

TE TURE WHENUA MAORI AMENDMENT BILL

MAORI LAND AMENDMENT BILL

EXPLANATORY NOTE

General Policy Statement

Te Ture Whenua Maori Amendment Bill amends Te Ture Whenua Maori Act 1993. The Act is based on principles set out in *Kaupapa: Te Wahanga Tuatahi* (1983) prepared by the New Zealand Maori Council. At the time the Act was passed, the Minister of Maori Affairs undertook to monitor and review the Act. This Bill is a result of that undertaking.

Issues of Maori land are of prime importance to Maori. There is a need to ensure that the law governing Maori land reflects the interests of owners and caters to their needs as far as practicable. Over the past century, “native affairs” legislation has contained complex and detailed provisions governing Maori land with multiple owners. Traditionally, the Maori Land Court has played a major interventionist role in ownership, occupation, management, utilisation, and alienation of Maori land. Since the passage of Te Ture Whenua Maori Act, the Court has also played a major role in the retention of remaining Maori freehold land (currently about 5.6% of the total land area in New Zealand).

The review that led to this Bill involved extensive consultation: 18 hui were held around New Zealand; a number of on going regional and specialist focus groups were established; and a group of kaumatua, Te Roopu Whakatamau Whenua, considered the principles that should underpin Maori land legislation.

Major issues raised at consultation hui and in written submissions that are addressed by this Bill include—

- requiring consideration of an intended Judges’ knowledge of te reo Maori, tikanga Maori, and the Treaty of Waitangi
- simplifying the rules for alienation of Maori freehold land and confirmations of alienation by the Maori Land Court and Registrar
- reducing the Court’s role in confirming alienations
- clarifying complex provisions, particularly those relating to alienation, confirmation, and noting
- increasing control by owners over the establishment and management of trusts and incorporations by reducing the Maori Land Court’s discretion in relation to trusts and incorporations

- allowing owners, themselves, to specify the terms of a trust and to appoint trustees through the ota kaitiaki (trust order)
- allowing trustees to register trust land title in the name of a tipuna (ancestor) or in the name of the trust
- allowing the Maori Land Court to order reasonable access to landlocked land, without requiring the consent of adjoining land owners, in a manner very similar to the High Court's powers under the Property Law Act 1952
- providing for owners without children to leave their land to whangai nieces or nephews
- allowing the Maori Land Court to correct the names of land blocks on application by owners
- defining better the scope of the Maori Land Court's power to mandate representatives of Maori groups in proceedings and negotiations
- making technical amendments to improve the operation of the Act, and to reduce administrative costs.

Many of the amendments in the Bill reduce the Court's interventionist role, acknowledging that owners desire a reduced level of judicial supervision and intervention. The guiding principle underlying the amendments, however, is that where the risk of loss of Maori land is greatest, so is the Court's supervisory role. For instance, where there is a proposal to sell or gift land (meaning complete loss of the land), the proposal must be confirmed by the Court.

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement of the Bill. The Bill comes into force on 1 July 2000.

PART 1

AMENDMENTS TO PRINCIPAL ACT

Amendments Relating to Preamble and Interpretation

Clause 2 amends the Preamble of the Act to recognise the need to protect land that is a wahi tapu (a place of special significance according to tikanga Maori), in recognition of protections contained already in the Act. The clause also inserts the correct Maori term for the Maori Land Court.

Clause 3 amends section 2 of the principal Act to insert the protection of a wahi tapu as one of the primary principles guiding the exercise of powers, duties, and discretions conferred by the Act, to reflect the amendment to the Preamble in *clause 2*.

Clause 4 amalgamates sections 3 and 4 of the principal Act so that all terms, Maori and English, are defined in one place. The clause introduces new definitions of "forestry right", "long-term lease", "ota kaitiaki", "ota whakanoho", "papanga wharenoho", "wahi rahui", and "wahi tapu".

Amendments Relating to Maori Land Court

Clause 5 amends section 7 of the principal Act to require persons appointed Judges of the Maori Land Court to be "suitable", having regard to their knowledge and experience of te reo Maori, tikanga Maori, and the Treaty of Waitangi.

Clause 6 amends section 18 (1) (i) of the principal Act to adopt the finding of the Court of Appeal in *Attorney-General v Maori Land Court [1999] 1 NZLR 689*. The Court of Appeal found that the Maori Land Court's power to make vesting orders and grant other relief was not intended to be used for General land or Crown land.

Clause 7 amends section 19 of the principal Act to confer on the Maori Land Court the jurisdiction to issue injunctions to protect a wahi tapu.

Clause 8 inserts *new section 22A* into the principal Act to confer on the Maori Land Court jurisdiction to grant and enforce specific performance of leases of Maori freehold land in terms corresponding with the power of the High Court to award specific performance.

Clause 9 repeals section 25(1)(c) of the principal Act to remove one of the requirements about which the Court must be satisfied before it can restore the effect of a lost or destroyed instrument of alienation of Maori freehold land.

Clause 10 amends section 30 of the principal Act to extend the Maori Land Court's power to advise or determine the most appropriate representatives of a class or group of Maori in proceedings or negotiations, consultations, allocation of funding, or other matters. The Court may—

- identify the most appropriate representatives for specific, as well as general, purposes
- place an expiry date on advice supplied or a determination made identifying appropriate representatives of a group of Maori.

Amendments Relating to Maori Land Court Special Aid Fund

Clause 11 amends section 98 of the principal Act to permit payment from the special aid fund of the reasonable fees and expenses of a person engaged by the Registrar, on direction by a Judge, to assist with an inquiry and report under section 40 of the principal Act.

Amendments Relating to Administration of Estates

Clause 12 makes a drafting amendment to section 104(3) of the principal Act to make it consistent with subsection (2) of that section.

Clause 13 amends section 108 of the principal Act to—

- expand the class of person who may succeed to Maori freehold land by will, to whangai of a member of a testator's whanau
- permit bequests by will of an ota whakanoho (occupation order) to persons in the categories specified in section 108(2) of the principal Act.

Clause 14 inserts *new section 109A* into the principal Act to provide that an ota whakanoho that passes by succession is cancelled automatically on the death of the successor.

Clause 15 amends section 115 of the principal Act to permit the Court to assist estate administration, by determining whether a person is a whangai of a member of a deceased owner's whanau.

Clause 16 inserts *new section 119A* into the principal Act to apply sections 117 to 119 of the Act to ota whakanoho. Sections 117 to 119 confer limited powers on the Court to vest (in this case) an ota whakanoho in a successor, following grant of administration of an estate or where no grant of administration has been made.

Amendments Relating to Recording of Ownership

Clause 17 inserts *new section 125A* into the principal Act to permit owners of Maori freehold land to seek a court order amending the appellation of a block of Maori freehold land in the title to that land or, for untitled land, on the cadastral record map. Owners of the land affected must receive notice of the application and there must be a sufficient degree of support for an order from owners.

Amendments Relating to Status of Land

Clause 18 amends section 133 of the principal Act to add General land owned by Maori as a category of land in respect of which the Maori Land Court may make a status order.

Amendments Relating to Alienation of Maori Land

The provisions governing alienation of Maori land, by different types of land owner, are scattered through the Act. These provisions have been amended several times. The result is provisions that are complex and difficult to follow.

Clauses 19, 21, and 22, taken together,—

- collect in 1 place provisions governing—
- The capacity of different types of owner to alienate Maori land; and
- The manner in which alienation must occur
- specify that alienations by sale, gift, or long-term lease, by all types of owner, require the support of at least 75% of the owners. These clauses provide, also, that sales or gifts of land must be confirmed by the Court, while lesser alienations must be noted by the Registrar or receive the Registrar's certificate of confirmation
- restrict a person with a life interest in Maori freehold land from alienating that interest without the consent of the persons entitled in remainder.

Clause 20 inserts *new section 147A* into the principal Act to restate the requirement, found currently in section 147 (2) and (3) of the Act, that persons who seek to sell or gift Maori freehold land must give a right of first refusal to persons who belong to 1 or more of the preferred classes of alienee. The current requirement that owners, other than trustees and Maori incorporations, give a right of first refusal for alienations by lease has been removed.

Amendments Relating to Duties and Powers of Court in Relation to Alienations of Maori Freehold Land

Clause 23 repeals section 152 of the principal Act and substitutes a new section. If the requirements of the new section are met, the Court must confirm the alienation. The Court's supervening discretion to grant or refuse confirmation, currently in sections 153 and 154 of the principal Act, is repealed by *clause 61*.

