noho hei mema mō Te Poari. Ko te tikanga, kīhai kē ngā whakataunga maimoatanga i raro i te ture o te *Mental Health Act* i hangaia hei waitohu i te kore kaha, ā, nā runga i tērā, kāore i te tika kia whakamahia pēneitia aua ture.

Ahakoia i whakahoahoatia ngā whakataunga wā-roa i raro i te *Protection of Personal and Property Rights Act* hei pūtohe i te kaha o te tangata ki te kawhe mahi e hāngai pū ana ki ō rātou ake pānga whaiaro, pānga rawa, ka hoatu ai hoki e taua *Protection of Personal and Property Rights Act* he wāhi mō ngā whakataunga wā-poto, me ngā whakataunga mō te wā noa nei, ēhara i te tātai tika mō te kaha. Kīhai a rara e 5 o te pire e wehewehe mai i ngā momo whakataunga nei.

Ka tūtohu mātou kia whakatikaina a rara e 5 kia noho ōrite ai ki te *New Zealand Bill of Rights Act*. Ka tūtohu mātou kia wetehia atu a tekiona hou e 5(1)(e), ā, kia whakatikaina a tekiona hou e 5(1)(f) kia herea ai ki ngā whakataunga i whakatatokotokia i raro tekiona e 31 o te *Protection of Personal and Property Rights Act* (kopoutanga kaiwhakahaere).

Ka tūtohu anō hoki mātou kia whakaurua he tekiona ō-raro iho, a (1A), kia whakatau ai, i te wā e herea ana he tangata i raro i te maru o tētahi whakatau wā poto i raro tekiona e 30 o te *Protection of Personal and Property Rights Act* kia maimaotia, me te mea nei e ngaro atu ana i raro i te mana whakaaetanga o Te Poari. E ōrite ana tēnei ki te aronga whakaratonga rite anō, i whakatikaina rā e te *Disability (United Nations Convention on the Rights of Persons With Disabilities) Act 2008*, mua mai i te wā i whakapūmautia ai te *Convention on the Rights of Persons with Disabilities* e Aotea-roa.

Te wā mō ngā mema i runga i Te Poari

Ka whakaurua e rara 5 o te pire he tekiona hou e 4A e tautuhi ana i te wā mō ngā mema i runga i Te Poari. Ka tūtohu mātou kia whakatikaina a rara e 5 mā te waiho i ngā kōrerotanga mō te tau 2017 i te wāhi o ngā kōrerotanga mō te 2015 hei whakapūmau ka whakamanatia te pire i mua mai o te rā i whakahuatia i roto tekiona hou e 4A.

Te haumi pūtea āwhina a te poutiaki

Mā rara e 13 e whakatika a tekiona e 15 o Te Ture tērā e pā ana ki ngā mahi haumi. Kua kite mātou, me te mea nei e katia ana e tekiona hou e 15(1) ngā mahi haumi ki te whenua nā te mea, ā, kaikiri ana tēnei i ngā hiahia o Te Poari i whakahuatia ake rā e ia i roto i tana tāpaetanga, ā, nā runga i tērā, ka tūtohu mātou kia whakatikaina a rara e 13, kia ngāwari ai te huarahi ki Te Poari mō āna ake mahi haumi, kia kore ai e katia ki te haumi whenua anake.

Tāpiritanga

Hātepe komiti

Ka tonoa Te Pire a Ngā Poutiaki, ko Papawai, ko Kaikōkirikiri ki te komiti i te 2 o Poutū-te-rangi i te tau 2016. Ko te 14 o Paenga-whāwhā i te tau 2016 te rā katinga mō ngā tāpaetanga. I whiwhi, i whakaaroarohia e mātou ngā tāpaetanga e rua nō mai i ngā kohinga whai pānga, ā, i rongo i te taunakitanga ā-waha o tētahi kaiwhakatakoto tāpaetanga kotahi.

I whiwhi whakamaherehere mātou nō mai i Te Tāhu o Te Ture.

Ngā mema o Te Komiti, ko

Tūtehounuku Kōrako (Heamana)

Hōnore Chester Borrows

Mārama Davidson

Kelvin Davis

Mārama Fox

Joanne Hayes

Hōnore Nanaia Mahuta

Pita Paraone

Papawai and Kaikokirikiri Trusts Amendment Bill

Private Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation

The Māori Affairs Committee has examined the Papawai and Kaikokirikiri Trusts Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Papawai and Kaikokirikiri Trusts Amendment Bill is a private bill, sponsored by Alastair Scott MP. The bill seeks to amend the Papawai and Kaikokirikiri Trusts Act 1943 so that it would:

- better describe the relationship between the Papawai and Kaikokirikiri Trusts Board, the Bishop of Te Upoko o Te Ika, and tangata whenua of Wairarapa
- establish a more robust nomination process for Board members
- provide fairer distribution of funds for tangata whenua of Wairarapa
- facilitate the long-term development of lands.

