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Drafted by Parliamentary Counsel

CONSULTATION DRAFT

# Waka Umanga (Māori Corporations) Bill

Government Bill

## Explanatory note

### General policy statement

The primary purpose of this Bill is to provide a legal entity, the waka umanga or Māori corporation, which is tailored to meet the organisational needs of Māori tribes and other groups that manage communal Māori assets. The Treaty claim process enables Māori to rebuild their tribal structures and so to take control of their own affairs, and the Bill provides an appropriate legal framework to achieve this. Both tribal groups and non-tribal Māori associations can form waka umanga. Those established by tribal groups will be known as **waka pū** while those established by Māori associations will be known as **waka tumaha**.

### Legal structure

Existing legal structures such as trusts, companies, and incorporated societies do not cater well for the cultural norms of Māori groups. The members are not investors, shareholders, or passive beneficiaries, and there may be fluid confederations, changing membership, and multiple functions. Members are entitled to full rights of participation and engagement with the governance of the communal assets for the benefit of the whole group and to maintain Māori cultural identity.

Under this legislation a tribal group or Māori association will be able to adopt an accountable structure for the stewardship of assets, gain corporate status and perpetual succession, and design a charter for their particular social and business operations. The entity will have standard accountabilities and provide certainty and protection for those who deal with Māori groups.

A waka umanga could be a stand-alone group, a confederation, or part of a confederation which is not itself a waka umanga. Existing entities set up for specific commercial or charitable purposes could come together under the umbrella of 1 waka umanga.

### **Formation of tribal entities**

Formation of tribal entities for Treaty settlement purposes has sometimes led to disputes between groups that have had long-standing historical alliances. The Bill contains a process for the formation of tribal entities with independent assistance from the courts if necessary. Tribal promoters must develop scheme plans in consultation with the members of the tribe, focusing on traditional consensus development and structures by which policy disputes may be mediated or democratically resolved.

### **Recognition**

The concept of recognition provided for in the Bill will assist with decisions about who represents a particular tribal group. Groups that meet certain criteria will be able to seek recognition for their waka pū as the lawful representatives of their group for specified purposes, and no other body can claim to represent the tribe for those purposes. This will give certainty to tribes and those who deal with them. Māori associations that form waka tumaha cannot be given recognition as lawful representatives of a particular tribe.

The concept of recognition will not limit the economic reality that many Treaty settlements will continue to be with large groupings, but it will assist groups to form entities and establish their mandate independently and earlier. Although the Crown can still insist that the waka umanga form a federation with other hapū in the tribal area to constitute a sufficiently large grouping for a settlement, the Crown cannot deal with a dissident group claiming to represent that tribal group. Rather than form new groups, members must work through the waka umanga governance structure to resolve problems, in the same way as citizens must work with existing local or national governments or elect new representatives.

Separate bodies can be established, or continued, to manage assets on a commercial basis or operate social services under the umbrella of a recognised waka pū.

### **Transition of existing entities**

A very important issue for existing entities is their ability to transition to the new structure if they wish to do so. The Bill allows existing entities to apply for registration and provides for the transfer of any property, rights, and obligations to the waka umanga. Tribal entities that have recently obtained a mandate for fisheries or Treaty settlement purposes could choose to seek a mandate to represent the tribe for the wider purposes of a waka umanga and ensure their charter reflects this legislation. Other entities may have to establish their mandate before forming a waka umanga.

### **Governance**

A primary intention of this Bill is to provide corporate governance standards that ensure governors act in accordance with the interests of members and that those interests are protected. The Bill also provides flexibility for tribes to shape their governance to suit their particular needs and membership.

The charter of a waka umanga is the constitution of the organisation. The charter of each waka umanga must meet certain standards of accountability to its members before it can be registered, but there is considerable flexibility for tribes in deciding how those standards will be met, allowing for variation in size, structure, and cultural traditions. The standard core obligations, detailed in the schedules of the Bill, relate to such matters as the selection and duties of governors of the rūnanganui, planning, financial management and the role of the chief executive.

