

## TREATY OF WAITANGI BILL

### EXPLANATORY NOTE

THIS Bill provides for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty.

*Clause 1* relates to the Short Title.

*Clause 2* defines terms used in the Bill.

*Clause 3* provides that the Act shall bind the Crown.

*Clause 4* provides for the establishment of the Waitangi Tribunal. The Tribunal is to consist of—

- (a) The Chief Judge of the Maori Land Court, who shall be the Chairman;
- (b) One person to be appointed by the Governor-General on the recommendation of the Minister of Justice;
- (c) One person to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs.

The two members appointed by the Governor-General are to be appointed for a term not exceeding 3 years.

*Clause 5: Subclause (1)* sets out the functions of the Tribunal. They are—

- (a) To inquire into and make recommendations upon claims submitted to the Tribunal under section 6 of the Act;
- (b) To examine and report on any proposed legislation referred to the Tribunal under section 8 of the Act.

*Subclause (2)* provides that in exercising any of its functions under this clause the Tribunal is to have regard to the two texts of the Treaty (one in English, one in Maori) set out in the First Schedule to the Bill and, for the purposes of the Act, is to have exclusive authority to determine the meaning and effect of the Treaty as embodied in the two texts and to decide issues raised by the differences between them.

*Clause 6* enables any Maori who claims that he or any group of Maoris of which he is a member is or is likely to be prejudicially affected—

- (a) By any Act, regulations, or Order in Council, for the time being in force; or
- (b) By any policy or practice adopted by or on behalf of the Crown and for the time being in force or by any policy or practice proposed to be adopted by or on behalf of the Crown; or

(c) By any act which, after the commencement of this Act, is done or omitted, or is proposed to be done or omitted, by or on behalf of the Crown,—  
and that the Act, regulations, or Order in Council, or the policy, practice, or act is inconsistent with the principles of the Treaty, to submit his claim to the Tribunal.

If the Tribunal finds that the claim is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.

The Tribunal is not to have jurisdiction in respect of any thing done or omitted before the commencement of the Act.

*Clause 7* confers on the Tribunal a discretion, in certain circumstances, not to inquire into a claim made under *clause 6*.

*Clause 8: Subclause (1)* requires the Tribunal to examine any proposed legislation referred to it under *subclause (2)* of this clause and to report whether, in its opinion, the provisions of the proposed legislation or any of them are contrary to the principles of the Treaty.

*Subclause (2)* provides that legislation may be referred to the Tribunal in the following ways:

- (a) In the case of a Bill before the House of Representatives, by resolution of the House:
- (b) In the case of any proposed regulations or Order in Council, by any Minister of the Crown.

*First Schedule:* This Schedule contains two texts of the Treaty of Waitangi. One is in English. The other is in Maori. There are material differences between the two texts but *clause 5 (2)* of the Bill gives the Tribunal jurisdiction to determine, for the purposes of the Bill, the meaning and effect of the Treaty as embodied in the two texts and to decide issues raised by the differences between them.

*Second Schedule:* This Schedule contains provisions relating to the Tribunal. The most important of these are—

- (a) *Clause 3* (which provides for the appointment of deputy members):
  - (b) *Clause 5 (4)* (which provides that no sitting of the Tribunal shall take place unless all the members are present, but the decision of a majority of the members shall be the decision of the Tribunal):
  - (c) *Clause 6* (which relaxes the rules of evidence in respect of proceedings before the Tribunal and provides that witnesses may give their evidence in Maori):
  - (d) *Clause 7* (which deems the Tribunal to be a Commission of Inquiry under the Commissions of Inquiry Act 1908).
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*Hon. Mr Rata*

## TREATY OF WAITANGI

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### ANALYSIS

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### A BILL INTITULED

5 **An Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty**

10 WHEREAS on the 6th day of February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand: And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Maori language: And whereas it is desirable that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles:

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

No. 172—1

**1. Short Title**—This Act may be cited as the Treaty of Waitangi Act 1974.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Maori” means a person of the Maori race of New Zealand; and includes any descendant of such a person: 5

“Treaty” means the Treaty of Waitangi as set out in English and in Maori in the First Schedule to this Act: 10

“Tribunal” means the Waitangi Tribunal established under this Act.