Clause 24 repeals section 155 of the principal Act and substitutes a new section that specifies the manner in which the Court is to confirm an alienation or a resolution of owners and preserves the effect of a confirmation even though an error or irregularity in procedure has been made.

Clause 25 amends section 160 of the principal Act to specify that alienations, by owners in common, of certain specified interests less than sale or gift, require a certificate of confirmation from the Registrar.

Clause 26 consequentially amends section 164 of the principal Act to omit reference to section 154 which is repealed by *clause 61*.

Amendments Relating to Trusts

Clauses 27 to 30 amend sections 212, 214, 215, and 216 of the principal Act to reduce the Court's discretion in constituting the various kinds of trust (except *kai tiaki* trusts) under Part XII. The Court is required to constitute a trust if the applicable requirements of sections 212 to 216 of the principal Act are met.

Clause 31 makes a drafting amendment to section 218 of the principal Act.

Clause 32 inserts new sections 219 and 219A into the principal Act to introduce new provisions allowing an applicant for constitution of a trust to write the terms of the trust, to nominate trustees for the intended trust, and to seek the Court's confirmation of those matters. The Court is required to confirm the terms of a trust written by an applicant if those terms satisfy the relevant sections of Part XII. The Governor-General is empowered to specify model terms for different kinds of trust for use or adaptation by applicants. Trust terms written by an applicant are called ota kaitiaki.

Clause 33 inserts new section 220A into the principal Act to enable trustees to direct the Registrar-General of Land, through the Registrar of the Court, to register land in their ownership in the name of, either, the trust or a tipuna (ancestor). This clause describes the method by which the trustees and the Registrar may do this. The trustees must provide the Registrar with a direction addressed to the Registrar-General of Land, evidence that beneficiaries support the direction, and a certificate identifying beneficiaries. On receipt, the Registrar must give a certificate to the Registrar-General of Land confirming the direction. The Registrar-General of Land is entitled to rely on the Registrar's certificate as conclusive, unless there is evidence to the contrary.

Clause 34 amends section 221 of the principal Act to require, for an amalgamation of 2 or more trusts, an application by all trustees of the trusts to be amalgamated.

Clause 35 repeals section 222 of the principal Act and substitutes a new section containing procedures for appointing trustees by either an ota kaitiaki or the Court. Beneficiaries of a trust may support the appointment of trustees by an ota kaitiaki or they may ask the Court to appoint trustees.

Clause 36 inserts a new section 227A into the principal Act to provide rules about the conduct of interested trustees in terms almost identical to clause 24 of the Maori Incorporations Constitution Regulations 1994.

Clause 37 repeals section 231 of the principal Act and substitutes a new section that revises the Court's power to review trusts. It permits a beneficiary of a trust to apply to the Court for a review. Now, only trustees can apply. However, to avoid vexatious or tactical applications, there can be no more than 1 review of a trust within a 24 consecutive month period. The Court may terminate a trust if there is sufficient degree of support by beneficiaries.

Clause 38 repeals section 239 of the principal Act and substitutes a new section that continues to permit the Court, on application, to add, reduce or replace trustees. Under the new section the Court may, of its own motion, amend the Court's records if a trustee dies and the Court sights a death certificate.

Clause 39 repeals section 244 of the principal Act and substitutes a new section that permits trustees to apply to the Court to vary a trust. The Court may vary a trust by varying or replacing the ota kaitiaki, or trust order, or in any other manner the Court considers appropriate. However, the Court may not exercise these powers unless beneficiaries have had notice of the application for variation and there is sufficient degree of support for the variation by beneficiaries.

Amendments Relating to Maori Incorporations

Clause 40 amends section 272 of the principal Act to correct a spelling mistake.

Clause 41 inserts *new section 274A* into the principal Act to provide rules regulating interests of committee members in the same terms as for trustees (as specified in *clause 36*).

Clause 42 amends section 276 of the principal Act to require the financial statements of a Maori incorporation to be filed in the Court within 14 days of their submission to shareholders, for the purpose of public inspection.

Clause 43 amends section 277 of the principal Act to exempt a Maori incorporation with gross revenue of \$25,000 or less, in its most recently completed financial year, from the audit requirements of the section, unless shareholders of the incorporation resolve that the incorporation's accounts should be audited.

Clause 44 amends section 280 of the principal Act to remove the Court's discretion to investigate the affairs of a Maori incorporation of the Court's own motion.

Clause 45 consequentially amends section 281 of the principal Act to include reference to *new section 274A* as inserted by *clause 41*.

Amendments Relating to Title Reconstruction and Improvement

Clause 46 amends section 288 of the principal Act to enable gifting of land, by partition, to a member of the donor's whanau who is within the preferred classes of alienee.

Clause 47 amends section 296 of the principal Act to substitute the expression "papanga wharenoho" for "site for a dwelling", and clarifies the orders that a Court can make on cancelling a papanga wharenoho.

Clauses 48 to 51 amend sections 301 to 304 of the principal Act, which govern the relationship between the principal Act and the Resource Management Act 1991. In considering certain partitions of land, the Court must have regard to certain sections of the Resource Management Act 1991 that, in turn, may require the Court to order a contribution of land for reserve purposes or in lieu of reserves. If a contribution of that nature is required, the land contributed must be set apart as wahi rahui (Maori reservations) for the common use and benefit of the people of New Zealand. *Clause 49*, in amending section 302 (2) of the principal Act, includes reference to land that is a wahi tapu. The Court retains the power to declare that land set apart be dedicated for the construction of roads.

Clause 52 inserts *new section 315A* into the principal Act to permit the Court to vary or cancel an easement created under section 315 of the Act, except easements granted to provide roadway access to land.

Clause 53 amends section 317 of the principal Act to substitute the "Commissioner of Crown Lands" for the "Director-General of Lands".

Clause 54 inserts *new sections 326A to 326D* into the principal Act. The new sections are modelled on section 129B of the Property Law Act 1952. They allow the Court to grant reasonable access to Maori freehold land that is landlocked. For that purpose, the Court may vest, in the owners of the landlocked land, ownership of other land (which may be General land) or may confer an easement over other land. The Court is required to consider a range of matters before making an order. The owner of any land adjoining the landlocked land must be

joined as a party to an application. Other persons affected by the application, including the relevant local authority, are entitled to be heard. The Court may declare that land affected by the order is to be free of a mortgage or lease or may declare that land to be vested in the landlocked owners is to vest subject to encumbrances that already apply to the landlocked land. Any appeal against a determination affecting General land must be made to the High Court, and not to the Maori Appellate Court, and must be by way of rehearing. The Maori Land Court's powers in these sections are in addition to the Court's other powers in the Act, to grant easements or lay out roadways.

Amendments Relating to Ota Whakanoho

Clause 55 amends sections 329 and 330 of the principal Act to substitute "ota whakanoho" for "occupation order".

Amendments Relating to Wahi Rahui

Clauses 56, 57 (2) to (6), and 58 to 60 replace various English terms relating to Maori reservations with Maori terminology of "wahi rahui". The Maori term "wahi tapu" is inserted to specify one of the purposes for which wahi rahui may be set aside. *Clause 57 (1)* rewrites section 338 (1) of the Act in light of the introduction of these Maori terms. The new subsection provides, in effect, that land that is wahi rahui may include land that is a wahi tapu.

PART 2

CONSEQUENTIAL AMENDMENTS

Clause 61 consequentially repeals certain provisions of the principal Act.

Clause 62 (1) consequentially amends section 129B (14) of the Property Law Act 1952.

Clause 62 (2) requires references relating to Maori reservation in other enactments to be read as references to "wahi rahui".

