



## ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. Waitangi Tribunal</p> <p>3. Jurisdiction of Tribunal to consider claims</p> <p>4. New Maori text substituted in principal Act</p> <p>5. Deputy members</p> <p>6. Sitings of the Tribunal</p>	<p>7. Tribunal may commission research and receive report in evidence</p> <p>8. Appointment of counsel</p> <p>9. Staff of Tribunal</p> <p>10. New Maori text substituted in Waitangi Day Act 1976 Schedule</p>
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1985, No. 148

**An Act to amend the Treaty of Waitangi Act 1975**

[9 December 1985]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Treaty of Waitangi Amendment Act 1985, and shall be read together with and deemed part of the Treaty of Waitangi Act 1975 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

**2. Waitangi Tribunal**—(1) Section 4 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) The Tribunal shall consist of—

“(a) The Chief Judge of the Maori Land Court, who shall be the Chairman:

“(b) Six persons, of whom at least 4 shall be Maori, to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice.

“(2A) In considering the suitability of any person for appointment to the Tribunal, the Minister of Maori Affairs shall have regard not only to that person's personal attributes but also to that person's knowledge of and experience in the different aspects of matters likely to come before the Tribunal.”

(2) Section 4 (3) of the principal Act is hereby consequentially amended by omitting the words “or paragraph (c)”.

**3. Jurisdiction of Tribunal to consider claims**—(1) Section 6 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where any Maori claims that he or she, or any group of Maoris of which he or she is a member, is or is likely to be prejudicially affected—

“(a) By any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Munster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after the 6th day of February 1840; or

“(b) By any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after the 6th day of February 1840 under any ordinance or Act referred to in paragraph (a) of this subsection; or

“(c) By any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by any policy or practice proposed to be adopted by or on behalf of the Crown; or

“(d) By any act done or omitted at any time on or after the 6th day of February 1840, or proposed to be done or omitted, by or on behalf of the Crown,—

and that the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.”

(2) Section 6 of the principal Act is hereby further amended by repealing subsection (6), and substituting the following subsection:

“(6) Nothing in this section shall confer any jurisdiction on the Tribunal in respect of any Bill that has been introduced into the House of Representatives unless the Bill has been referred to the Tribunal pursuant to section 8 of this Act.”

**4. New Maori text substituted in principal Act**—The First Schedule to the principal Act is hereby amended by omitting the text in Maori, and substituting the text set out in the Schedule to this Act.

**5. Deputy members**—Clause 4 of the Second Schedule to the principal Act is hereby amended by repealing subclause (1), and substituting the following subclause:

“(1) The Governor-General may from time to time appoint a deputy for each member of the Tribunal, to act for that member whenever that member is prevented from acting by illness, absence, or other sufficient cause, or if that member considers it not proper or desirable for that member to adjudicate on a particular matter. Only a Judge of the Maori Land Court may be appointed as a deputy for the Chairman, and only a person who is Maori may be appointed as a deputy for any other member who is Maori.”

**6. Sittings of the Tribunal**—(1) Clause 5 of the Second Schedule to the principal Act is hereby amended by repealing subclause (4), and substituting the following subclauses:

“(4) Every claim before the Tribunal shall be heard and determined, and every Bill or proposed regulations or Order in Council referred to the Tribunal shall be considered and reported upon, by at least 3 members of the Tribunal (including the Chairman), of whom at least 1 shall be Maori.

“(4A) In the event of disagreement in respect of any such matter, the decision of the majority of the members dealing with the matter shall be the decision of the Tribunal, and, where those members are equally divided, the decision of the Chairman shall be the decision of the Tribunal.”

(2) Clause 5 of the Second Schedule to this Act is hereby further amended by adding to subclause (6) the words “, and in doing so may have regard to and adopt such aspects of te kawa o te marae as the Tribunal thinks appropriate in the particular case, but shall not deny any person the right to speak during the proceedings of the Tribunal on the ground of that person’s sex”.

**7. Tribunal may commission research and receive report in evidence**—The Second Schedule to the principal Act is hereby amended by inserting, after clause 5 (as amended by section 6 of this Act), the following clause:

“5A. (1) In respect of any claim before it, the Tribunal may commission any person (whether or not a member of its staff appointed under clause 9 of this Schedule) to investigate any matter relating to the claim, and to prepare and submit a report on it for consideration by the Tribunal.

“(2) The Tribunal may receive in evidence any report prepared and submitted to it pursuant to subclause (1) of this clause.

“(3) Every party to the proceedings shall be entitled to receive a copy of the report, and to make submissions on it to the Tribunal.”

**8. Appointment of counsel**—The Second Schedule to the principal Act is hereby amended by inserting, after clause 7, the following clause:

“7A. (1) The Tribunal may appoint counsel to assist it in respect of any proceedings or any part of any proceedings before the Tribunal.

“(2) The Tribunal may appoint counsel to assist the claimant in respect of any proceedings or any part of any proceedings before the Tribunal if it is satisfied that the matter is of sufficient importance or complexity to warrant such an appointment or that it would be unjust to the claimant not to make such an appointment.

“(3) Every counsel appointed under this clause shall be paid out of money appropriated by Parliament for the purpose such fee as may be agreed between the Tribunal and the counsel appointed.”

**9. Staff of Tribunal**—The Second Schedule to the principal Act is hereby amended by repealing clause 9, and substituting the following clause:

“9. (1) There may from time to time be appointed under the State Services Act 1962 a Registrar of the Tribunal, and such research officer or officers or other staff as may be necessary for the efficient operation of the Tribunal.

“(2) Any person appointed to any position under subclause (1) of this clause may hold that position either separately or in conjunction with any other position in the Public Service.”

**10. New Maori text substituted in Waitangi Day Act 1976**—The Schedule to the Waitangi Day Act 1976 is hereby amended by omitting the text in Maori, and substituting the text set out in the Schedule to this Act.

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## SCHEDULE

Sections 4 and 10

NEW TEXT IN MAORI SUBSTITUTED IN PRINCIPAL ACT AND WAITANGI DAY ACT 1976

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo

SCHEDULE—*continued*

ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kau ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

*Ko te Tuatahi*

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

*Ko te Tuarua*

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

*Ko te Tuatoru*

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON,  
Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.