**3. Act to bind the Crown**—This Act shall bind the Crown.

**4. Waitangi Tribunal**—(1) There is hereby established a tribunal to be known as the Waitangi Tribunal. 15

(2) The Tribunal shall consist of:

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

(b) One person to be appointed by the Governor-General on the recommendation of the Minister of Justice: 20

(c) One person to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs.

(3) Every person appointed to the Tribunal under paragraph (b) or paragraph (c) of subsection (2) of this section shall be appointed for a term not exceeding 3 years, but may from time to time be reappointed. 25

(4) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Superannuation Act 1956 by reason of his being a member of the Tribunal. 30

(5) The Department of Maori Affairs shall furnish such secretarial, recording, and other services as may be necessary to enable the Tribunal to exercise its functions and powers. 35

(6) The provisions of the Second Schedule to this Act shall have effect in relation to the Tribunal and its proceedings.

**5. Functions of the Tribunal—**(1) The functions of the Tribunal shall be—

- 5 (a) To inquire into and make recommendations upon, in accordance with section 6 of this Act, any claim submitted to the Tribunal under that section:
- (b) To examine and report on, in accordance with section 8 of this Act, any proposed legislation referred to the Tribunal under that section.

10 (2) In exercising any of its functions under this section the Tribunal shall have regard to the two texts of the Treaty set out in the First Schedule to this Act and, for the purposes of this Act, shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the two

15 them.

**6. Jurisdiction of Tribunal to consider claims—**(1) Where any Maori claims that he or any group of Maoris of which he is a member is or is likely to be prejudicially affected—

- 20 (a) By any Act, regulations, or Order in Council, for the time being in force; or
- (b) By any policy or practice adopted by or on behalf of the Crown and for the time being in force or by any policy or practice proposed to be adopted by or on behalf of the Crown; or
- 25 (c) By any act which, after the commencement of this Act, is done or omitted, or is proposed to be done or omitted, by or on behalf of the Crown,—

and that the Act, regulations, or Order in Council, or the policy, practice, or act is inconsistent with the principles of

30 the Treaty, he may submit that claim to the Tribunal under this section.

(2) Subject to section 7 of this Act, the Tribunal shall inquire into every claim submitted to it under this section.

35 (3) If the Tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.

40 (4) A recommendation under subsection (3) of this section may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take.

(5) The Tribunal shall cause a sealed copy of its findings and recommendation (if any) with regard to any claim to be served on—

(a) The claimant:

(b) The Minister of Maori Affairs and such other Ministers of the Crown as in the opinion of the Tribunal have an interest in the claim: 5

(c) Such other persons as the Tribunal thinks fit.

(6) Nothing in this section shall confer any jurisdiction on the Tribunal in respect of any thing done or omitted before the commencement of this Act. 10

**7. Tribunal may refuse to inquire into claim—**(1) The Tribunal may in its discretion decide not to inquire into, or, as the case may require, not to inquire further into, any claim made under section 6 of this Act if in the opinion of the Tribunal— 15

(a) The subject-matter of the claim is trivial; or

(b) The claim is frivolous or vexatious or is not made in good faith; or

(c) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition Parliament or to make a complaint to the Ombudsman, which it would be reasonable for the person alleged to be aggrieved to exercise. 20

(2) In any case where the Tribunal decides not to inquire into or further inquire into a claim it shall cause the claimant to be informed of that decision, and shall state its reasons therefor. 25

**8. Jurisdiction of Tribunal to consider proposed legislation—**(1) The Tribunal shall examine any proposed legislation referred to it under subsection (2) of this section and shall report whether, in its opinion, the provisions of the proposed legislation or any of them are contrary to the principles of the Treaty. 30

(2) Proposed legislation may be referred to the Tribunal— 35

(a) In the case of a Bill before the House of Representatives, by resolution of the House:

(b) In the case of any proposed regulations or Order in Council, by any Minister of the Crown.