Hon Tau Henare

**TE TURE WHENUA MAORI AMENDMENT
MAORI LAND AMENDMENT**

ANALYSIS

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| <p>Title</p> <p>1. Short Title and commencement</p> <p style="text-align: center;">PART 1</p> <p style="text-align: center;">AMENDMENTS TO PRINCIPAL ACT</p> <p style="text-align: center;"><i>Amendments Relating to Preamble and Interpretation</i></p> <p>2. Preamble of principal Act amended</p> <p>3. Interpretation of Act generally</p> <p>4. Interpretation</p> <p style="text-align: center;"><i>Amendments Relating to Maori Land Court</i></p> <p>5. Appointment of Judges</p> <p>6. General jurisdiction of Court</p> <p>7. Jurisdiction in respect of injunctions</p> <p>8. Power of Court to grant specific performance of leases of Maori freehold land</p> <p>9. Power of Court to make order to restore effect of lost instruments of alienation</p> <p>10. Power of Maori Land Court to give advice or make determination as to representatives of class or group of Maori</p> <p style="text-align: center;"><i>Amendments Relating to Maori Land Court Special Aid Fund</i></p> <p>11. Maori Land Court Special Aid Fund</p> <p style="text-align: center;"><i>Amendments Relating to Administration of Estates</i></p> <p>12. Liability of Maori land for payment of debts of estate</p> <p>13. Disposition by will</p> <p>14. Succession to ota whakanoho on intestacy</p> <p>15. Court may make provision for whangai</p> <p>16. Vesting of ota whakanoho</p> <p style="text-align: center;"><i>Amendments Relating to Recording of Ownership</i></p> <p>17. Alteration to land appellation</p> | <p style="text-align: center;"><i>Amendments Relating to Status of Land</i></p> <p>18. Change from General land to Maori freehold land by status order</p> <p style="text-align: center;"><i>Amendments Relating to Alienation of Maori Land</i></p> <p>19. Alienation of whole or part of block</p> <p>20. Right of first refusal for sale or gift</p> <p>21. Manner of alienation of undivided interests</p> <p>22. New sections inserted</p> <p style="padding-left: 2em;">150A. Alienation by trustees</p> <p style="padding-left: 2em;">150B. Alienation by Maori incorporation</p> <p style="padding-left: 2em;">150C. Alienation by other owners</p> <p style="padding-left: 2em;">150D. Life interests</p> <p style="text-align: center;"><i>Amendments Relating to Duties and Powers of Court in Relation to Alienations of Maori Freehold Land</i></p> <p>23. Court to grant confirmation if satisfied of certain matters</p> <p>24. Manner of confirmation</p> <p>25. Certain instruments require only certificate of confirmation by Registrar</p> <p>26. Transfer of land or undivided interest by Court vesting orders</p> <p style="text-align: center;"><i>Amendments Relating to Trusts</i></p> <p>27. Putea trusts in respect of land interests</p> <p>28. Whanau trusts</p> <p>29. Ahu whenua trusts</p> <p>30. Whenua topu trusts</p> <p>31. Maori community purposes</p> <p>32. New sections inserted</p> <p style="padding-left: 2em;">219. Meanings in certain sections</p> <p style="padding-left: 2em;">219A. Ota kaitiaki</p> <p>33. Registration of land in name of trust or tipuna</p> <p>34. Power of court to amalgamate trusts</p> <p>35. Appointment of trustees</p> <p>36. Interested trustees</p> <p>37. Review of trusts</p> |
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*Te Ture Whenua Maori Amendment
Maori Land Amendment*

38. Addition, reduction, and replacement of trustees

39. Variation of trust

Amendments Relating to Maori Incorporations

40. Qualification, disqualification, and removal of members

41. Interested members

42. Accounts and balance sheet

43. Appointment and duties of auditor

44. Investigation of incorporation's affairs

45. Power of Court to require officers to attend to explain non-compliance with statutory requirements

Amendments Relating to Title Reconstruction and Improvement

46. Matters to be considered

47. Papanga wharenoho

48. Compliance with provisions of Resource Management Act 1991 relating to subdivisions

49. Contributions for reserve purposes

50. Subdivision consent and conditions of subdivision consent

51. Power to impose restrictions in respect of other partitions

52. Court may cancel or vary easements

53. Required consents

54. New section heading and sections inserted

Landlocked Maori Land

326A. Meaning of certain terms

326B. Reasonable access may be granted in cases of landlocked Maori land

326C. Conditions and other matters

326D. Additional provisions relating to orders under sections 326B or 326C

Amendments Relating to Ota Whakanoho

55. Ota whakanoho

Amendments Relating to Wahi Rahui

56. Part XVII heading amended

57. Wahi rahui

58. Court may consider proposal for wahi rahui on application of Minister

59. Wahi rahui not wahi tapu may be held for common use and benefit of people of New Zealand

60. Further provisions relating to wahi rahui for marae or meeting place

PART 2

CONSEQUENTIAL REPEALS AND AMENDMENTS

61. Repeals

62. Consequential amendments

A BILL INTITULED

An Act to amend Te Ture Whenua Maori Act 1993

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

1. Short Title and commencement—(1) This Act may be cited as—

(a) Te Ture Whenua Maori Amendment Act **1999**; or

(b) The Maori Land Amendment Act **1999**.

(2) This Act is part of Te Ture Whenua Maori Act 1993* (“the principal Act”).

(3) This Act comes into force on 1 July 2000.

*1993, No. 4

Amendments: 1993, Nos. 70, 104; 1994, No. 69; 1996, Nos. 35, 153

PART 1

AMENDMENTS TO PRINCIPAL ACT

Amendments Relating to Preamble and Interpretation

2. Preamble of principal Act amended—(1) The first paragraph of the Preamble of the principal Act is amended—

(a) By inserting, after the words “hapū hoki, a,” where they first occur, the words “a ki te whakangungu i ngā wāhi tapu”:

5 (b) By omitting the word “Kōti”, and substituting the words “Te Kooti”.

(2) The second paragraph of the Preamble of the principal Act is amended by inserting, after the words “and their hapu” where they first occur, the words “, and to protect wahi tapu”.

10 **3. Interpretation of Act generally**—Section 2 (2) of the principal Act is amended by adding the words “, and that protects wahi tapu”.

4. Interpretation—(1) Section 4 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

15 “‘Forestry right’ has the same meaning as in section 2 of the Forestry Rights Registration Act 1983:

“‘Kaitiaki’ means guardian:

“‘Long-term lease’ means a lease—

20 “(a) For a term of more than 42 years; or

“(b) For a term that would be more than 42 years if 1 or more rights of renewal were exercised:

“‘Ota kaitiaki’ means a document prepared under **section 219A (1)** and confirmed, or to be confirmed, by the Court under **section 219A (3)**:

25 “‘Ota whakanoho’ means an order made under section 328 or the right to exclusive use and occupation conferred by such an order:

“‘Papanga wharenoho’ means a site for a dwelling:

30 “‘Tikanga Maori’ means Maori customary values and practices:

“‘Tipuna’ means ancestor:

“‘Wahi rahui’ means land set apart under **section 338 (1)**, or which must be treated as if it were set apart under that section:

35 “‘Wahi tapu’ means land set apart under **section 338 (1) (b)**:

“‘Whanaunga’ means a person related by blood:

“‘Whangai’ means a person adopted in accordance with tikanga Maori.”

40 (2) Section 4 of the principal Act is amended by inserting, after subparagraph (vi) of paragraph (a) of the definition of “alienation”, the following subparagraph:

“(vii) The granting, renewal, variation, transfer, assignment, or mortgage of a forestry right over Maori land; and”.

(3) Section 4 of the principal Act is amended by repealing the definition of “occupation order”.

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(4) The section heading of section 4 of the principal Act is amended by omitting the words “**of English terms**”.

Amendments Relating to Maori Land Court

5. Appointment of Judges—Section 7 of the principal Act is amended by inserting, after subsection (2), the following subsection:

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“(2A) A person must not be appointed a Judge unless the person is suitable, having regard to the person’s knowledge and experience of te reo Maori, tikanga Maori, and the Treaty of Waitangi.”

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6. General jurisdiction of Court—Section 18 (1) (i) of the principal Act is amended by omitting the words “specified land”, and substituting the words “Maori freehold land or General land owned by Maori”.

7. Jurisdiction in respect of injunctions—Section 19 (1) (a) of the principal Act is amended by inserting, after the word “land”, the words “or any wahi tapu”.

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8. Power of Court to grant specific performance of leases of Maori freehold land—The principal Act is amended by inserting, after section 22, the following section:

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“22A. The Court has the same jurisdiction as that of the High Court to grant and enforce specific performance or to award damages in addition to, or in substitution for, specific performance, in respect of leases of Maori freehold land.”

9. Power of Court to make order to restore effect of lost instruments of alienation—Section 25 (1) of the principal Act is amended—

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(a) By omitting from paragraph (b) the expression “; and”:

(b) By repealing paragraph (c).

