

Historic Places Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Historic Places Act 1993 to adjust and clarify its application. The Historic Places Act 1993 gives the New Zealand Historic Places Trust (Pouhere Taonga) (the **Trust**) a range of functions and powers. Among other things, these concern protecting archaeological sites, maintaining a Register of places of historical and cultural heritage, and owning and managing heritage properties. Although the Trust exercises regulatory responsibilities, and receives funding by parliamentary appropriation, it is not currently regarded as a Crown entity.

This Bill contains a range of amendments to strengthen the New Zealand Historic Places Trust's governance arrangements, enhance its accountability to the Government, and clarify and adjust some provisions of the Historic Places Act 1993. The Trust's governance arrangements are strengthened by, among other measures, reducing the size of the Trust Board from 11 to 9 members, and increasing the number of Crown appointments from 3 to 6. The Trust's accountability to the Government is enhanced by making the Trust a Crown entity. Detailed consequential provisions necessary for this change in status have been included in Supplementary Order Paper No 183, which amends the Public Finance (State Sector Management) Bill through which Crown entity reforms are being advanced.

The Bill requires the Trust to notify and invite submissions on all registration proposals under Part II of the Act. These amendments arise from an independent review of the Trust's registration procedures, and will ensure greater transparency and accountability in the compilation of the Trust's register of places of historical and cultural

heritage. In addition, the Bill contains amendments that clarify sections of the Historic Places Act 1993 and further enhance the Trust's ability to fulfill its heritage responsibilities.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on **1 July 2005**.

Part 1

Amendments to principal Act

Clause 3 amends the definition of **historic place** in section 2 of the principal Act to ensure that it covers any combination of land, buildings or structures, and associated buildings or structures. It also amends the definition of **regional council** by omitting the reference to the Chatham Islands Council, which is now designated as a territorial authority under the Local Government Act 2002. It also amends the definition of **working day** to reduce the period over Christmas and New Year that is excluded from the definition from 20 December to 15 January to 20 December to 10 January.

Clause 4 adds a *new paragraph (f)* to section 20(6) of the principal Act. *New paragraph (f)* clarifies that a court considering an appeal must have regard to the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.

Clause 5 inserts *new section 20A* into the principal Act. *New section 20A* provides that an authority granted by the Trust may not commence before the relevant rights to appeal have expired or before any appeals that have been lodged are resolved.

Clause 6 amends section 24(3)(b)(iii) of the principal Act. The amendment adds the relevant regional council to the list of persons that must be notified of the registration of an historic place.

Clause 7 amends section 25(3)(b)(ii) of the principal Act. The amendment adds the relevant regional council to the list of persons that must be notified of the registration of a wahi tapu.

Clause 8 amends the cross-references in section 26(3)(a) of the principal Act to account for the repeal of sections 29 and 30 and their replacement by *new sections 32B and 32C*.

Clause 9 replaces section 28 of the principal Act. The new provision sets out the procedure that must be followed if the registration of an historic place or wahi tapu is proposed.

Clause 10 repeals sections 29 and 30, which are reconstituted in *clause 13* as *new sections 32B and 32C*.

Clause 11 amends section 31 of the principal Act. The amendment augments the notice requirements with respect to proposals for the registration of an historic area.

Clause 12 amends section 32 of the principal Act. The amendment augments the notice requirements with respect to proposals for the registration of a wahi tapu area.

Clause 13 inserts *new sections 32A to 32D* into the principal Act. *New section 32A* sets out the procedure that must be followed if the registration of an historic area or wahi tapu area is proposed. *New section 32B* reconstitutes section 29 of the principal Act, which is repealed by *clause 10*. It provides that registration may be confirmed by agreement. *New section 32C* reconstitutes section 30 of the principal Act, which is repealed by *clause 10*. It sets out the circumstances when the registration occurs of an historic place, a wahi tapu, an historic area, or a wahi tapu area. *New section 32D* continues the requirement for territorial authorities and regional councils to have particular regard to the Trust's or Council's recommendations.

Clause 14 amends section 33(2) of the principal Act. The amendment adds the relevant regional council to the list of persons who must be consulted about applications or proposals affecting a registered wahi tapu area.