Many of the governance provisions derive from the Local Government Act 2002 as well as the Companies Act 1993. Like councils, a waka umanga will be responsible to members in many different ways; it must look after and grow tribal assets and also provide social services, encourage cultural activities, and care for the environment.

### **Dispute resolution and the Māori Land Court**

As a means of avoiding costly and protracted court cases, every waka umanga is required to have an internal dispute resolution mechanism in its charter, and the Māori Land Court is given jurisdiction to hear matters that are not resolved internally. It can also hear claims about unfair processes adopted in the formation of a

waka umanga and has power to intervene or wind up a waka umanga that is in trouble.

In exercising this jurisdiction the Māori Land Court is in effect the guardian of fair process to ensure that members are treated fairly by the rūnanganui. Only if the internal waka umanga dispute resolution processes, together with the Court's mediation procedures, fail does the Court make the decisions.

At present most disputes involving Māori organisations go to the High Court because it involves a dispute within a trust, company, or incorporated society. The High Court is expensive and often has little background in such disputes, whereas the Māori Land Court already deals with land-based Māori trusts and incorporations, and similar matters under the Māori Fisheries Act 2004 and Foreshore and Seabed Act 2004.

However, if the parties wish, or the Māori Land Court so decides, a matter can be moved into the High Court for hearing. All appeals from the Māori Land Court will be heard by the High Court.

### **Administration**

Waka umanga will potentially become significant players in the New Zealand mainstream economy. The new position of Registrar of Waka Umanga within the Companies Office of the Ministry of Economic Development will be responsible for the central registry functions. The Companies Office already has an efficient and readily accessible service, available online to both members and third parties. Unlike companies, however, the approval of the Māori Land Court is needed for names of waka umanga and before a waka umanga can be struck off.

In addition to the registry function, it is recognised that groups wishing to adopt the waka umanga structure will need administrative support and advice, and options to provide this will be considered in relation to the implementation of the legislation.

### **Public good outcomes**

Provision of an effective legal structure for tribal and other groups to fully participate in the commercial and social life of the community and manage their substantial assets is a significant public good outcome. The legal framework will also provide greater certainty for

businesses and organisations treating with Māori groups. In addition, the legislation is expected to reduce the overall costs of determining tribal representatives, enhance the Treaty claims process, and ensure that the benefits from Treaty settlements are durable.

### **Clause by clause analysis**

*Clause 1* is the title clause which allows the Bill to be cited by its full title and also as either the Waka Umanga Bill or the Māori Corporations Bill.

*Clause 2*, the commencement clause, provides that the Bill comes into force on 1 July 2008, except that *subpart 5 of Part 4* (which makes provision for a waka umanga to appoint an administrator for the purpose of going into voluntary administration) comes into force at a time provided for by Order in Council.

## **Part 1**

### **Preliminary provisions and key concepts**

#### **Subpart 1—Purposes of Bill and interpretation matters**

*Part 1* includes, in *subpart 1*, the purposes of the Bill and matters of interpretation.

#### **Subpart 2—Key concepts**

*Subpart 2* sets out certain key concepts, including the purpose of a waka umanga and the 2 types of waka umanga: waka pū and waka tumaha. A waka pū is formed and registered by and on behalf of a tribal group; a waka tumaha is formed and registered by and on behalf of a Māori association, that is, a non-tribal group. This subpart also sets out the basis on which a waka pū may seek to be registered as a recognised waka pū and certain key requirements for all waka umanga, namely, a charter and a register of its members. *Clause 13* provides that the Bill binds the Crown.

## **Part 2**

### **Formation and registration of waka umanga**

*Part 2* provides for the formation and registration of a waka umanga, including the particular requirements that relate to waka pū, waka tumaha, and recognised waka pū.

### Subpart 1—Status, capacity, and powers

*Subpart 1* sets out the matters relevant to the status, capacity, and powers of a waka umanga.

