



## Treaty of Waitangi (State Enterprises) Act 1988

1988

- Citation:** No 105  
**Date of Assent:** 30 June, 1988  
**Commencement:** 9 December, 1987
- Repeal:** Still in Force  
**Amendments:** –  
**Type of Legislation:** Public  
**Subject:** ToW / Principles of ToW reference  
Status of Land  
Wahi Tapu & Non Tangible Resources  
Public Works  
Compulsory Acquis & Transfer of Control
- Relevant Sections:** *Preamble* gives extensive record of the court proceedings, negotiations and compromise settlement arrived at between the Maori Council and the Crown including giving the Waitangi Tribunal power to make a binding recommendation to return to Maori ownership, land transferred to State enterprises under this Act.  
*s3:* Amends Treaty of Waitangi Act 1975. Adds to *s5* Functions of the Tribunal – to make recommendations in accordance with this Act including recommendations that land or interests in land be no longer subject to resumption under *s27B* of the State-Owned Enterprises Act.  
*s4:* Amends Treaty of Waitangi Act 1975. Inserts new sections...  
– *s8A* – Recommendations in respect of land transferred to or vested in a State enterprise may be made by the Tribunal including the return to Maori ownership of the whole or part of the land. Tribunal is required to take no notice of the fact that land may have been improved and may have changed ownership since the transfer to a State enterprise.  
– *s8B* – Interim recommendations in respect of land transferred to or vested in State enterprises shall take effect as final recommendations after 90 days unless there is a prior agreed settlement between the claimant and the Minister of Maori Affairs.  
– *s8C* – Persons entitled to be heard on any question in relation to land transferred to or vested in a State enterprise shall be a) the claimant, b) the Minister of Maori Affairs, c) any other Minister who notifies the Tribunal that he/she wishes to appear, d) any Maori who satisfy the Tribunal that they have a special interest in the inquiry.  
– *s8D* – Tribunal to have special power to recommend,

*Relevant Sections continued over page*



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on application of a State enterprise or other owner of land to which s8A applies and after public notice, that land be no longer subject to resumption by the Crown.

**s7:** Power of Tribunal to refer claims for mediation by a mediator who shall use his/her best endeavours to bring about a settlement.

**s10:** Amends State Owned Enterprises Act 1986.

Repeals and replaces s27 with new sections...

– s27 – The submission of a Maori land claim to the Waitangi Tribunal does not prevent the transfer of that land by the Crown to a State enterprise, or by a State enterprise to any other person.

– s27A – District Land Registrar to register a memorial on the title to any land transferred stating that it is liable to resumption by the Crown without the right of third parties to be heard by the Waitangi Tribunal.

– s27B – On confirmed recommendation of the Waitangi Tribunal to return transferred land to Maori ownership, the land shall be resumed by the Crown and returned to Maori ownership.

– s27C – Resumption of land to be effected by the Public Works Act 1981 as if it were land or an interest in land required both for Government work and a public work.

– s27D – Resumption of Wahi Tapu by Order in Council where Governor-General is satisfied land is of special spiritual, cultural, or historical tribal significance.

**ss13 - 17:** Amendments to Legal Aid Act 1969 to provide a special procedure for claimants to obtain legal aid in order to bring proceedings before the Waitangi Tribunal.

**Schedule:** Modifications of Public Works Act 1981.

**Commentary:** This Act results from the Court of Appeal decision that the protection for land already subject to claims before the Waitangi Tribunal in s27 of the State Owned Enterprise Act 1986 was insufficient to comply with the requirement under s9 that the Crown must not act inconsistently with the principles of the Treaty of Waitangi. This Act creates a mechanism designed to protect future claims to the Waitangi Tribunal over land transferred to SOEs. Should the Waitangi Tribunal find in favour of the claimants, any recommendation that the land should be returned will be binding after an interim 90 day period for other arrangements to be negotiated. This new procedure by which Tribunal

*Commentary and Cross Reference continued next page*



recommendations are binding caused a lot of debate in the House. One of the most contentious provisions is that land sold on by the SOE to a third party is to remain liable to compulsory resumption by the Crown whilst there is a memorial to that effect (similar to a caveat) on the title.

The opposition members argued that this would devalue the land and make it difficult for the SOE to sell. There were also arguments that the third party should be able to appear before the Waitangi Tribunal, but this was denied because the Waitangi Tribunal's function is to decide matters only between the Crown and Maori. Land that is resumed by the Crown from the SOE (to be returned to Maori) is to be taken under the Public Works Act and Tapsell said "There are Maori people who express concern that they will be now cast as beneficiaries under an Act that they have until now detested and hated – that is, the Public Works Act. It has been made clear to them that the Act is to be used solely to effect the transfer."

**Cross Reference:** NZPD vol 485 (1988) 1715 - 1734  
NZPD vol 488 (1988) 3970 - 3982  
NZPD vol 489 (1988) 4560 - 4568, 4777 - 4791.