Clause 15 amends the cross-references in section 34(2)(b) of the principal Act to account for the repeal of section 30 and its replacement by *new section 32C*, the changes to section 37(7), and the addition of *new section 37A(b)*.

Clause 16 replaces section 37 of the principal Act, which concerns the review of registrations. The new provisions continue, in a revised form, the original section 37, and are combined with reconstituted sections 31(6) and 32(6), which are repealed by *clauses 11 and 12* respectively. The new provisions allow reviews to be initiated by the Trust or the Council (as the case may be) or by any person. Once a review is completed, the Trust or Council must vary, remove, or confirm the relevant registration, or, in the case of an historic place, change the category of registration. *Clause 16* also

amends the application of sections 194 and 195 of the Resource Management Act 1991 in cases in which the Trust has publicly notified a proposal to change the category of a registered historic place to Category I. *New section 37A* continues the Trust's or Council's discretion to remove registration if an historic place, a wahi tapu, an historic area, or wahi tapu area is destroyed or demolished.

Clause 17 amends section 38 of the principal Act by adding a *new subsection (3)*. The new provision provides that the Trust is a Crown entity for the purposes of the Public Finance Act 1989.

Clause 18 amends section 39 of the principal Act to clarify the Trust's functions regarding the conservation and protection of wahi tapu.

Clause 19 replaces section 42 of the principal Act. The new provision specifies that membership of the Board consists of 9 persons, 3 of whom must be elected by members of the Trust and 6 of whom must be appointed by the Minister. Appointed members must have the skills, knowledge, or cultural background appropriate to the functions or powers of the Trust. At least 3 of the appointed members must be appointed having regard to their knowledge of te ao Maori and tikanga Maori.

Clause 20 amends the cross-references in section 43 of the principal Act to account for the change to section 42.

Clause 21 repeals section 51 of the principal Act.

Clause 22 amends section 54(2)(1) of the principal Act to give the Trust the power to appoint and remove Board committees and their members, and establish and disestablish Branch committees.

Clause 23 amends section 60(1) of the principal Act to clarify that the Trust may make rules for the disestablishment of branches and for the election and removal of members of branch committees.

Clause 24 repeals section 79(2) of the principal Act.

Clause 25 replaces section 84(2) of the principal Act. The new provision is a consequence of changes to the composition of the Trust Board. It provides that the Council continues to have 8 members, 4 of whom must be members of the Board, and of whom 3 must have been appointed with regard to their knowledge of te ao Maori and tikanga Maori, and 4 appointees, all of whom must be Maori.

Clause 26 amends section 106(2)(b) of the principal Act to omit the word "either" because both subparagraphs (i) and (ii) of paragraph (b) are required to apply.

Part 2

Transitional provisions and consequential amendments

Clause 27 sets out the transitional provisions. A person elected to the Board under the principal Act before this Bill comes into force continues in office until new elections are held. Any appointment to the Board under the principal Act before this Bill comes into force expires when this Bill comes into force. Any appointment to the Council made by the Board before this Bill comes into force expires when this Bill comes into force (or if the appointment was made by the Minister, it expires when the term of that appointment ends).

Clause 28 sets out the consequential amendments. These amendments add the Trust to the Fourth, Fifth, and Sixth Schedules of the Public Finance Act 1989 as a consequence of its classification as a Crown entity under *new section 38(3)* as inserted by *clause 17*.

Hon Judith Tizard

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Historic Places Amendment Act **2004**.

- (2) In this Act, the Historic Places Act 1993¹ is called “the principal Act”.

¹ 1993 No 38

2 Commencement

This Act comes into force on **1 July 2005**.

Part 1

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Amendments to principal Act

3 Interpretation

- (1) Section 2 of the principal Act is amended by adding to paragraph (a)(iii) of the definition of **historic place** the word “; or”, and also by inserting, after that subparagraph, the following subparagraph: 10

“(iv) any combination of land, buildings or structures, and associated buildings or structures (including any part of those buildings or structures, or associated buildings or structures)”.

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- (2) Section 2 of the principal Act is amended by inserting in paragraph (a) of the definition of **historic place**, after the word “forms”, the words “a place that is”.