### Subpart 2—Formation of waka umanga

*Subpart 2* provides for the formation of waka umanga, including the appointment of representatives whose role is to lead the formation process and develop a draft charter for the waka umanga.

### Subpart 3—Waka pū seeking recognition

*Subpart 3* sets out the threshold requirements for a waka pū seeking recognition, and the effect of recognition on the responsibilities of the waka pū and its relations with third parties. It includes the requirements for the development, review, and variation of a scheme plan, an instrument that is required only for waka pū seeking recognition.

### Subpart 4—Provisional approval of proposed name

*Subpart 4* sets out the process for obtaining approval of a proposed name for a waka umanga. The process involves consideration of the proposed name by both the Māori Land Court and the Registrar.

### Subpart 5—Registration of waka umanga

*Subpart 5* provides for the registration of waka umanga. It establishes the Registrar of Companies as the Registrar of Waka Umanga, provides for the application of the relevant provisions of Part 20 of the Companies Act 1993, and for a Register of Waka Umanga to be created and maintained by the Registrar. This subpart also sets out the requirements and process for registration, including objection procedures and the obligation of the Registrar to issue a certificate of registration which is conclusive evidence of the incorporation of a waka umanga.

## Part 3

### **Governance, management, and accountability of waka umanga, associated entities, and subsidiaries**

*Subparts 1 to 3* and *Schedules 1 and 2* contain the key provisions relevant to the governance, management, and accountability of the

waka umanga. *Subpart 4* and *Schedule 3* relate to associated entities and subsidiaries of waka umanga.

### Subpart 1—Governance of waka umanga

*Subpart 1* sets out the requirement for a waka umanga to have a rūnanganui, consisting of the number of governors (which must be not fewer than 3) specified in the charter. The rūnanganui, through its governors, is responsible for exercising the powers and performing the duties of the waka umanga under this Bill and the charter of the waka umanga, as kaitiaki for the tribal group or Māori association on whose behalf the waka umanga is formed and registered. Governors must in general be elected, unless provision is made in the charter for a proportion of governors to be appointed.

The duties of governors include the duty to act in good faith, honestly, and with integrity. Governors must disclose any conflicts of interest they have in relation to transactions or other matters of the waka umanga, and the rūnanganui must maintain a register of such conflicts. There are 2 levels of conflict of interest, one giving rise to a significant benefit and the other to a material financial interest. As a general rule, any conflict of interest will exclude a governor from voting or participating in a transaction or other matter, but the rūnanganui may, by resolution permit a governor to participate where the conflict of interest is at the lesser level of significant benefit. Governors are also under a duty of confidentiality in relation to information of the waka umanga.

The Bill provides for matters classified as major transactions and for determinations relating to protected assets to be subject to particular procedural provisions. Protected assets are not able to be used as security for a mortgage or other charge. Registers must be created and maintained in respect of all assets classified as protected assets and all mortgages and other charges granted over assets of the waka umanga that are not protected assets.

The rūnanganui is also required to prepare and consult on a policy for the distribution of benefits to the registered members of the waka umanga.

### Subpart 2—Management of waka umanga

*Subpart 2* provides for the appointment of a chief executive and the delegation of powers to the chief executive and by him or her to employees.

### Subpart 3—Accountability of waka umanga to registered members

*Subpart 3* sets out the obligations of the rūnanganui in relation to consultation and communication requirements. It also provides for the rights of registered members to access certain information and their ability to request other information. This subpart—

- includes requirements for meetings of the registered members of the waka umanga; and
- specifies the governance documents that must be prepared for a waka umanga; and
- makes provision for the appointment of an auditor (in cases where an audit report is required); and
- provides for the application of the relevant provisions of Part 11 of the Companies Act 1993 that relate to auditors.

### Subpart 4—Associated entities and subsidiaries

This subpart provides certain requirements in relation to entities in which waka umanga have a significant interest (**associated entities**) or a controlling interest (**subsidiaries**). Some requirements apply to both associated entities and subsidiaries, but some requirements apply only to subsidiaries.