- (3) The Tribunal's report shall be given—
- (a) In the case of a Bill, to the Speaker of the House:
  - (b) In every other case, to the person or body who referred the proposed regulations or Order in Council to the Tribunal.
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- (4) A copy of every report made by the Tribunal under this section shall be given by the Tribunal to the Minister of Maori Affairs and shall be laid before Parliament as soon as practicable.
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## SCHEDULES

Section 2

## FIRST SCHEDULE

## THE TREATY OF WAITANGI

## (THE TEXT IN ENGLISH)

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

## ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

## ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

## ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.



FIRST SCHEDULE—*continued*

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

(THE TEXT IN MAORI)

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 ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kea tukua mai tetahi Rangatira—hei kai wakarite ki nga Tangata maori o Nu Tirani—kia wakaactia e nga Rangatira maori te kawana-tanga 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 a 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 a tukua aiane amua atu ke te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me 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 wakarita ka wakaae ki nga tangata katoa o Nu Tirani te tino rangatiratanga o 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 mona 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 Kawana-tanga o te Kuini—Ki 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) W. Hobson,  
Consul & Lieutenant Governor.

FIRST SCHEDULE—*continued*

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 enei kopu, ka tangohia ka wakaaetia katoatia e matou, koia ka tonungia ai o matoa 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.

Section 4 (6)

## SECOND SCHEDULE

## PROVISIONS RELATING TO THE WAITANGI TRIBUNAL

**1. Term of office**—Notwithstanding that the term of office of any appointed member of the Tribunal may have expired, he shall, unless he sooner vacates office otherwise than by effluxion of time, continue to hold office until his successor comes into office.

**2. Removal or resignation from office**—Any appointed member of the Tribunal may be at any time removed from office by the Governor-General for inefficiency, disability, insolvency, neglect of duty, or misconduct proved to the satisfaction of the Governor-General or may at any time resign his office by writing addressed to the Minister.

**3. Remuneration and travelling allowances**—(1) There may be paid to the members and deputy members of the Tribunal out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

(2) The Tribunal is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

**4. Deputy members**—(1) In any case in which the Chairman or any other member of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the Chairman or any other member deems it not proper or desirable that he should adjudicate on any specified matter, the Governor-General may appoint a suitable person to be the deputy of the Chairman or of that member, as the case may require, to act for the Chairman or member for the period or purpose stated in the appointment.

(2) Every deputy appointed under this section shall, while acting for a member, be deemed to be a member of the Tribunal, and, in the case of a deputy for the Chairman, shall, while so acting, be deemed to be the Chairman of the Tribunal.

(3) The fact that any person is sitting as the deputy of the Chairman or any other member of the Tribunal shall be conclusive evidence of his authority to do so, and no person shall be concerned to inquire whether the occasion for his appointment has arisen or ceased.

**5. Sittings of the Tribunal**—(1) The Chairman shall preside at all sittings of the Tribunal.

(2) Sittings of the Tribunal shall be held at such times and places as the Tribunal or the Chairman from time to time appoints.

(3) Any sitting of the Tribunal may be adjourned from time to time and from place to place by the Tribunal or the Chairman.

SECOND SCHEDULE—*continued*

(4) No sitting of the Tribunal shall take place unless all the members are present, but the decision of a majority of the members shall be the decision of the Tribunal.

(5) The Tribunal may meet in private or in public, as the Tribunal may from time to time decide. The Chairman shall cause such notice as he thinks fit to be given of any public sitting of the Tribunal to persons likely to be affected thereby.

(6) Except as expressly provided in this Act, the Tribunal may regulate its procedure in such manner as it thinks fit.

**6. Evidence in proceedings before Tribunal**—(1) The Tribunal may act on any testimony, sworn or unsworn, and may receive as evidence any statement, document, information, or matter which in the opinion of the Tribunal may assist it to deal effectually with the matters before it, whether the same would, apart from this section, be legally admissible evidence or not.

(2) Witnesses appearing before the Tribunal may give their evidence in the Maori language.

(3) Subject to subclause (1) of this clause, the Evidence Act 1908 shall apply to the Tribunal in the same manner as if the Tribunal were a Court within the meaning of that Act.

**7. Tribunal to be a Commission of Inquiry**—(1) The Tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

(2) The Chairman of the Tribunal, or any other member purporting to act by direction or with the authority of the Chairman, may issue summonses requiring the attendance of witnesses before the Tribunal, or the production of documents, or may do any other act preliminary or incidental to the hearing of any matter by the Tribunal.

**8. Registrar of Tribunal**—(1) There may from time to time be appointed under the State Services Act 1962 a Registrar of the Tribunal.

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

**9. Seal of Tribunal**—The Tribunal shall have a seal which shall be appended to all reports and recommendations made by it.