10. Power of Maori Land Court to give advice or make determination as to representatives of class or group of Maori—(1) Section 30 of the principal Act is amended by inserting, after subsection (1), the following subsection:

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5 “(1A) Any advice supplied or determination made under subsection (1) as to the most appropriate representatives of any class or group of Maori may identify those representatives for either general or specific purposes relating to the proceedings, negotiations, consultations, allocation, or other matter.”

(2) Section 30 of the principal Act is amended by inserting, after subsection (3), the following subsections:

10 “(3A) The Maori Land Court may specify a date after which advice supplied or a determination made under subsection (1) ceases to have effect.

“(3B) The Maori Land Court must, before specifying a date under **subsection (3A)**, consult the parties to the proceedings or the persons involved in the negotiations, consultations, allocation, or other matter.”

15 *Amendments Relating to Maori Land Court Special Aid Fund*

11. Maori Land Court Special Aid Fund—Section 98 (9) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

20 “(aa) The reasonable fees and reasonable expenses of any person the Registrar is directed, by the Judge, to engage to assist with an inquiry and report under section 40; and”.

Amendments Relating to Administration of Estates

25 **12. Liability of Maori land for payment of debts of estate**—Section 104 (3) of the principal Act is amended by inserting, after the word “dies”, the words “on or”.

13. Disposition by will—(1) Section 108 (2) (e) of the principal Act is amended by adding the words “or a whangai of a member of the testator’s whanau”.

30 (2) Section 108 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“**(2A)** A person in whom an ota whakanoho has been vested may leave the ota whakanoho by will to any 1 or more persons who come within subsection (2).”

35 **14. Succession to ota whakanoho on intestacy**—The principal Act is amended by inserting, after section 109, the following section:

40 “**109A.** (1) Section 109 applies, with all necessary modifications, to an ota whakanoho as if it were a beneficial interest in Maori freehold land.

“(2) An ota whakanoho that passes by succession is cancelled automatically on the date of death of the successor to the ota whakanoho.”

15. Court may make provision for whangai—
(1) Section 115 (1) of the principal Act is amended by adding the words “or a whangai of a member of the deceased owner’s whanau”.

(2) Section 115 (2) of the principal Act is amended by inserting, after the words “deceased owner” where they first occur, the words “or a whangai of a member of the deceased owner’s whanau”.

16. Vesting of ota whakanoho—The principal Act is amended by inserting, after section 119, the following section:
“119A. Sections 117 to 119 apply, with all necessary modifications, to an ota whakanoho as if it were a beneficial interest in Maori freehold land.”

Amendments Relating to Recording of Ownership

17. Alteration to land appellation—The principal Act is amended by inserting, after section 125, the following section:
“125A. (1) The Court may, on application under **subsection (2)**, make an order amending the name given to the whole or part of a block of Maori freehold land in—

“(a) The title to that land; and

“(b) If necessary, the cadastral record map, produced under section 11 (1)(c) of the Survey Act 1986, of the relevant land district.

“(2) A legal or beneficial owner of Maori freehold land may apply to the Court for an order under **subsection (1)** for Maori freehold land in which the legal or beneficial owner has an interest and must pay, with the application, the amount necessary (if any) to enable the Registrar to make the payment (if any) required by **subsection (7) (c)**.

“(3) On receiving an application under **subsection (1)**, the Registrar must, as soon as practicable,—

“(a) Notify every person with a beneficial interest in the Maori freehold land, whose identity and address is known to the Court, of the application; and

“(b) Notify the Registrar-General of Land and Chief Surveyor of the application; and

“(c) Invite submissions on the application from the persons notified.

“(4) The Registrar may specify a date by which submissions on the application must be received.

5 “(5) The Court must not make an order under this section affecting the whole or part of a block of Maori freehold land unless it is satisfied—

“(a) That the owners of the land have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and

10 “(b) That there is a sufficient degree of support for the application among the owners; and

“(c) That the format of the appellation, as amended, conforms with the requirements specified by the Surveyor-General under section 11 (1)(g) of the Survey Act 1986.

15 “(6) The Court must not make an order under this section affecting the whole or part of a block of Maori freehold land vested in a Maori incorporation unless it is satisfied—

“(a) That the shareholders of the incorporation have been given sufficient notice of the application; and

20 “(b) That the shareholders have passed a special resolution supporting the application.

“(7) If the Court makes an order under **subsection (1)**, the Registrar must forward—

25 “(a) A copy of the order to the land registry office for the land registration district in which the land is situated, for registration by the Registrar-General of Land; and

30 “(b) Any documentation required by the Surveyor-General, to the Surveyor-General, for updating the cadastral record map of the relevant land district; and

“(c) Payment of a fee (if any) prescribed, for registration or updating under **paragraphs (a) and (b)**.

Amendments Relating to Status of Land

35 **18. Change from General land to Maori freehold land by status order**—(1) Section 133 (1) of the principal Act is amended by inserting, after the words “General land”, the words “or General land owned by Maori”.

40 (2) The section heading of section 133 of the principal Act is amended by inserting, after the words “**General land**”, the words “**or General land owned by Maori**”.

Amendments Relating to Alienation of Maori Land

19. Alienation of whole or part of block—Section 147 (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraphs:

“(c) The owners in common of a block of Maori freehold land have the capacity to alienate the whole or any part of the land in accordance with **section 150c**; and 5

“(d) The trustees of a trust constituted under Part XII have the capacity to alienate the whole or any part of Maori freehold land vested in them, in accordance with **section 150A**; and 10

“(e) A Maori incorporation has the capacity to alienate the whole or any part of Maori freehold land vested in it, in accordance with **section 150b**.”

20. Right of first refusal for sale or gift—The principal Act is amended by inserting, after section 147, the following section: 15

“147A. A person referred to in section 147 who seeks to alienate any Maori freehold land by sale or gift must give the right of first refusal to prospective purchasers or donees who belong to 1 or more of the preferred classes of alienees, ahead of those who do not belong to any of those classes.” 20

21. Manner of alienation of undivided interests—Section 150 of the principal Act is amended by repealing subsections (3), (4), and (5). 25

22. New sections inserted—The principal Act is amended by inserting, after section 150, the following sections:

“150A. **Alienation by trustees**—(1) The trustees of a trust constituted under Part XII must not alienate Maori freehold land, vested in them as trustees, by way of sale, gift, or long-term lease unless the sale, gift, or long-term lease has the consent of— 30

“(a) At least three-quarters of the owners, where no owner has a defined share in the land; or

“(b) The persons who together own at least 75% of the beneficial freehold interest in the land. 35

“(2) **Subsection (1)** and **section 147A** do not apply if the Court is satisfied that it is necessary for the trustees to sell part of the Maori freehold land to make minor boundary adjustments.

“(3) The trustees of a trust constituted under Part XII who execute an instrument of alienation of Maori freehold land must,—

5 “(a) If the alienation is by way of sale or gift, get the instrument confirmed by the Court under Part VIII; and

 “(b) If the alienation is by way of lease, licence, or forestry right, for a term of more than 21 years (including any term or terms of renewal), or mortgage, send a copy of the instrument to the Registrar for noting; and the Registrar must note the contents of that instrument.

15 “150B. **Alienation by Maori incorporation**—(1) A Maori incorporation must not alienate Maori freehold land vested in it by way of sale, gift, or long-term lease unless the sale, gift, or long-term lease is authorised by a special resolution passed by shareholders holding 75% or more of the total shares in the incorporation.

20 “(2) **Subsection (1) and section 147A** do not apply if the Court is satisfied that it is necessary for the Maori incorporation to sell part of the Maori freehold land to make minor boundary adjustments.

 “(3) A Maori incorporation that executes an instrument of alienation of Maori freehold land must,—

25 “(a) If the alienation is by way of sale or gift, get the instrument confirmed by the Court under Part VIII; and

 “(b) If the alienation is by way of lease, licence, or forestry right, for a term of more than 21 years (including any term or terms of renewal), or mortgage, send a copy of the instrument to the Registrar for noting; and the Registrar must note the contents of that instrument.

35 “150c. **Alienation by other owners**—(1) The owners in common of a block of Maori freehold land must not alienate Maori freehold land owned by them—

 “(a) By way of sale, gift, or long-term lease unless the sale, gift, or long-term lease has the consent of—

40 “(i) At least three-quarters of the owners, where no owner has a defined share in the land; or

 “(ii) The persons who together own at least 75% of the beneficial freehold interest in the land; and

 “(b) In any other way except—

“(i) By agreement of all the owners; or

“(ii) Pursuant to a resolution carried at a meeting of assembled owners held under and in accordance with Part IX.