An entity is an associated entity of a waka umanga if the waka umanga has—

- control, directly or indirectly, of 20% or more but not more than 50% of the votes at any meeting of the members or controlling body of the entity; or
- the right, directly or indirectly, to appoint 20% or more but not more than 50% of the directors of the entity.

An entity is a subsidiary of a waka umanga if the waka umanga has—

- control, directly or indirectly, of more than 50% of the votes at any meeting of the members or controlling body of the entity; or
- the right, directly or indirectly, to appoint more than 50% of the directors of the entity.

There is a limit on the power of a waka umanga to acquire or dispose of an interest in an associated entity or to establish or disestablish a subsidiary. The limitation is that the rūnanganui of the waka umanga



has adopted a policy on associated entities and subsidiaries, and the exercise of the power accords with the policy.

### *Directors*

A waka umanga must have a policy about directors of associated entities and subsidiaries.

The policy must set out an objective and transparent process for identifying and considering the skills, knowledge, and experience of directors, and for their appointment and remuneration. The policy must also state whether governors of a rūnanganui and employees of a waka umanga can be appointed as directors. A waka umanga may appoint a person to be a director of an associated entity or subsidiary only if the person has the skills, knowledge, and experience to contribute to the achievement of the objective of the associated entity or subsidiary, and contribute to the effective governance of the associated entity or subsidiary.

An employee of a subsidiary who is appointed to be a director of the subsidiary must, before taking up the position as director, resign his or her position as an employee, unless the rūnanganui of the waka umanga has resolved that the employee does not need to resign.

### *Subsidiaries*

The directors of a subsidiary are accountable to the waka umanga for the governance of the subsidiary in accordance with the subsidiary's statement of intent. The directors must ensure that the subsidiary complies with its statement of intent, and any other obligations under any other enactment.

A subsidiary must have a statement of intent. The content of the statement and the input of a waka umanga are specified in *Schedule 3*.

The purpose of a statement of intent is—

- to state the subsidiary's activities and intentions for the year and the objectives to which the activities will contribute; and
- provide an opportunity for the waka umanga to determine the activities, intentions, and objectives of the subsidiary; and
- provide a basis for the accountability of the subsidiary's directors to the waka umanga for the performance of the subsidiary.

### *Monitoring and reporting*

A waka umanga must, at intervals of not more than 3 months, monitor the performance of each associated entity and subsidiary to evaluate its contribution to the achievement of—

- the objectives of the waka umanga for the associated entity or subsidiary; and
- the long-term outcomes of the waka umanga.

Within 3 months after the end of its financial year, the directors of a subsidiary must deliver to the waka a report on the subsidiary's operations during that year. The content of the report, the inclusion of financial statements, and whether an auditor's report is required are set out in *clauses 95 and 96*.

## **Part 4** **Dispute resolution, judicial intervention, voluntary administration, and liquidation**

### *Dispute resolution*

*Subparts 1 to 3* provide for informal dispute resolution processes to deal with internal disputes and also sets out the matters that are within the jurisdiction of the Māori Land Court under this Bill. Two schedules include, respectively, options for dispute resolution processes and procedural matters for the Māori Land Court.

#### Subpart 1—Processes for resolution of internal disputes

This subpart defines **internal dispute** and provides for dispute resolution processes to be included in the charter.

#### Subpart 2—Jurisdiction of Māori Land Court

*Subpart 2* provides for—

- the limited application of Te Ture Whenua Maori Act 1993; and
- the scope of the Court's jurisdiction to hear and determine applications under the Bill; and
- who is entitled to make those applications.

The Court is empowered to exercise an injunctive jurisdiction, and has specific jurisdiction to review scheme plans of a waka pū seeking recognition and to determine objections to the registration of a waka umanga.

There is a broad power to transfer to the High Court any proceeding commenced in the Māori Land Court.