Language of the bill

We considered whether the bill should be enacted in te reo Māori as well as English. We support this in principle and note that it is an aspiration for all bills to be enacted in te reo Māori as well as English.

However, we accept that the practical difficulties and time constraints on this particular bill are too great to recommend enacting a te reo Māori version. This is because the original Act exists only in English, so the only way to give effect to an amending bill in both languages would be to re-enact the entire Act by introducing a new bill. This would considerably delay the reforms proposed by the current bill.

If this bill is enacted in English, the Board can still prepare a new private bill that re-enacts the entire Act in both languages for later introduction. Alternatively, the pro-

moter of the bill can withdraw this bill, and the Board can prepare a new bill in both languages that re-enacts the entire Papawai and Kaikokirikiri Trusts Act 1943 with the changes included in this bill.

In the future, we recommend that sponsors of private bills consider introducing them as dual language bills.

Definition of tangata whenua of Wairarapa

We considered whether the definition of “tangata whenua of Wairarapa” in clause 4 of the bill should be amended so that it specifically mentions both iwi to which the bill applies (Rangitāne and Ngāti Kahungunu). The bill adopts a definition of “tangata whenua of Wairarapa” that does not specifically refer to either iwi.

We understand that, based on consultation in 2006, the Board considers that the wording proposed in the bill best embraces the historical kinship groups of the Wairarapa. Therefore, we do not recommend amending the definition.

Inconsistency with the New Zealand Bill of Rights Act 1990

Clause 5 of the bill would replace section 5 of the Act. It sets out circumstances in which the office of a member of the Board would become vacant. Such circumstances would include a member of the Board:

- becoming subject to a compulsory treatment order
- becoming a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992
- having an order made about them under the Protection of Personal and Property Rights Act 1988.

The Attorney-General has issued a report under section 7 of the New Zealand Bill of Rights Act 1990 that concludes that clause 5 of the bill appears to be inconsistent with section 19(1): the right to be free from discrimination. Section 5 of the New Zealand Bill of Rights Act states that the rights and freedoms it contains are subject only to reasonable limits that can be demonstrably justified in a free and democratic society.

The Attorney-General states that the circumstances set out in clause 5 of the bill are not reasonable limits on the right to be free from discrimination because they use the existence of orders under these Acts to determine whether a person is capable to be a member of the Board. Compulsory treatment orders under the Mental Health Act are not meant to signify a lack of capacity, so it is not appropriate to use them in this way.

Although long-term orders under the Protection of Personal and Property Rights Act are designed to determine an individual’s capacity to carry out specific functions relating to their personal and property interests, the Protection of Personal and Property Rights Act also provides for short-term and interim orders that are not an appropriate measure of capacity. Clause 5 of the bill does not distinguish between these types of orders.

We recommend amending clause 5 so that it is consistent with the New Zealand Bill of Rights Act. We recommend removing new section 5(1)(e) and amending new section 5(1)(f) to limit it to orders made under section 31 of the Protection of Personal and Property Rights Act (appointment of a manager).

We also recommend inserting a new subsection (1A) to provide that, while a person is subject to a temporary order under section 30 of the Protection of Personal and Property Rights Act, they are treated as absent with the leave of the Board. This is consistent with the approach to similar provisions amended by the Disability (United Nations Convention on the Rights of Persons With Disabilities) Act 2008 before New Zealand ratified the Convention on the Rights of Persons with Disabilities.

Term of office of Board members

Clause 5 of the bill would insert a new section 4A to specify the term of office of Board members. We recommend amending clause 5 to replace references to 2015 with references to 2017 to ensure that the bill passes before the date referred to in new section 4A.

Investment of trust funds

Clause 13 would amend section 15 of the Act, which relates to investments. We note that the proposed new section 15(1) appears to restrict investments to investments in land. Because this would be contrary to the Board's intentions as outlined in its submission, we recommend amending clause 13 so the Board would have flexibility in its investments and would not be restricted to investing only in land.

Appendix

Committee process

The Papawai and Kaikokirikiri Trusts Amendment Bill was referred to the committee on 2 March 2016. The closing date for submissions was 14 April 2016. We received and considered two submissions from interested groups and heard oral evidence from one submitter.

We received advice from the Ministry of Justice.