“(2) **Subsection (1) and section 147A** do not apply if the Court is satisfied that it is necessary for the owners to sell part of the Maori freehold land to make minor boundary adjustments. 5

“(3) A person referred to in section 147 (1) (a), (b), or (c) who executes an instrument of alienation of Maori freehold land must,— 10

“(a) If the alienation is by way of sale or gift, get the instrument confirmed by the Court under Part VIII; and

“(b) If the alienation is by way of lease, licence, forestry right, profit, mortgage, charge, or encumbrance, get a certificate of confirmation issued and noted by the Registrar under section 160. 15

“150D. **Life interests**—A person with a life interest or a determinable life interest in Maori freehold land—

“(a) Is not capable of alienating the Maori freehold land in which the life interest is held without the consent of all persons entitled in remainder; and 20

“(b) Holds that interest as a kaitiaki in accordance with tikanga Maori.”

Amendments Relating to Duties and Powers of Court in Relation to Alienations of Maori Freehold Land 25

23. Court to grant confirmation if satisfied of certain matters—The principal Act is amended by repealing section 152, and substituting the following section:

“152. (1) The Court must grant confirmation of an alienation of Maori freehold land if it is satisfied— 30

“(a) That,—

“(i) In the case of an instrument of alienation, the instrument has been executed and attested in the manner required by the rules of Court; or 35

“(ii) In the case of a resolution of assembled owners, the resolution was passed in accordance with this Act or regulations made under this Act; and

“(b) That the alienation is not in breach of any trust to which the land is subject; and 40

- 5 “(c) That the value of all buildings, all fixtures attached to the land, all things growing on the land, all minerals in the land, and all other assets or funds relating to the land, has been properly taken into account in assessing the consideration payable; and
- “(d) That, having regard to the relationship (if any) of the parties and to any other special circumstances of the case, the consideration (if any) is adequate; and
- 10 “(e) That the purchase money (if any) has been paid to, or secured to the satisfaction of, the Maori Trustee or Court appointed agent or trustees in accordance with section 159; and
- “(f) That, if **section 147A** applies to the alienation, the alienating owners have discharged the obligation in that
- 15 section.
- “(2) Before granting confirmation, the Court may, with the consent of the parties, vary the terms of the instrument of alienation or resolution.
- “(3) In considering an application for confirmation of an
- 20 alienation to a person who is an overseas person (within the meaning of the Overseas Investment Act 1973) of any land that, if it were General land, could be acquired by that person only in accordance with that Act or regulations made under that Act, the Maori Land Court—
- 25 “(a) Must, as far as possible, act in conformity with the relevant provisions of that Act and those regulations; and
- “(b) Must have regard to the matters that any person is required by that Act or those regulations to consider
- 30 in relation to applications under that Act or those regulations.”

24. Manner of confirmation—The principal Act is amended by repealing section 155, and substituting the following section:

- 35 “155. (1) If the Court is satisfied that it should grant confirmation, it must,—
- “ (a) For an instrument of alienation, endorse the instrument with an appropriate certificate of confirmation; or
- “ (b) For a resolution of owners, make an order accordingly.
- 40 “(2) A certificate or order under **subsection (1)** has full force and effect even though there has been an error or irregularity in the procedure followed in making or granting the application for confirmation.”

25. Certain instruments require only certificate of confirmation by Registrar—(1) Section 160 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) This section applies to the instruments of alienation specified in **section 150c (3) (b)**. 5

“(2) An instrument of alienation to which this section applies has no force or effect (unless confirmed by the Court under subsection (6)) until a certificate of confirmation—

“(a) Has been issued by the Registrar under this section; and 10

“(b) Has been noted by the Registrar in the records of the Court.”

(2) Section 160 (3) (d) of the principal Act is amended by inserting, after the word “Act” in both places where it occurs, the words “or regulations made under this Act”. 15

(3) Section 160 of the principal Act is amended by adding the following subsection:

“(10) The Registrar may correct accidental clerical errors made in certificates of confirmation under this section whether or not the relevant certificate of confirmation has become effective.” 20

26. Transfer of land or undivided interest by Court vesting orders—Section 164 (3) of the principal Act is amended by omitting the expression “to 154”.

Amendments Relating to Trusts 25

27. Putea trusts in respect of land interests—(1) Section 212 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) A putea trust may be constituted in respect of—

“(a) Any interests in Maori land or General land owned by Maori; or 30

“(b) Any shares in a Maori incorporation, subject to any minimum share unit fixed by the constitution of the Maori incorporation.”

(2) Section 212 (5) of the principal Act is amended by omitting the words “The Court shall not grant an application made under this section by or on behalf of the trustees of the land or the incorporation unless it is satisfied”, and substituting the words “A putea trust must be constituted if the applicant shows”. 40

28. Whanau trusts—(1) Section 214 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) A whanau trust may be constituted in respect of—

5 “(a) Any beneficial interests in Maori land or General land owned by Maori; and

 “(b) Any shares in a Maori incorporation, subject to any minimum share unit fixed by the constitution of the Maori incorporation.”

10 (2) Section 214(4) of the principal Act is amended by omitting the words “either on the constitution of a whanau trust or on application at any time thereafter”, and substituting the words “on application by trustees appointed or to be appointed”.

15 **29. Ahu whenua trusts**—(1) Section 215 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

 “(1) An ahu whenua trust may be constituted in respect of any Maori land or General land owned by Maori.”

20 (2) Section 215(2) of the principal Act is amended by omitting the words “the Court is satisfied that”.

 (3) Section 215(4) of the principal Act is amended by omitting the words “The Court shall not grant an application made under this section unless it is satisfied”, and substituting
25 the words “An ahu whenua trust must be constituted if the applicant shows”.

 (4) Section 215(6) of the principal Act is amended by omitting the words “either on the constitution of an ahu whenua trust or on application at any time thereafter”, and
30 substituting the words “on application by trustees appointed or to be appointed”.

30. Whenua topu trusts—(1) Section 216 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

35 “(1) A whenua topu trust may be constituted in respect of any Maori land or General land owned by Maori.”

 (2) Section 216(2) of the principal Act is amended—

 (a) By omitting the words “the Court is satisfied that”;

 (b) By omitting the word “substantial”.

40 (3) Section 216(4) of the principal Act is amended by omitting the words “The Court shall not grant an application made under this section unless it is satisfied”, and substituting

the words “A whenua topu trust must be constituted if the applicant shows”.

(4) Section 216 (5) of the principal Act is amended—

(a) By omitting the words “the Court may specify either on the constitution of the trust or on application at any time thereafter”, and substituting the words “are specified in the ota kaitiaki”:

(b) By omitting the words “ordered by the Court”, and substituting the words “specified in the ota kaitiaki”.

(5) Section 216 (7) of the principal Act is amended by omitting the words “either on the constitution of a whenua topu trust or on application at any time thereafter”, and substituting the words “on application”.

31. Maori community purposes—Section 218 (2) (b) (iii) of the principal Act is amended by omitting the word “maraes”, and substituting the word “marae”.

32. New sections inserted—The principal Act is amended by repealing section 219, and substituting the following sections:

“219. **Meanings in certain sections**—In this section and sections 219A, 220A, and 222, unless the context otherwise requires,—

“Applicant” means the person or group who applies to constitute an intended trust:

“Beneficiaries” means the persons beneficially entitled to the property of an intended trust:

“Intended trust” means a trust, except a kai tiaki trust, for which an application for constitution under this Part is made but not decided.

“219A. **Ota kaitiaki**—(1) An applicant may prepare an ota kaitiaki, with the content required or authorised by subsection (2), and apply to the Court to confirm it.

“(2) An ota kaitiaki prepared by an applicant—

“(a) Must specify the terms of the intended trust; and

“(b) May nominate trustees for the intended trust, or specify a process for their appointment.

“(3) The Court must, by order, confirm an ota kaitiaki if it is satisfied,—

“(a) In relation to subsection (2) (a), that the terms specified for the intended trust satisfy the requirements of this Part that apply to the constitution of the intended trust; and

“(b) In relation to **subsection (2) (b)**, that **section 222 (2) and (4)** is satisfied.

5 “(4) The Governor-General may, by Order in Council, specify model terms for different kinds of intended trust for use or adaptation by applicants in preparing an ota kaitiaki.