- (3) Section 2 of the principal Act is amended by repealing paragraph (b) of the definition of **regional council**. 20

- (4) Section 2 of the principal Act is amended by omitting from paragraph (b) of the definition of **working day** the expression “15th”, and substituting the expression “10th”.

4 Rights of appeal

Section 20(6) of the principal Act is amended by adding the following paragraph: 25

“(f) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.”

5 New section 20A inserted

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The principal Act is amended by inserting, after section 20, the following section:

“20A Commencement of authority

- “(1) An authority granted under this Act by the Trust commences when— 35

“(a) the time for lodging appeals under section 20(1)(c), (d), (e), (f), or (g) expires and no appeals have been lodged; or	
“(b) the Environment Court determines any appeals lodged under section 20(1)(c), (d), (e), (f), or (g); or	5
“(c) all appellants withdraw their appeals lodged under section 20(1)(c), (d), (e), (f), or (g).	
“(2) Subsection (1) applies subject to the authority or a determination of the Environment Court specifying a later commencement date.	10
Compare: 1991 No 69 s 116(1)”. 6 Provisions relating to historic places Section 24(3)(b)(iii) of the principal Act is amended by inserting, after the word “authority”, the words “and regional council”.	15
7 Provisions relating to wahi tapu Section 25(3)(b)(ii) of the principal Act is amended by inserting, after the word “authority”, the words “and regional council”.	
8 Interim registration	20
(1) Section 26(3)(a) of the principal Act is amended by omitting the words “section 29 or section 30”, and substituting the words “ section 32B or section 32C ”.	
(2) Section 26(3)(a) and (b) is amended by omitting the word “final”.	25
9 New section 28 substituted The principal Act is amended by repealing section 28, and substituting the following section:	
“28 Procedure if registration of historic place or wahi tapu proposed	30
“(1) The following persons may make written submissions on a proposal under section 24 to register an historic place or on an application under section 25 to enter a wahi tapu on the Register:	
“(a) the owner of the historic place or wahi tapu;	35
“(b) any occupier of the historic place or wahi tapu;	

- “(c) any person having a registered interest in the historic place or wahi tapu:
- “(d) any incorporated society or body corporate engaged in or having as one of its objects the protection of historical and cultural heritage: 5
- “(e) the territorial authority and regional council having jurisdiction in the area:
- “(f) the appropriate iwi.
- “(2) Submissions may be made on a proposal or application whether or not interim registration of the historic place that the proposal relates to or of the wahi tapu that the application relates to has been granted. 10
- “(3) In the case of an interim registration, submissions must be made to the Trust or Council, as the case may require, within 20 working days after the date of the public notification of the grant of interim registration. 15
- “(4) In all other cases, submissions must be made to the Trust or Council, as the case may require, within—
- “(a) 20 working days after the public notification of the proposal or application; or 20
- “(b) any longer period specified by the Trust or Council in a particular case, but not longer than 40 working days after the public notification of the proposal or application.
- “(5) The Council may make any inquiries that it sees fit before deciding whether to register a wahi tapu. 25
- “(6) If the Trust considers that an historic place proposed for registration is of Maori interest, the Trust must refer the proposal to the Council for its recommendation as to whether the historic place should be registered. 30
- “(7) When deciding whether to register an historic place, the Trust may reconsider the category of registration proposed of the place concerned and alter the category if it considers this action appropriate.”
- 10 Sections 29 and 30 repealed** 35
 Sections 29 and 30 of the principal Act are repealed.