### Subpart 3—Appeals

*Subpart 3* sets out the appeal rights that apply under the Bill. Appeals from decisions of the Māori Land Court proceed to the High Court, and thence to the Court of Appeal and Supreme Court.

#### *Judicial intervention, voluntary administration, and liquidation*

*Subparts 4 to 6* provide for—

- the Māori Land Court to make certain orders in relation to the affairs and administration of a waka umanga; and
- the voluntary administration of a waka umanga in financial difficulty; and
- the liquidation of a waka umanga in financial difficulty that cannot be overcome or where its members wish to bring its existence to an end.

### Subpart 4—Judicial intervention

This subpart provides the Māori Land Court with a discretion to make certain orders in relation to the affairs and administration of a waka umanga.

The persons who may apply for an order are: 15 or more members of the waka umanga, the Registrar, or a secured creditor.

An order may be made on one or both of the following grounds:

- that the waka umanga, its rūnanganui, any governors of its rūnanganui, or any of the employees of the waka umanga, has acted, is acting, or proposes to act in a manner that is inconsistent with this Bill or the charter of the waka umanga; or
- that the rūnanganui of the waka umanga cannot function because of a lack of a quorum or substantial disagreement.

In relation to 2 types of order there are additional grounds (see *clause 119(2)(d) and (e)*).

The Court may make an order only if satisfied that the relevant ground or grounds have been made out and that the making of the order or orders sought is the most appropriate way to remedy the matter in relation to which the order or orders are sought.

The Court may make a wide range of orders. It can make an order—

- appointing reviewers to report on the activities and operations of a waka umanga and its rūnanganui:
- requiring compliance with the Bill or the charter of the waka umanga:
- declaring a provision in the charter of the waka umanga to be inconsistent with the Bill:
- removing a governor:
- requiring an election to be held to fill a vacancy in a rūnanganui:
- appointing persons as governors:
- suspending the powers and functions of a rūnanganui and appointing a commissioner to exercise them:
- referring a matter to the Attorney-General to determine whether criminal proceedings should be brought:
- requiring a governor to pay compensation to a member of a waka umanga for loss suffered because the governor failed to comply with this Bill.

To deal with a situation not covered by any of the specific orders, the Court may make any other order that is appropriate to remedy the matters made out by the applicant.

### Subpart 5—Voluntary administration

The purpose of voluntary administration is to provide for the operations, property, and activities of a waka umanga that is or may become insolvent to be administered in a way that—

- maximises the chances of the waka umanga continuing in existence; or
- if that is not possible, results in a better return for the members and creditors of the waka umanga than would result from an immediate liquidation of the waka umanga.

An administrator may be appointed to a waka umanga by—

- the rūnanganui of the waka umanga (unless the waka umanga is in liquidation):
- if the waka umanga is in liquidation, the liquidator:
- if an interim liquidator has been appointed, the interim liquidator:
- a secured creditor holding a charge over the whole, or substantially the whole, of the property of the waka umanga (other than any protected assets):

- the Court, on application by a creditor, the liquidator (if the waka umanga is in liquidation), or the Registrar.

While a waka umanga is in administration, the administrator—

- has control of the operations, property, and activities of the waka umanga; and
- may carry on and manage the operations, property, and activities; and
- may terminate or dispose of all or part of the operations, property, and activities; and
- may perform any function, and exercise any power, that the waka umanga or any of its officers could perform or exercise if the waka umanga were not in administration.

However, an administrator must not dispose of any property of a waka umanga that is a protected asset except with the prior consent of the Court.

The remainder of the rules about the voluntary administration of waka umanga are applied by reference from Part 15A of the Companies Act 1993, which provides for the voluntary administration of companies.

### Subpart 6—Liquidation

A waka umanga may be put into liquidation by its members or by the Court.

A waka umanga may be put into liquidation by its members if, at a general meeting, members pass a resolution appointing a liquidator, and the resolution is confirmed at a subsequent general meeting held not earlier than 30 days after the first general meeting.