“(5) An order made by the Court under **subsection (3)** is not capable of registration under the Land Transfer Act 1952, despite anything in this Act or that Act.”

33. Registration of land in name of trust or tipuna—

10 The principal Act is amended by inserting, after section 220, the following section:

“220A. (1) This section applies to land or an interest in land that constitutes the whole or part of the property of a trust.

15 “(2) The trustees of a trust may give a direction that land that is registered or registrable under the Land Transfer Act 1952—

“(a) Be registered in the name of—

“(i) The trust applying to that land; or

“(ii) A tipuna; or

20 “(b) No longer be registered in the name of the trust applying to that land, or a tipuna, and instead be registered in the names of the trustees.

“(3) The Registrar-General of Land must implement a direction under **subsection (2)** if the Registrar-General of Land
25 receives—

“(a) A copy of the direction from the Registrar; and

“(b) A certificate of the Registrar confirming the direction.

“(4) To give a direction under **subsection (2)**, the trustees must present to the Registrar—

30 “(a) A direction in writing, addressed to the Registrar-General of Land, executed by the trustees, saying whether the direction is given under **paragraph (a) or (b) of subsection (2)**; and

35 “(b) A certificate executed by the trustees identifying the beneficiaries of the trust; and

“(c) Evidence of a resolution of beneficiaries approving the direction.

“(5) **Subsections (2) and (3)** apply despite anything in the Land Transfer Act 1952 or any other Act or rule of law.

40 “(6) If the documents received under **subsection (4)** comply with that subsection, the Registrar must—

“(a) Issue a certificate to the Registrar-General of Land confirming the direction; and

“(b) Forward a copy of the direction and that certificate to the Registrar-General of Land.

“(7) Trustees who give a direction under **subsection (2)**—

“(a) Retain the rights, duties, and powers of the registered proprietor of the land even though the land may not be registered in their name; and 5

“(b) Must exercise those rights, duties, and powers in their own names.

“(8) The Registrar-General of Land—

“(a) Is entitled to rely on the Registrar’s certificate issued under **subsection (6) (a)** as sufficient evidence that the direction has been given properly, unless there is evidence to the contrary; and 10

“(b) Must have regard to **subsection (7)**.”

34. Power of court to amalgamate trusts—Section 221 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 15

“(1) The Court may order the amalgamation of 2 or more trusts (other than kai tiaki trusts) constituted under this Part, if— 20

“(a) All trustees of the trusts to be amalgamated apply for the order; and

“(b) The Court is satisfied that—

“(i) The beneficiaries of the trusts to be amalgamated have had sufficient notice of the proposal to amalgamate and sufficient opportunity to discuss and consider it; and 25

“(ii) There is a sufficient degree of support for the application among the beneficiaries of the trusts to be amalgamated.” 30

35. Appointment of trustees—The principal Act is amended by repealing section 222, and substituting the following section:

“222. (1) Every trust—

“(a) Must have 1 or more responsible trustees; and 35

“(b) May have 1 or more advisory trustees; and

“(c) May have 1 or more custodian trustees.

“(2) A trustee appointed by an applicant or the Court—

“(a) May be an individual, a body corporate, a Maori incorporation, the Maori Trustee, the Public Trustee, a Maori Trust Board under the Maori Trust 40

Boards Act 1955, or a trustee company under the Trustee Companies Act 1967; and

“(b) Must consent to being appointed.

“(3) The trustees of an intended trust—

5 “(a) May be appointed by an applicant in accordance with **section 219A**; or

“(b) Must be appointed by the Court if beneficiaries apply to the Court for the Court to do so.

10 “(4) An applicant must obtain a sufficient degree of support from beneficiaries to nominees for trusteeship, or to any process for appointment of trustees, before appointing trustees under **subsection (3) (a)**.

“(5) Before appointing a trustee under **subsection (3) (b)** the Court must—

15 “(a) Have regard to the ability, experience, and knowledge of the proposed appointee; and

“(b) Be satisfied that the proposed appointee is broadly acceptable to the beneficiaries.”

20 **36. Interested trustees**—The principal Act is amended by inserting, after section 227, the following section:

“227A. (1) A person is not disqualified from being elected or from holding office as a trustee because of that person’s employment as a servant or officer of the trust, or interest or concern in any contract made by the trust.

25 “(2) A trustee must not vote or participate in the discussion on any matter before the trust that directly or indirectly affects that person’s remuneration or the terms of that person’s employment as a servant or officer of the trust, or that directly or indirectly affects any contract in which that person may be
30 interested or concerned.”

37. Review of trusts—The principal Act is amended by repealing section 231, and substituting the following section:

35 “231. (1) The trustees or a beneficiary of a trust (other than a kai tiaki trust) constituted under this Part may apply to the Court to review the terms, operation, or other aspect of the trust.

“(2) There can be no more than 1 review of a trust within a period of 24 consecutive months.

“(3) The Court may, on any review,—

40 “(a) Confirm the ota kaitiaki for the trust without variation; or

“(b) Exercise its powers under **section 244**; or

“(c) Terminate the trust if the Court is satisfied that there is a sufficient degree of support for termination among the beneficiaries.”

38. Addition, reduction, and replacement of trustees—

The principal Act is amended by repealing section 239, and substituting the following section: 5

“239. (1) The Court may at any time, on application, in respect of any trust to which this Part applies, add to or reduce the number of trustees or replace 1 or more of the trustees.

“(2) The Court may amend the Court’s records for a trust if a trustee dies and the Court receives a death certificate for the deceased trustee. 10

“(3) In exercising the powers in **subsections (1) and (2)**, the Court may order the vesting of land or other assets of the trust in any person or persons (with the consent of that person or those persons) upon the terms of the trust, whether or not that person was previously a trustee.” 15

39. Variation of trust—The principal Act is amended by repealing section 244, and substituting the following section:

“244. (1) The trustees of a trust to which this Part applies may apply to the Court to vary the trust. 20

“(2) The Court may vary the trust by varying or replacing the ota kaitiaki or other order constituting the trust, or in any other manner the Court considers appropriate.

“(3) The Court may not exercise its powers under this section unless it is satisfied— 25

“(a) That the beneficiaries of the trust have had sufficient notice of the application by the trustees to vary the trust and sufficient opportunity to discuss and consider it; and 30

“(b) That there is a sufficient degree of support for the variation among the beneficiaries.”

Amendments Relating to Maori Incorporations

40. Qualification, disqualification, and removal of members—Section 272 (2) (b) of the principal Act is amended by omitting the word “fulfilled”, and substituting the word “fulfilled”. 35

41. Interested members—The principal Act is amended by inserting, after section 274, the following section:

5 “274A. (1) A person is not disqualified from being elected or from holding office as a member of the committee of management because of that person’s employment as a servant or officer of the incorporation, or interest or concern in any contract made by the incorporation.

10 “(2) A member of a committee of management must not vote or participate in the discussion on any matter before the committee that directly or indirectly affects that person’s remuneration or the terms of that person’s employment as a servant or officer of the incorporation, or that directly or indirectly affects any contract in which that person may be interested or concerned.”

15 **42. Accounts and balance sheet**—Section 276 of the principal Act is amended by repealing subsection (7), and substituting the following subsections:

20 “(7) The committee of management of a Maori incorporation must ensure that copies of the balance sheet, profit and loss account, and other documents are filed in Court, for the purpose of public inspection, within 14 days after their submission to a general meeting of shareholders.

“(8) Copies filed under **subsection (7)** must be available for inspection by the public during the office hours of the Court on payment of the fee (if any) prescribed for that purpose.”

25 **43. Appointment and duties of auditor**—(1) Section 277 (1) of the principal Act is amended by inserting, after the words “Maori incorporation”, the words “(except the Maori incorporations referred to in **subsection (1A)**)”.

(2) Section 227 of the principal Act is amended by inserting, after subsection (1), the following subsection:

30 “(1A) This section does not apply to a Maori incorporation that had gross revenue of \$25,000 or less for its most recently completed financial year unless the shareholders of that Maori incorporation resolve by special resolution that the accounts of the Maori incorporation should be audited under this section.”

35 **44. Investigation of incorporation’s affairs**—Section 280 (3) of the principal Act is amended—

- (a) By omitting from paragraph (b) the expression “; or”:
- (b) By repealing paragraph (c).

40 **45. Power of Court to require officers to attend to explain non-compliance with statutory requirements**—

Section 281 (1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) Failure to comply with **section 274A (2)**.”.