Committee membership

Tutehounuku Korako (Chairperson)

Hon Chester Borrows

Marama Davidson

Kelvin Davis

Marama Fox

Joanne Hayes

Hon Nanaia Mahuta

Pita Paraone

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Alastair Scott

Papawai and Kaikokirikiri Trusts Amendment Bill

Private Bill

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Preamble

- (1) The Papawai and Kaikokirikiri Trusts Act 1943 (the **principal Act**) restricts the powers of the Papawai and Kaikokirikiri Trusts Board. The Papawai and Kaikokirikiri Trusts Board wishes to—
- (a) describe better the relationship between Papawai and Kaikokirikiri Trusts Board, the Bishop of Te Upoko o Te Ika, and tangata whenua of Wairarapa; and 5
 - (b) establish a more robust nomination process ~~of~~ for Board members; and
 - (c) provide a fairer distribution of funds for tangata whenua of Wairarapa; and 10
 - (d) facilitate the long-term development of lands:
- (2) Attaining these objectives requires amendments to the principal Act:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Papawai and Kaikokirikiri Trusts Amendment Act **2015**. 15

2 Commencement

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

3 Principal Act

This Act amends the Papawai and Kaikokirikiri Trusts Act 1943 (the **principal Act**). 20

4 Section 2 amended (Interpretation)

- (1) In section 2, repeal the definitions of **Church of England** and **financial year**.
 (2) In section 2, insert in their appropriate alphabetical order:

Bishop of Te Upoko o Te Ika—

- (a) means the Bishop appointed under that title by the Anglican Church in Aotearoa, New Zealand and Polynesia, commonly known as the Church of England, or the Bishop of any replacement diocese; and 25
- (b) includes any person acting as the Bishop when the Bishop is, for any reason, unavailable 30

financial year means a period of 12 months ending on the day in any year that the Board determines

tangata whenua of Wairarapa means an individual who has a whakapapa to the tīpuna rangatira who established historical kinship groups in Wairarapa

5 Sections 4 and 5 replaced

Replace sections 4 and 5 with:

4 Members of Board

- (1) The Board must have 8 members, consisting of—
- (a) 4 members appointed by the Bishop of Te Upoko o Te Ika; and 5
 - (b) 4 members, being tangata whenua of Wairarapa, appointed or elected by tangata whenua of Wairarapa in accordance with a process adopted and publicly notified by the Board.
- (2) The chairperson of the Board—
- (a) must be a member of the Board; and 10
 - (b) must be appointed annually at the first meeting of the Board following its annual general meeting; and
 - (c) may hold office until the end of the next annual general meeting.

4A Term of office

- (1) Despite anything in **section 4**,— 15
- (a) the members of the Board holding office on the commencement of this section continue to hold office until the end of the annual general meeting of the Board held in **20152017**; and
 - (b) the Bishop of Te Upoko o Te Ika must, in relation to members of the Board to be appointed in **20152017** under **section 4(1)(a)**, appoint— 20
 - (i) 1 person to hold office for a term of 4 years; and
 - (ii) 1 person to hold office for a term of 3 years; and
 - (iii) 1 person to hold office for a term of 2 years; and
 - (iv) 1 person to hold office for a term of 1 year; and
 - (c) the tangata whenua of Wairarapa must, in relation to members of the Board to be appointed or elected in **20152017** under **section 4(1)(b)**, appoint or elect— 25
 - (i) 1 person to hold office for a term of 4 years; and
 - (ii) 1 person to hold office for a term of 3 years; and
 - (iii) 1 person to hold office for a term of 2 years; and 30
 - (iv) 1 person to hold office for a term of 1 year.
- (2) A member of the Board whose term has expired ceases to be a member of the Board but is, if still qualified, eligible to hold office again.
- (3) When the term of office of any member of the Board expires, the office must be filled in the manner in which the office was originally filled under **section 4**. 35

- (4) A person who takes office as a member of the Board under **section 4** after ~~2015~~**2017** may hold office for a term of 4 years.

5 Vacancies

- (1) The office of a member of the Board becomes vacant if the member—
- (a) dies; or 5
 - (b) resigns his or her office by written notice to the Board; or
 - (c) is declared bankrupt; or
 - (d) is convicted of any offence punishable by a term of imprisonment of 1 year or more; or
 - (e) ~~becomes a person subject to a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or becomes a special patient as defined in section 2(1) of that Act; or~~ 10
 - (f) becomes a person in respect of whom an order is made ~~pursuant to~~ under section 31 of the Protection of Personal and Property Rights Act 1988; 15
or
 - (g) is absent from 4 consecutive meetings of the Board without the leave of the Board.
- (1A) A member of the Board is to be treated as absent with the leave of the Board while the member is subject to a temporary order under section 30 of the Protection of Personal and Property Rights Act 1988. 20
- (2) When the office of any member of the Board becomes vacant, the vacancy must be filled in the manner in which that office was originally filled.
- (3) A person who takes office as a member of the Board under **subsection (2)** may hold office for the residue of the term for which his or her predecessor would have held office if the vacancy had not occurred. 25
- (4) A vacancy does not affect the powers of the Board, provided that the Board has a quorum.