11 Provisions relating to historic areas

The principal Act is amended by repealing section 31(3) to (6), and substituting the following subsections:

- “(3) If satisfied that the proposal is supported by sufficient evidence, the Trust must— 5
 - “(a) publicly notify the proposal for registration in the manner that the Trust considers appropriate; and
 - “(b) give notice in writing of the proposal to the following persons known to the Trust or whom the Trust can ascertain from publicly available records: 10
 - “(i) every owner of the historic area or part of the historic area; and
 - “(ii) every person having a registered interest in the historic area or part of the historic area; and
 - “(iii) the relevant territorial authority and regional council. 15
- “(4) An owner of an historic area or part of an historic area who receives a notice under **subsection (3)(b)(i)** must give notice in writing of the proposal to any occupiers of the historic area or part of the historic area owned by the owner. 20
- “(5) Failure to give notice under **subsection (4)** does not invalidate the registration process.
- “(6) In the case of an application affecting Maori land, the Trust must give notice of the application to the appropriate Registrar of the Maori Land Court, who must record the notice in the Court records.” 25

12 Provisions relating to wahi tapu areas

The principal Act is amended by repealing section 32(3) to (6), and substituting the following subsections:

- “(3) If satisfied that the proposal is supported by sufficient evidence, the Council must— 30
 - “(a) publicly notify the proposal for registration in the manner that the Council considers appropriate; and
 - “(b) give notice in writing of the proposal to the following persons known to the Council or whom the Council can ascertain from publicly available records: 35
 - “(i) every owner of the wahi tapu area or part of the wahi tapu area; and
 - “(ii) every person having a registered interest in the wahi tapu area or part of the wahi tapu area; and 40

- “(iii) the relevant territorial authority and regional council; and
- “(iv) the appropriate iwi.
- “(4) An owner of a wahi tapu area or part of a wahi tapu area who receives a notice under **subsection (3)(b)(i)** must give notice in writing of the proposal to any occupiers of the wahi tapu area or part of the wahi tapu area owned by the owner. 5
- “(5) Failure to give notice under **subsection (4)** does not invalidate the registration process.
- “(6) In the case of an application affecting Maori land, the Trust must give notice of the application to the appropriate Registrar of the Maori Land Court, who must record the notice in the Court records.” 10
- 13 New sections 32A to 32D inserted**
- The principal Act is amended by inserting, after section 32, the following sections: 15
- “32A Procedure if registration of historic area or wahi tapu area proposed**
- “(1) The following persons may make written submissions on a proposal under section 31 to register an historic area or on a proposal under section 32 to enter a wahi tapu area on the Register: 20
- “(a) every owner of the historic area or wahi tapu area, or part of the historic area or wahi tapu area:
- “(b) any occupier of the historic area or wahi tapu area, or part of the historic area or wahi tapu area: 25
- “(c) every person having a registered interest in the historic area or wahi tapu area, or part of the historic area or wahi tapu area:
- “(d) any incorporated society or body corporate engaged in or having as one of its objects the protection of historical and cultural heritage: 30
- “(e) the relevant territorial authority and regional council:
- “(f) the appropriate iwi.
- “(2) The submissions must be made to the Trust or Council, as the case may require, within— 35
- “(a) 20 working days after the public notification of the proposal or application; or
- “(b) any longer period specified by the Trust or Council in a particular case, but not longer than 40 working days 40

after the public notification of the proposal or application.

- “(3) The Council may make any inquiries that it sees fit before deciding whether to register a wahi tapu area.
- “(4) If the Trust considers that an historic area proposed for registration is of Maori interest, the Trust must refer the proposal to the Council for its recommendation as to whether the historic area should be registered. 5

- “32B **Registration may be confirmed by agreement**
 The Trust or the Council (as the case may be) may confirm the registration of the historic place, wahi tapu, historic area, or wahi tapu area at any time— 10
 - “(a) after notice of a proposal has been given under **section 24(3)(b), section 25(3)(b), section 31(3)(b), or section 32(3)(b);** and 15
 - “(b) with the agreement of all owners and all persons holding a registered interest.

- “32C **When registration occurs**
 “(1) An historic place, a wahi tapu, an historic area, or a wahi tapu area is registered when— 20
 - “(a) either—
 - “(i) the Trust (in the case of an historic place or historic area) or the Council (in the case of a wahi tapu or wahi tapu area) has confirmed its registration; or 25
 - “(ii) its registration has been confirmed by agreement under **section 32B**; and
 - “(b) every owner of the historic place, wahi tapu, historic area, or wahi tapu area has received a notice under **subsection (2)(b).** 30
- “(2) The Trust or the Council (as the case may require) must—
 - “(a) publicly notify the registration; and
 - “(b) give written notice of the registration to the persons identified in **section 24(3)(b), section 25(3)(b), section 31(3)(b), or section 32(3)(b).** 35