A waka umanga may be put into liquidation by the Court appointing a liquidator. The grounds on which the Court may appoint a liquidator are—

- that the waka umanga does not have the resources to comply with the Bill or to pay its debts as and when they fall due for payment; or
- that there has been a fundamental change in the circumstances of the members of the waka umanga such that the waka umanga can no longer perform its role; or
- that the Court is satisfied that putting the waka umanga into liquidation accords with the view of the membership of the waka umanga.

The persons who can apply to the Court to appoint a liquidator are—

- the waka umanga itself; or
- not fewer than 15 registered members of the waka umanga; or
- a creditor of the waka umanga; or
- the Registrar.

The rules governing the liquidation of a waka umanga are applied by reference from the liquidation provisions of the Companies Act 1993.

Provision is made for the Court to appoint an interim liquidator after an application is made to put a waka umanga into liquidation but before the application is heard. The Court may appoint an interim liquidator if it is satisfied that it is necessary or expedient for the purpose of maintaining the value of the assets owned or managed by the waka umanga.

The remainder of this subpart deals with any surplus assets left over after the liquidation of a waka umanga. Any surplus assets must be disposed of in accordance with the charter of the waka umanga. However, this rule does not apply if—

- the surplus assets cannot be disposed of in accordance with the charter of the waka umanga; or
- the surplus assets are subject to a trust; or
- the disposition of surplus assets would be inconsistent with the Bill.

In these cases, the surplus assets are to be held by the Māori Trustee, or a trustee company appointed by the Court, and then to be disposed of in accordance with an order of the Court.

## **Part 5**

### **Registration of existing entities, and miscellaneous matters**

#### *Registration of existing entities*

*Subparts 1 to 6—*

- set out the processes for Maori Trust Boards, incorporated societies, and trusts to obtain authorisation to register as waka umanga; and
- then provide for the continuity of the property, rights, obligations, and any proceedings from the Maori Trust Board, incorporated society, or trust that registers as a waka umanga; and

- clarify the effect of registration of these entities as waka umanga for the purposes of Inland Revenue legislation.

Those subparts do not provide for the transfer of a Maori Trust Board, incorporated society, or trust's status as a mandated iwi organisation under the Maori Fisheries Act 2004 or as a registered charitable entity under the Charities Act 2005.

### Subpart 1—Registration of Maori Trust Board as waka umanga

A Maori Trust Board may apply to be registered as a waka umanga if,—

- at meeting of Board members, not less than 75% of the members present cast a valid vote in favour of doing so; and
- that resolution is confirmed in a postal ballot of adult beneficiaries by not less than 75% of adult beneficiaries who cast a valid vote; and
- the Minister of Māori Affairs gives his or her consent in writing to the Board.

If the Maori Trust Board is authorised to register as a waka umanga, it must do so as soon as is reasonably practicable. Registration must be completed in accordance with *Part 2*, but certain additional information must be provided with the application under that Part (see *clause 138(2)*).

The Registrar of Waka Umanga cannot complete the registration of a Maori Trust Board until an Order in Council is made declaring that on and from the date on which the Maori Trust Board is registered as a waka umanga, it ceases to be a Maori Trust Board.

The registration of a Maori Trust Board as a waka umanga does not create a new legal entity or affect proceedings by or against it immediately before its registration. The property, rights, and obligations of the Board before its registration become the property, rights, and obligations of the waka umanga.

If any of sections 10(2) and (3), 19A, 24A, or 41A of the Maori Trust Boards Act 1955 applied to a Maori Trust Board immediately before its registration as a waka umanga, the provision continues to apply as if the waka umanga were still a Maori Trust Board.

A declaration of trust for charitable purposes under section 24B of the Maori Trust Boards Act 1955 approved by the Commissioner of Inland Revenue before registration of a Maori Trust Board as a waka

umanga continues to apply after registration, but only in relation to property acquired by or vested in the Board before registration.

As soon as is reasonably practical after the registration of a Maori Trust Board as a waka umanga, the waka umanga must prepare final accounts for the Board and send them to the Minister of Māori Affairs who must present them to the House of Representatives.

