



ANALYSIS

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1991, No. 41

An Act to amend the Maori Trustee Act 1953

[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 Trustee Amendment Act 1991, and shall be read together with and deemed part of the Maori Trustee Act 1953 (hereinafter referred to as the principal Act).

2. Appointment of Maori Trustee by executors, administrators, and trustees—The principal Act is hereby amended by inserting, after section 12D (as inserted by section 148 (1) of the Maori Affairs Amendment Act 1967), the following section:

“12DA. (1) With the consent of the High Court, and subject to the agreement of the Maori Trustee,—

“(a) Executors, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, before or after taking out probate, appoint the Maori Trustee as sole executor or appoint as co-executor the Maori Trustee and any other person or persons, whether or not the other person or persons include all or any of the executors making the appointment; and

“(b) Other administrators under a grant of administration with or without a will annexed, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, appoint the Maori

Trustee as sole administrator or appoint as co-administrators the Maori Trustee and any other person or persons, whether or not the other person or persons include all or any of the administrators making the appointment.

“(2) Where, pursuant to subsection (1) of this section, any executor or administrator with a will annexed appoints the Maori Trustee as executor or administrator, or appoints the Maori Trustee and any other person or persons as co-executors or co-administrators, the appointee or appointees shall, by virtue of the appointment, be also the sole trustee or co-trustees (as the case may be) in all cases where the executor or administrator was trustee, or where there was no trustee appointed by the trust instrument or in existence at the date of the appointment under this section. The provisions of this subsection shall apply to all appointments made under this Act before or after the commencement of this section, or made before the commencement of this Act under any Act repealed by this Act.

“(3) Where there are more executors or administrators or trustees or persons having power to appoint a trustee than one, any one executor (whether before or after proving a will), any one administrator, or any one trustee, or any one of those persons having power to appoint a trustee, may, with the consent of the proposed appointee or appointees apply to the High Court to have the Maori Trustee appointed as sole executor, administrator, or trustee or to have appointed as co-executors, co-administrators, or co-trustees the Public Trustee and any other person or persons, whether or not the other person or persons include all or any of the executors or administrators or trustees or persons having power to appoint a trustee.

“(4) On any application to the High Court under this section, the Court shall have power to make such order as it thinks fit.”

3. Maori Trustee may enter into joint ventures—The principal Act is hereby amended by inserting, after section 13A (as inserted by section 148 (2) of the Maori Affairs Amendment Act 1967), the following section:

“13B. (1) In the performance and exercise of the Maori Trustee’s functions, duties, and powers, and in pursuit of the Maori Trustee’s objectives, the Maori Trustee may enter into any partnership, joint venture, or other arrangement with the owners of any Maori freehold land or any General land owned by Maori or any General land owned on behalf of Maori, or

accept any lease or licence of any such land, for the purpose of co-operating with the owners in the use and development of the land or any enterprise conducted on or from the land.

“(2) Without limiting or being limited by subsection (1) of this section, the Maori Trustee may do all or any of the following things:

“(a) Establish or promote, or concur in or support the establishment or promotion of, any body corporate having power to carry on business of any kind related to the Maori Trustee’s operations:

“(b) Subscribe for or otherwise acquire shares in any company incorporated in New Zealand that carries on or proposes to carry on business of any kind related to the Maori Trustee’s operations, and exercise, in respect of any such shares acquired by the Maori Trustee, all rights and powers to which the Maori Trustee may be entitled as the holder of the shares:

“(c) Otherwise participate in any body corporate, firm, partnership, or joint venture (whether established before or after the commencement of this Act) having power to carry on business of any kind related to the Maori Trustee’s operations.”

4. Unclaimed agency money—(1) The principal Act is hereby amended by inserting, after section 30, the following section:

“30A. (1) In this section ‘unclaimed agency money’ means unclaimed money within the meaning of section 30 of this Act that is held by the Maori Trustee as agent for—

“(a) Any trust constituted under the Maori Affairs Act 1953;
or

“(b) Any Maori incorporation; or

“(c) Any Maori Trust Board.

“(2) In respect of any unclaimed agency money, the provisions of subsection (3) of this section shall apply instead of the provisions of subsection (9) of section 30 of this Act; but, except in that regard, the provisions of that section shall apply to all unclaimed agency money as they apply to any other unclaimed money within the meaning of that section.

“(3) Any unclaimed agency money in respect of which claims are not established within 12 months after the date of the publication in the *Gazette* of the notice required by subsection (8) of section 30 of this Act, shall be paid by the Maori Trustee

to the trust or the Maori incorporation or the Maori Trust Board, as the case may require.”

(2) Section 30(9) of the principal Act (as substituted by section 16(1) of the Maori Purposes Act 1961) is hereby amended by inserting, before the words “Any unclaimed money”, the words “Except as provided in section 30A of this Act,”.

5. Guarantees and indemnities—The principal Act is hereby amended by inserting, after section 32, the following section:

“32A. (1) Subject to this section, the Maori Trustee may in writing, on any conditions that the Maori Trustee thinks fit, give for any purposes such guarantees or indemnities as the Maori Trustee thinks fit in respect of the whole or any part of any money that is payable or that is to become payable or that may become payable by any person (in this section called “the debtor”) to any other person (in this section called “the creditor”).

“(2) Without prejudice to subsection (1) of this section, the Maori Trustee may require as a condition of any such guarantee or indemnity that the debtor pay a specified amount to the Maori Trustee determined in accordance with a formula approved from time to time by the Maori Trustee.

“(3) Any amount payable to the Maori Trustee under subsection (2) of this section may be paid by the debtor at the time of the giving of the guarantee or indemnity, or it may be added to the amount of any loan by the creditor to the debtor and included in the guarantee or indemnity; and in the latter case it may be secured by any security instrument given by the debtor in favour of the creditor in respect of the loan as if it formed part of the loan, and shall be paid by the creditor to the Maori Trustee.

“(4) Out of the money paid under subsection (2) of this section, the Maori Trustee shall appropriate a fee at a rate from time to time fixed by the Maori Trustee to meet the costs of administration of guarantees and indemnities given under this section, and shall credit the remainder to the General Purposes Fund.

“(5) Notwithstanding any rule of law or other provision to the contrary, any person may advance money (including trust funds) on the security of a mortgage of land if the repayment of the money advanced, or of the excess above the amount that might otherwise be advanced, is directly or indirectly secured by a guarantee or indemnity under this section that is

expressed to be a guarantee or indemnity to which this subsection applies.

“(6) Any loss that may be incurred by the Maori Trustee by reason of the operation of this section shall be a charge against the General Purposes Fund.”

This Act is administered in the Ministry of Maori Affairs.