- “32D Territorial authorities and regional councils must have particular regard to recommendations**
- “(1) In respect of any registered historic area, the Trust may make recommendations to the territorial authority and regional council where the historic area is located as to the appropriate measures that the authority or council should take to assist in the conservation and protection of the historic area. 5
- “(2) In respect of any registered wahi tapu area, the Council may make recommendations to the territorial authority and regional council where the wahi tapu area is located as to the appropriate measures that the authority or council should take to assist in the conservation and protection of the wahi tapu area. 10
- “(3) A territorial authority or regional council receiving recommendations under **subsection (1) or subsection (2)** must have particular regard to the Trust’s or the Council’s recommendations.” 15
- 14 Proposals affecting registered wahi tapu areas**
Section 33(2) of the principal Act is amended by inserting, after the word “authority,” the words “the relevant regional council,”. 20
- 15 Records to be supplied to territorial authorities**
Section 34(2)(b) of the principal Act is amended by omitting the words “section 30(2)(b) of this Act of final”, and substituting the expression “**section 32C(2)(b) or section 37(7) or section 37A(b)** of”. 25
- 16 New sections 37 and 37A substituted**
The principal Act is amended by repealing section 37, and substituting the following sections:
- “37 Review, variation, or removal of registration** 30
- “(1) The Trust (in the case of an historic place or historic area) or the Council (in the case of a wahi tapu or wahi tapu area) may, at any time, review the registration of the historic place, historic area, wahi tapu, or wahi tapu area.
- “(2) Any person may— 35
- “(a) apply to the Trust for a review of the registration of any historic place or historic area:

- “(b) apply to the Council for a review of the registration of any wahi tapu or wahi tapu area.
- “(3) However, no person may apply for a review of a registration within 3 years after the date of the last review of the registration. 5
- “(4) An application for the review of a registration must be made in the prescribed form (if any) and state the grounds for review.
- “(5) An application for the review of registration must be considered by the Trust or the Council (as the case may be) not later than 2 years after the date of its receipt by the Trust or the Council. 10
- “(6) However, the Trust or the Council (as the case may be)—
- “(a) may decline to consider any application that does not state any grounds for review or if it considers that the grounds stated are insufficient to justify a review; and 15
- “(b) must notify the applicant of its decision in writing.
- “(7) If the Trust or the Council decides to review a registration (whether on its own initiative or as a result of an application), the Trust or the Council (as the case may be) must conduct the review in the same manner as if it were a proposal for registration or an application to enter on the Register (as appropriate) under this Act. 20
- “(8) When its review is completed, the Trust or the Council (as the case may be) may— 25
- “(a) vary the registration; or
- “(b) remove the registration; or
- “(c) confirm the registration; or
- “(d) in the case of an historic place, change or confirm the category of registration. 30
- “(9) If the Trust has, as part of its review, publicly notified a proposal to change the category of a registered historic place to Category I,—
- “(a) the Trust may apply section 194 of the Resource Management Act 1991 until the Trust has finally dealt with the application, as if the application were a notice of a requirement for a heritage order; and 35
- “(b) if the Trust applies section 194 of the Resource Management Act 1991, section 195 of that Act applies.

“37A Removal of registration in cases of destruction or demolition

If an historic place, a wahi tapu, an historic area, or a wahi tapu area is destroyed or demolished, the Trust or the Council (as the case may be)—

“(a) may, after making any inquiries that it sees fit, remove the registration of that historic place, wahi tapu, historic area, or wahi tapu area; and

“(b) must, as soon as practicable after removing a registration, notify in writing the relevant territorial authority and regional council.”

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17 New Zealand Historic Places Trust (Pouhere Taonga)

Section 38 of the principal Act is amended by adding the following subsection:

“(3) The Trust is a Crown entity for the purposes of the Public Finance Act 1989.”

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18 Functions of Trust

(1) Section 39(a) of the principal Act is amended by inserting, after the word “conserve”, the words “wahi tapu,”.

(2) Section 39(b) of the principal Act is amended by inserting, after the word “of”, the words “wahi tapu,”.