6 Section 7 amended (Meetings of Board)

- (1) In section 7(1), replace “Chairman” with “Chairperson”. 30
- (2) In section 7(1A), replace “Chairman” with “Chairperson” in each place.
- (3) In section 7(2), replace “6 members” with “5 members”.

7 Section 8 amended (Chairman and Deputy Chairman)

- (1) In the heading to section 8, replace “**Chairman**” with “**Chairperson**” in each place. 35
- (2) Replace section 8(1) with:

- (1) The Board must appoint from its members a Chairperson and a Deputy Chairperson of the Board.
- (1A) During any vacancy in the office of Chairperson, or whenever the Chairperson is unable to act, whether by reason of absence or otherwise, the Deputy Chairperson may exercise and perform all the powers and duties of the Chairperson. 5
- (3) In section 8(2), replace “Chairman” with “Chairperson” in each place.
- (4) In section 8(3), replace “Chairman” with “Chairperson”.
- 8 Section 10 amended (Contracts of Board)**
Replace section 10(3) with:
- (3) No oral contract may be made by or on behalf of the Board. 10
- 9 Section 12 amended (Application of trust moneys)**
Replace section 12(3) to (6) with:
- (3) The Board must appropriate income for each financial year to a fund to be called the Papawai and Kaikokirikiri Scholarship Fund, which may be available only for the following purposes: 15
- (a) the provision of scholarships for the post-primary education of children who have whakapapa in relation to the tangata whenua of Wairarapa:
- (b) the provision of books, clothing, and other equipment for the holders of scholarships, and the making of grants for those purposes and generally for the purpose of assisting the parents or guardians of any holders of scholarships to provide for their education: 20
- (c) the making of grants to the governing bodies of any schools at which any such scholarships are tenable or at which any such children are educated:
- (d) the establishment, furnishing, maintenance, and management of a school or schools in the Wairarapa district for children, including provision for residential accommodation. 25
- 10 Section 13 amended (Scholarships)**
Repeal section 13(3) to (5).
- 11 Section 14 replaced (Powers of Board to sell or lease lands)** 30
Replace section 14 with:
- 14 Powers of Board to sell or lease lands**
- (1) This section applies to the lands described in the Schedule, namely, the Clareville land, the Papawai land, and the Kaikokirikiri land.
- (2) The Board may sell the Clareville land, but not the Papawai land or the Kaikokirikiri land, by public auction or by private contract, and on the terms and con- 35

	ditions that the Board thinks fit, with power to buy in or rescind or vary any contract of sale.	
(3)	To avoid doubt, the Board may not consent to the sale of or otherwise permanently alienate the Papawai land or the Kaikokirikiri land.	
(4)	The Board may lease the Clareville land, the Papawai land, and the Kaikokirikiri land, in whole or in part, and on the terms and conditions that the Board thinks fit.	5
12	Section 14A amended (Leasing of certain Kaikokirikiri lands) Repeal section 14A(1) and (3).	
13	Section 15 amended (Investment of trust funds, etc) Replace section 15(1) with:	10
(1)	Any moneys belonging to the Board and available for investment may be invested in any investments for the time being authorised by law for the investment of trust funds in the purchase of lands.	
(1A)	Subject to section 14A, any investment made under subsection (1) may be varied from time to time.	15
14	Section 16 replaced (Travelling expenses) Replace section 16 with:	
16	Payments for attending business meetings of Board and its subcommittees	
(1)	The members of the Board are entitled to receive payment from the funds of the Board for any reasonable travelling, accommodation, and other expenses that they incur to attend—	20
	(a) business meetings of the Board; and	
	(b) business meetings of any subcommittees of the Board.	
(2)	The members of the Board may also be paid a meeting fee or honoraria that the Board has approved at its annual general meeting.	25
(3)	However, no meeting fee or honoraria may be payable to a member of the Board if that member has determined or materially influenced the amount of the meeting fee or honoraria.	
15	Section 18 amended (Annual report, including statement of accounts) Replace section 18(3) with:	30
(3)	Copies of the report must be provided to the Bishop of Te Upoko o Te Ika.	

Legislative history

3 December 2015
2 March 2016

Introduction (Bill 102–1)
First reading and referral to Māori Affairs Committee

Papawai and Kaikokirikiri Trusts Amendment Bill

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