Amendments Relating to Title Reconstruction and Improvement

46. Matters to be considered—Section 288 of the principal Act is amended by repealing subsection (4), and substituting the following subsection: 5

“(4) The Court must not make a partition order unless it is satisfied that the partition order—

“(a) Is necessary to facilitate the effective operation, development, and utilisation of the land; or 10

“(b) Effects an alienation of land, by gift, to a member of the donor’s whanau, being a member who is within the preferred classes of alienees.”

47. Papanga wharenoho—(1) Section 296 (1) and (4) of the principal Act is amended by omitting the words “site for a dwelling” in each place where they occur, and substituting in each case the words “papanga wharenoho”. 15

(2) Section 296 of the principal Act is amended by repealing subsections (5) and (6), and substituting the following subsections: 20

“(5) On cancelling a vesting order under subsection (4), the Court may order—

“(a) That the land be held again under the former instrument of title as if the vesting order had not been made; or 25

“(b) That the land is vested in any other person whom the Court considers to be justly entitled to it.

“(6) If an order under **subsection (5) (a)** is made, all orders of the Court and all alienations affecting interests in the land made or effected since the date of the order cancelled are to be treated as relating to the former title and the interests under it. 30

“(7) On cancelling a vesting order under subsection (4), the Court may, if it considers it necessary, make an order under section 128.” 35

(3) The section heading of section 296 of the principal Act is amended by omitting the words “**Dwelling sites**”, and substituting the words “**Papanga wharenoho**”.

48. Compliance with provisions of Resource Management Act 1991 relating to subdivisions—Section 301 (3)(b) of the principal Act is amended by omitting the 40

words “Planning Tribunal”, and substituting the words “Environment Court”.

5 **49. Contributions for reserve purposes**—(1) Section 302 (2) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

10 “(a) The Court must not impose any condition requiring a contribution of land for reserve purposes or in lieu of reserves from land that is of special historical significance or spiritual or emotional association with the Maori people or any group or section of the Maori people, which includes all land that is a wahi tapu; and

15 “(b) The Registrar-General of Land and Registrar of Deeds must not require, under Part X of the Resource Management Act 1991, the deposit of a survey plan for the partition.”

(2) Section 302 of the principal Act is amended by repealing subsection (3).

20 **50. Subdivision consent and conditions of subdivision consent**—(1) Section 303 of the principal Act is amended by repealing subsections (2) to (5), and substituting the following subsections:

25 “(2) The Court must—
 “(a) Make such orders as it considers necessary, having regard to Part X of the Resource Management Act 1991, to ensure that, in respect of any conditions of the subdivision consent that have not been complied with, adequate provision is made for such compliance; and

30 “(b) Have regard to sections 229 to 237H of the Resource Management Act 1991 in respect of every partition of land to which section 301 applies.

35 “(3) Any land that would be required to be set apart, reserved, or vested in another person, because of **subsection (2)**, must be set apart as a wahi rahui, for the common use and benefit of the people of New Zealand, despite anything in the Resource Management Act 1991.

 “(4) Land to which **subsection (3)** applies must be treated—

40 “(a) As if it were land set apart under **section 338 (1)** and section 340 (1); and

 “(b) As if the procedural requirements of those subsections had been satisfied.

“(5) The Court may declare that any land set apart under **subsection (3)** be dedicated for the construction of roads, if the Court considers that to be necessary to satisfy a condition or requirement of a subdivision consent.”

(2) Section 303 of the principal Act is amended by repealing subsection (8). 5

(3) Section 303 of the principal Act is amended by repealing subsection (9), and substituting the following subsection:

“(9) On the completion of any vesting order made by the Court for the purposes of this section, the Registrar must forward the order to the Registrar-General of Land who must register the order.” 10

51. Power to impose restrictions in respect of other partitions—(1) Section 304 (2) of the principal Act is amended by omitting the word “alienated”, and substituting the word “sold”. 15

(2) Section 304 of the principal Act is amended by repealing subsections (3) to (7), and substituting the following subsections:

“(3) If an application to which this section applies is made to the Court to confirm a sale of Maori land, the Court— 20

“(a) May, if it considers it appropriate, publicly notify the application and invite submissions from the territorial authority and any other person who is likely to be affected by the application; and

“(b) May confirm or refuse to confirm the sale under **section 152**, having regard to sections 229 to 237H of the Resource Management Act 1991 and the fact that the land has previously been partitioned without a subdivision consent being obtained under that Act. 25 30

“(4) If an application under this section involves the sale of land to persons who are not members of the same hapu, and the Court decides under **subsection (3)** that land is required to be set apart, reserved, or vested in another person, the Court must set that land apart as a wahi rahui, for the common use and benefit of the people of New Zealand, despite anything in the Resource Management Act 1991. 35

“(5) Land to which **subsection (4)** applies must be treated—

“(a) As if it were land set apart under **section 338 (1)** and section 340 (1); and 40

“(b) As if the procedural requirements of those subsections had been satisfied.

“(6) If the Court confirms the sale of land to persons who are not members of the same hapu,—

5 “(a) The Court must not impose any condition requiring a contribution of land for reserve purposes or in lieu of reserves from land that is of special historical significance or spiritual or emotional association with the Maori people or any group or section of the Maori people, which includes all land that is a wahi tapu; and

10 “(b) Any condition imposed by the Court requiring a contribution of land for reserve purposes or in lieu of reserves may only require any such land to be set aside from that part of the land that is to be sold.”

52. Court may cancel or vary easements—The principal Act is amended by inserting, after section 315, the following section:

15 “315A. (1) The Court may, on application, vary or cancel an easement created under section 315 except an easement granted for the purpose stated in section 315 (3).

20 “(2) The Court may vary or cancel an easement under this section even though the land subject to the easement has ceased to be land to which this Part applies.”

53. Required consents—Section 317 (4) of the principal Act is amended by omitting the words “Director-General of Lands”, and substituting the words “Commissioner of Crown Lands”.

54. New section heading and sections inserted—The principal Act is amended by inserting, after section 326, the following heading and sections:

30 “*Landlocked Maori Land*

“326A. **Meaning of certain terms**—In this section and sections 326B, 326C, and 326D, unless the context otherwise requires,—

35 “(a) ‘Landlocked land’ means a piece of land that—

“(a) Is Maori freehold land; and

“(b) Has no reasonable access to it; and

“(b) ‘Owners’, in relation to any landlocked land, means the legal or beneficial owners of the land; and

40 “(c) ‘Occupier’ means the owners or occupier of the landlocked land; and

“(d) ‘Reasonable access’ means physical access of such nature and quality as may be reasonably necessary to enable the occupier for the time being of the landlocked land to use and enjoy that land.

“326B. **Reasonable access may be granted in cases of landlocked Maori land**—(1) The owners of landlocked land may apply at any time to the Court for an order in accordance with this section. 5

“(2) On an application made under this section,—

“(a) The owner of land adjoining the landlocked land that will or may be affected by the application must be joined as a party to the application; and 10

“(b) Every person having an estate or interest in the landlocked land, or in any other piece of land (whether or not that piece of land adjoins the landlocked land), that will or may be affected if the application is granted, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract, or other instrument affecting or relating to any such land, and the local authority concerned, are entitled to be heard in relation to any application for, or proposal to make, any order under this section. 15 20

“(3) For the purposes of **subsection (2)**, the Court may, if in its opinion notice of the application or proposal should be given to any person mentioned in that subsection, direct that such notice as it thinks fit must be given to that person by the applicant or by any other person. 25

“(4) In considering an application under this section, the Court must have regard to— 30

“(a) The nature and quality of the access (if any) to the landlocked land that existed when the applicant purchased or otherwise acquired the land; and

“(b) The circumstances in which the landlocked land became landlocked; and 35

“(c) The conduct of the applicant and the other parties, including any attempts that they may have made to negotiate reasonable access to the landlocked land; and

“(d) The hardship that would be caused to the applicant by the refusal to make an order in relation to the hardship that would be caused to any other person by the making of the order; and 40

“(e) Such other matters as the Court considers relevant.

5 “(5) If, after taking into consideration the matters specified in subsection (4), and all other matters that the Court considers relevant, the Court is of the opinion that the applicant should be granted reasonable access to the landlocked land, it may make an order for that purpose—

10 “(a) Vesting in the owners of the legal estate in the landlocked land the legal estate in fee simple in any other piece of land (whether or not that piece of land adjoins the landlocked land); or

“(b) Attaching and making appurtenant to the landlocked land an easement over any other piece of land (whether or not that piece of land adjoins the landlocked land).