(3) Section 39(d) of the principal Act is amended by inserting, after the word “of”, the words “wahi tapu,”.

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19 New section 42 substituted

The principal Act is amended by repealing section 42, and substituting the following section:

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“42 Membership of Board

“(1) The membership of the Board consists of 9 persons, of whom—

“(a) 3 are elected by the members of the Trust in accordance with regulations made under section 113(a); and

“(b) 6 are appointed by the Minister.

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“(2) The persons appointed under **subsection (1)(b)** must have the skills, knowledge, or cultural background appropriate to the functions and powers of the Trust.

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“(3) At least 3 of the persons appointed under **subsection (1)(b)** must, in the opinion of the Minister after consultation with the

Minister of Maori Affairs, be qualified for appointment, having regard to their knowledge of te ao Maori (Maori worldview) and tikanga Maori (Maori protocol and culture).

- “(4) The Minister must designate one of the persons appointed under **subsection (1)(b)** as the Chairperson of the Board.” 5

20 Term of office of members of Board

- (1) Section 43(1) of the principal Act is amended by omitting the words “paragraph (a) or paragraph (b) or paragraph (d) of section 42 of this Act”, and substituting the expression “**section 42(1)(b)**”. 10
- (2) Section 43(2) of the principal Act is amended by omitting the expression “section 42(c)”, and substituting the expression “**section 42(1)(a)**”.

21 Section 51 repealed

Section 51 of the principal Act is repealed. 15

22 Powers of Trust

Section 54(2) of the principal Act is amended by repealing paragraph (l), and substituting the following paragraph:

- “(l) appoint and remove Board committees and their members, and establish and disestablish Branch committees:”. 20

23 Rules of Trust

- (1) Section 60(1)(d) of the principal Act is amended by inserting, after the word “establishment,”, the word “disestablishment,”. 25
- (2) Section 60(1)(e) of the principal Act is amended by omitting the words “and branch committees”.
- (3) Section 60(1) of the principal Act is amended by inserting, after paragraph (e), the following paragraph: 30
 - “(ea) providing for the election and removal of members of branch committees:”.

24 Section 79(2) repealed

Section 79(2) of the principal Act is repealed.

25 Maori Heritage Council

The principal Act is amended by repealing section 84(2), and substituting the following subsection:

- “(2) The membership of the Council consists of—
- “(a) 3 members of the Board who have been appointed in accordance with **section 42(3)**; and 5
 - “(b) 1 member of the Board who has been either appointed or elected under **section 42(1)**; and
 - “(c) 4 persons who—
 - “(i) are Maori; and 10
 - “(ii) have the skills, knowledge, or cultural background appropriate to the functions and powers of the Council; and
 - “(iii) are appointed by the Minister after consultation with the Minister of Maori Affairs and the Board.” 15

26 Strict liability and defences

Section 106(2)(b) of the principal Act is amended by omitting the word “either”.

Part 2

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Transitional provisions and consequential amendments**27 Transitional provisions**

- (1) A person elected to the Board under the principal Act before the commencement of this Act continues in office until new elections are held under regulations made under section 113(a) of the principal Act. 25
- (2) Any appointment to the Board under the principal Act before the commencement of this Act expires when this Act comes into force. 30
- (3) Any appointment to the Council made—
 - (a) under section 84(2)(a), (b), or (c) of the principal Act before the commencement of this Act expires when this Act comes into force; and
 - (b) by the Minister under the principal Act before the commencement of this Act expires when the term of that appointment ends. 35

28 Consequential amendments

- (1) The Fourth Schedule of the Public Finance Act 1989 is amended by inserting, in its appropriate alphabetical order, the following item: 5
New Zealand Historic Places Trust (Pouhere Taonga)
- (2) The Fifth Schedule of the Public Finance Act 1989 is amended by inserting, in its appropriate alphabetical order, the following item: 10
New Zealand Historic Places Trust (Pouhere Taonga)
- (3) The Sixth Schedule of the Public Finance Act 1989 is amended by inserting, in its appropriate alphabetical order, the following item:
New Zealand Historic Places Trust (Pouhere Taonga)