



ANALYSIS

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1991, No. 38

An Act to amend the law relating to the Wi Pere Trust
[20 June 1991]

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

1. Short Title—This Act may be cited as the Maori Purposes Act 1991.

2. Wi Pere Trust—Whereas by deed dated the 14th day of April 1899 (in this section called the trust deed), made between Wi Pere, Arapera Pere, Hetekia Pere, Moanaroa Pere, Riria Mauaranui, and Riripeti Rangikohera (together in the trust deed and in this section referred to as the assignors) of the one part and Walter George Foster of the other part, certain real and personal property in the Poverty Bay District was transferred to Walter George Foster upon the trusts declared in the trust deed: And whereas by Order in Council dated the 9th day of January 1909 His Excellency the Governor, by virtue of the powers vested in him by section 47 of the Maori Land Claims Adjustment and Laws Amendment Act 1907, removed Walter George Foster as trustee under the trust deed, appointed in his place Henry Cheetham Jackson and Hetekia te Kani Pere as trustees, and declared fresh trusts in respect of the residue of the real and personal property then remaining subject to the trust: And whereas Hetekia te Kani Pere died on or about the 21st day of March 1925, and Henry Cheetham Jackson died on or about the 7th day of April 1925: And whereas by deed dated the 1st day of August 1925 Moanaroa Pere, the then sole survivor of the assignors, in exercise of the powers conferred upon him by the trust deed, appointed himself and Charles Alfred Smith and Heathcote Beetham

Williams (together in this section referred to as the former trustees) to be trustees in place of Henry Cheetham Jackson and Hetekia te Kani Pere, and that appointment was approved by His Excellency the Governor-General by writing endorsed upon the deed of appointment: And whereas Moanaroa Pere died on or about the 3rd day of February 1935: And whereas, each of the other two former trustees having expressed a desire to resign as trustee, His Excellency the Governor-General, by Order in Council dated the 2nd day of March 1938, removed them from office and appointed Owen Neil Campbell, Rongowhakaata Halbert, and Harold Walter Symes to be trustees of the trust: And whereas, by section 15 of the Maori Purposes Act 1938, new trusts were declared in respect of the real and personal property then remaining subject to the trust, further powers were conferred upon the trustees, and certain provision was made for the administration of the trusts and the release and discharge of certain former trustees: And whereas, since the passing of that Act, various people have been appointed from time to time as trustees of the trust, namely, Francis Herbert Bull, Robert Graham Dobson, Turuki Pere, Iho-O-Te-Rangi Halbert, Rangiwahipu Arapeta (otherwise known as Rangiwahipu Halbert), Thomas Smiler, Nonoi Haronga (otherwise known as Te Nonoikura or Hinemanuhiri Haronga), and Anthony Halbert, the last 3 being the holders of that office at the time of the enactment of this section: And whereas Nonoi Haronga wishes to retire from the office of trustee and it has been agreed that she should do so and be replaced by her son Alan Parekura Torohina Haronga: And whereas it is expedient, having regard to the intentions express or implied and contained in the trust deed, that new trusts should be declared in respect of the residue of the real and personal property now remaining subject to the trust, and that further powers should be conferred on the trustees, and that provision should be made for the administration of the trusts and the release and discharge of the former trustees as follows: Be it therefore enacted as follows:

(1) The trust created as recited in the preamble to this section and known as the Wi Pere Trust shall continue to exist, and the trust property shall comprise all the real and personal property that, at the passing of this Act, is vested in the trustees for the time being, and shall include any real or personal property that may, after the commencement of this Act, be acquired by the trustees for the purposes of the trust.

(2) There shall be 5 trustees of the trust.

(3) The first trustees of the trust after the passing of this Act shall be—

- (a) Thomas Smiler and Anthony Halbert; and
- (b) Alan Parekura Torohina Haronga; and
- (c) Two other trustees appointed by the Minister of Maori Affairs on the recommendation of the persons named in paragraphs (a) and (b) of this subsection.

(4) The first trustees shall hold office for a period of 3 years beginning with the date of the commencement of this Act.

(5) The trustees of the trust (other than the first trustees) shall be appointed by the Minister on the recommendation of the retiring trustees, and shall hold office for a term of 3 years beginning with the date of their appointments.

(6) Every trustee shall be eligible, on the expiry of his or her term of office, to be reappointed.

(7) The Minister may at any time, by notice in writing signed by the Minister and addressed to the trustee, remove a trustee from office for misconduct or neglect of duty proved to the satisfaction of the Minister.

(8) Any trustee may at any time resign by notice in writing signed by the trustee and addressed to the Minister.

(9) Where, because of the death, resignation, or removal of any trustee, there are for the time being less than 5 trustees, the remaining trustees may exercise all the powers conferred on the trustees by this section as if there were no such vacancy in the office of trustee.

(10) Every trustee shall have the same rights and powers as he or she would have had if he or she had been appointed by order of the Maori Land Court and not under this section.

(11) There shall be paid to each trustee, out of the trust estate,—

- (a) Such salary and other remuneration as shall be determined by the trustees with the approval of the Maori Land Court; and
- (b) Such travelling expenses and allowances as shall be determined by the trustees with the approval of the Minister.