15 “326c. **Conditions and other matters**—(1) Any order under section 326b (5) may be made upon such terms and subject to such conditions as the Court thinks fit in respect of—

“(a) The payment of compensation by the applicant to any other person; and

20 “(b) The exchange of any land by the applicant and any other person; and

“(c) The fencing of any land and the upkeep and maintenance of any fence; and

25 “(d) The upkeep and maintenance of any land over which an easement is to be granted; and

“(e) The powers of the Court under Part XVI as to Maori land; and

30 “(f) The carrying out of any survey that may be required by the Registrar-General of Land before the Registrar-General of Land will issue, in respect of any piece of land affected by the order, a certificate of title free of any limitations as to title or parcels within the meaning of Part XII of the Land Transfer Act 1952; and

35 “(g) The time in which any work necessary to give effect to the order is to be carried out; and

“(h) The execution, stamping, and delivery of any instrument; and

“(i) Such other matters as the Court considers relevant.

40 “(2) Every order made under section 326b (5) must provide that the reasonable cost of carrying out any work necessary to give effect to the order is to be borne by the applicant for the order, unless the Court is satisfied, having regard to the matters

specified in **section 326B (4) (b) and (c)**, that it is just and equitable to require any other person to pay the whole or any specified share of the cost of such work.

“(3) If the Court makes an order under section 326B (5), the Court may, in the order,—

“(a) Declare any estate or interest in any piece of land affected by the order to be free of any mortgage, lease, easement, or other encumbrance affecting that piece of land, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to that piece of land; and

“(b) Declare that the legal estate in fee simple in any piece of land to be vested in the owners of the landlocked land is to vest subject to the same terms, conditions, liabilities, and encumbrances as those on and subject to which the owners hold the estate in the landlocked land, and is subject in all respects to any instrument of mortgage, charge, lease, sublease, or other encumbrance affecting that estate in the landlocked land as if the piece of land to be vested had been expressly included in the instrument.

“(4) If the Court makes an order (in this subsection referred to as the ‘principal order’) under **section 326B (5)**, it may, at the same time or at any other time on an application made to it in that behalf, make—

“(a) An order authorising any person named in the order, or the agents, employees, and contractors of the named person, with or without animals, vehicles, aircraft, hovercraft, and any mode of conveyance and any equipment, to enter upon any piece of land specified in the order for the purpose of carrying out any work necessary to give effect to the principal order; and

“(b) Such other consequential order as the Court may think necessary or desirable to give full effect to the principal order.

“326D. **Additional provisions relating to orders under sections 326B or 326C**—(1) Any order made under **section 326B (5)** must be registered as an instrument under the Land Transfer Act 1952, the Deeds Registration Act 1908, or Part I of the Crown Minerals Act 1991, as the case may require.

“(2) This section and **sections 326A to 326C** bind the Crown.

“(3) The High Court, and not the Maori Appellate Court, has jurisdiction to hear and determine appeals from any order made under **section 326B or 326C** that affects General land.

5 “(4) Every appeal to the High Court under **subsection (3)** is by way of rehearing.

“(5) Nothing in Part X of the Resource Management Act 1991 applies to any transfer, exchange, or other disposition of any land required by an order of the Court made under
10 **sections 326B or 326C**.

“(6) The Court’s powers under this section and sections 326A to 326C are additional to, and not limited by or subject to, sections 315 to 317.”

Amendments Relating to Ota Whakanoho

15 **55. Ota whakanoho**—(1) The heading of Part XV of the principal Act is amended by omitting the words “OCCUPATION ORDERS”, and substituting the words “OTA WHAKANOHO”.

(2) Sections 329 and 330 of the principal Act are amended by omitting the words “occupation order” in each place where
20 they occur, and substituting in each case the words “ota whakanoho”.

(3) Section 328 of the principal Act is amended by repealing the section heading, and substituting the section heading “**Ota whakanoho**”.

25 (4) The section heading of section 330 of the principal Act is amended by omitting the words “**occupation order**”, and substituting the words “**ota whakanoho**”.

Amendments Relating to Wahi Rahui

30 **56. Part XVII heading amended**—The heading of Part XVII of the principal Act is amended by omitting the words “MAORI RESERVATIONS”, and substituting the words “WAHI RAHUI”.

57. Wahi rahui—(1) Section 338 of the principal Act is amended by repealing subsection (1), and substituting the
35 following subsection:

“(1) The Chief Executive may, by notice in the *Gazette* issued on the recommendation of the Court, set apart as wahi rahui any Maori freehold land or any General land—

40 “(a) For the purposes of a village site, marae, meeting place, recreation ground, sports ground, bathing place, church site, building site, burial ground, landing

place, fishing ground, spring, well, timber reserve, catchment area or other source of water supply, or place of cultural, historical, or scenic interest, or for any other specified purpose; or

“(b) That is a wahi tapu, being a place of special significance according to tikanga Maori.” 5

(2) Section 338 (2) of the principal Act is amended by omitting the words “Maori reservation” and the word “reservation”, and substituting in both cases the words “wahi rahui”. 10

(3) Section 338 (3) to (9), (11), (12), and (16) of the principal Act is amended by omitting the words “Maori reservation” in each place where they occur, and substituting in each case the words “wahi rahui”.

(4) Section 338 (5), (a), (b), (c), and (d), (7), (9), (11), and (12) of the principal Act is amended by omitting the word “reservation” in each place where it occurs, and substituting in each case the words “wahi rahui”. 15

(5) Section 338 (16) and (17) of the principal Act is amended by omitting the words “Maori reservations” in each place where they occur, and substituting in each case the words “wahi rahui”. 20

(6) The section heading of section 338 of the principal Act is amended by omitting the words “**Maori reservations**”, and substituting the words “**Wahi rahui**”. 25

58. Court may consider proposal for wahi rahui on application of Minister—(1) Section 339 (1) of the principal Act is amended by omitting the words “Maori reservation”, and substituting the words “wahi rahui”.

(2) Section 339 (2) (a), (b), and (c) of the principal Act is amended by omitting the words “reservation” in each place where they occur, and substituting in each case the words “wahi rahui”. 30

(3) The section heading of section 339 of the principal Act is amended by omitting the words “**Maori reservation**”, and substituting the words “**wahi rahui**”. 35

59. Wahi rahui not wahi tapu may be held for common use and benefit of people of New Zealand—(1) Section 340 (1) of the principal Act is amended—

(a) By omitting the words “Maori reservation”, and substituting the words “wahi rahui that is not a wahi tapu”: 40

(b) By omitting the word “reservation” in both places where it occurs, and substituting in each case the words “wahi rahui that is not a wahi tapu”.

5 (2) Section 340 (2) of the principal Act is amended by omitting the words “Maori reservation”, and substituting the words “wahi rahui that is not a wahi tapu”.

(3) Section 340 (3) of the principal Act is amended by omitting the words “Maori reservation”, and substituting the words “wahi rahui that is not a wahi tapu”.

10 (4) The section heading of section 340 of the principal Act is amended by omitting the words “**Maori reservation**”, and substituting the words “**Wahi rahui not wahi tapu**”.

60. Further provisions relating to wahi rahui for marae or meeting place—(1) Section 341 (1) and (2) of the principal
15 Act is amended by omitting the words “Maori reservation” in both places where they occur, and substituting in each case the words “wahi rahui”.

(2) Section 341 (3) of the principal Act is amended by omitting the word “reservation” in each place where it occurs,
20 and substituting the words “wahi rahui”.

(3) The section heading of section 341 of the principal Act is amended by omitting the words “**Maori reservation**”, and substituting the words “**wahi rahui**”.

PART 2

25 CONSEQUENTIAL REPEALS AND AMENDMENTS

61. Repeals—The following provisions of the principal Act are repealed:

- (a) Section 3:
- (b) Section 147 (2) and (3):
- 30 (c) Section 153:
- (d) Section 154:
- (e) Section 161:
- (f) Section 228:
- (g) Section 254:
- 35 (h) Section 255:
- (i) Section 305.

62. Consequential amendments—(1) Section 129B (14) of the Property Law Act 1952 is amended by inserting, after the expression “section 316”, the expression “**or sections 326A to 326D**”.

(2) Every reference in another Act to a Maori reservation must be read as a reference to wahi rahui.