(12) Subject to subsection (14) of this section, the trustees shall have all such powers as are conferred on trustees generally by Part III of the Trustee Act 1956 and as are reasonably necessary to enable the trustees to carry out their duties.

(13) All freehold land vested in the trustees and for the time being forming part of the trust property shall be deemed to be and at all times and for all purposes to have been Maori

freehold land within the meaning of the Maori Affairs Act 1953.

(14) Any sale of land for the time being forming part of the trust property shall require confirmation by the Maori Land Court; and for that purpose sections 224 to 232 of the Maori Affairs Act 1953 shall apply with any necessary modifications.

(15) No person lending money on the security of the trust property shall be concerned to inquire as to the necessity for the loan, or as to the application by the trustees of the money raised by the loan; and every such security executed by the trustees shall be as valid and effectual for the protection of the mortgagee and his or her assigns as if the trustees had been entitled in their own right to the land or other property comprised in the security; and in any such security, a power of sale on default may be granted.

(16) In respect of the trust property vested in the trustees, the Maori Land Court may from time to time, on the application of the trustees or of the beneficiaries,—

- (a) Settle the lists of the beneficiaries in the trust property or any part of the trust property; and
- (b) Determine the relative interests of the beneficiaries; and
- (c) Appoint successors to any deceased beneficiaries; and
- (d) Appoint trustees for any beneficiary under disability; and
- (e) Generally exercise jurisdiction so far as the equitable estate of the beneficiaries is concerned.

(17) The trustees may from time to time set aside any part of the land comprised in the trust property and allow any beneficiary or beneficiaries of the trust to use it, whether for the purpose of papakainga or otherwise, upon such terms and subject to such conditions as the trustees think fit.

(18) The Maori Land Court may from time to time, upon application by all the trustees, order that any part of the land comprised in the trust property and not for the time being subject to any mortgage be transferred to any beneficiary or beneficiaries of the trust, upon such terms and subject to such conditions as the Court thinks fit, for the purpose of providing a residential building site or sites for the beneficiary or beneficiaries freed and discharged from the trust.

(19) The trustees may from time to time, out of the trust estate, purchase the interest of any beneficiary who wishes to dispose of it, and deal with that interest in any of the following ways:

- (a) Cancel the interest, so that the shares of the other beneficiaries shall be increased proportionately; or
- (b) Resell the interest to any other beneficiary; or

(c) Retain the interest until such time as any other beneficiary is willing to buy it at a fair price.

(20) Subject to subsections (19) and (21) of this section, no beneficiary of the trust shall be capable of disposing of his or her interest in the trust property (whether by way of sale, mortgage, assignment, or otherwise), or in the rents, profits, or other income derived from that property, or in any money borrowed upon the security of that property.

(21) Notwithstanding the other provisions of this section or of any other Act, for the purposes of succession to an interest in the trust property the following provisions shall apply:

(a) A beneficiary of the trust may dispose of his or her interest by will only to a person who belongs to any one or more of the following classes:

(i) Children and remoter issue of the beneficiary;

(ii) Any other persons who would be entitled, in accordance with section 76A of the Maori Affairs Amendment Act 1967, to succeed to the interest if the beneficiary died intestate;

(iii) Any other persons who are related by blood to Wi Pere;

(iv) Trustees of persons referred to in any of subparagraphs (i) to (iii) of this paragraph;

(b) Succession to the interests of a beneficiary of the trust who dies intestate shall be in accordance with section 76A of the Maori Affairs Amendment Act 1967:

(c) A person who is—

(i) The spouse of a beneficiary; or

(ii) The child or a remoter issue of a beneficiary by adoption,—

shall not be entitled to succeed to any interest in the trust greater than a life interest:

(d) The Maori Land Court may, in accordance with the provisions of section 213 of the Maori Affairs Act 1953, make orders under that section vesting the whole or any part of the interest of any beneficiary in any person who belongs to any class of persons described in paragraph (a) of this subsection; and the provisions of sections 213 and 214 of that Act shall apply with any necessary modifications.

(22) Nothing in the Matrimonial Property Act 1976 shall apply in respect of interests in the trust estate.

(23) The disposition whether by operation of law or otherwise of the interest of a beneficiary in any land comprised in the trust property, whether so expressed or not, shall be

deemed to include a disposition of that beneficiary's corresponding interest in all other property comprised in the trust; but no beneficiary shall be capable of disposing of that other property separately.

(24) The trustees shall cause to be made up to the 30th day of June in each year a balance sheet and a statement of accounts setting forth all receipts and payments and income and expenditure of the trustees.

(25) The balance sheet and statement shall be audited by a person to be approved by the Minister, and shall be submitted to the Minister as soon as possible after the audit is completed.

(26) Every beneficiary shall be entitled at all reasonable times to inspect and take copies of the accounts, and, at the beneficiary's own expense, to be supplied with copies of the accounts or extracts from them.

(27) The former trustees and their respective estates and effects are hereby released and discharged from all actions, claims, and demands for or in respect of any act, matter, or thing done, omitted, or suffered by them or any of them as trustees in good faith under the trust deed, or arising out of the administration of the trust property.

3. Repeals—The following enactments are hereby repealed:

- (a) Section 15 of the Maori Purposes Act 1938;
 - (b) Section 22 of the Maori Purposes Act 1973.
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