### Subpart 2—Registration of incorporated society as waka umanga

An incorporated society may apply to be registered as a waka umanga if—

- a general meeting of its members passes a resolution authorising it to do so; and
- the resolution is confirmed at a subsequent general meeting of members held not earlier than 30 days after the first meeting.

For the purposes of those meetings, a resolution is passed if carried by a majority of the valid votes cast.

If an incorporated society is authorised to apply to register as a waka umanga, it must do so as soon as is reasonably practicable. Registration must be completed in accordance with *Part 2*. The application for registration must include copies of the authorising resolutions.

The registration of an incorporated society does not create a new legal entity or affect proceedings by or against it immediately before its registration.

The property, rights, and obligations of the incorporated society before its registration become the property, rights, and obligations of the waka umanga.

As soon as is reasonably practicable after the registration of an incorporated society as a waka umanga, it must prepare final accounts of the incorporated society and make them available on request to any person who immediately before registration was a member of the incorporated society.

### Subpart 3—Registration of trust as waka umanga

This subpart does not apply to trusts that are charitable trusts.

The trustees of a trust may apply for the trust to be registered as a waka umanga if—



- a resolution authorising the trustees to do so is passed at a meeting of adult beneficiaries by not less than 75% of those who cast valid votes; and
- the resolution is confirmed in the same manner by a subsequent meeting of adult beneficiaries; and
- the Māori Land Court approves the resolution and confirmation of the resolution.

The Māori Land Court must not give its approval unless satisfied that the adult beneficiaries who did not vote in favour will not be unfairly prejudiced by registration of the trust as a waka umanga.

If trustees are authorised to register the trust as a waka umanga, they must do so as soon as is reasonably practicable. Registration must be completed in accordance with *Part 2*. The application for registration must include copies of the resolutions and the Court order.

The registration of a trust as a waka umanga brings the trust to an end and cancels it, but it does not affect proceedings by or against it immediately before its registration.

The property, rights, and obligations of the trustees in relation to the trust before its registration become the property, rights, and obligations of the waka umanga.

As soon as is reasonably practicable after registration of a trust as a waka umanga, the trustees must prepare final accounts of the trust and make them available on request to any person who immediately before registration was a beneficiary of the trust.

#### Subpart 4—Registration of charitable trust

The trustees of a charitable trust may apply for the trust to be registered as a waka umanga if—

- a resolution authorising the trustees to do so is passed at a meeting of trustees by not less than 75% of trustees present who cast a valid vote; and
- the Court has approved the resolution.

The Court must not approve the resolution unless—

- a copy of the application has been served on the Attorney-General and the Court has heard any submissions he or she wishes to make; and
- a copy of the application has been served on any other persons that the Court considers appropriate and the Court has heard any submissions that those persons wish to make.

If the trustees of a charitable trust are authorised to register the trust as a waka umanga, they must do so as soon as is reasonably practicable. Registration must be completed in accordance with *Part 2*. The application for registration must include copies of the trustees' resolution and the Court's approval.

The registration of a charitable trust as a waka umanga brings the trust to an end and cancels it, but it does not affect proceedings by or against it immediately before its registration.

The property, rights, and obligations of the trustees in relation to the trust before its registration become the property, rights, and obligations of the waka umanga.

As soon as is reasonably practicable after registration of a charitable trust as a waka umanga, the trustees must prepare final accounts of the trust and forward them to the Attorney-General.

### Subpart 5—Taxes and duties

This subpart clarifies that for the purpose of the Inland Revenue Acts and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge, a waka umanga registered as a result of an authorisation under this Part and the organisation it was immediately before registration are to be treated as the same person in relation to the property, rights, and obligations that become the property, rights, and obligations on registration as a waka umanga. However, this subpart applies only if the membership of the organisation immediately before and immediately after registration as a waka umanga is the same or substantially the same.

### Subpart 6—Other matters relating to registration of Maori Trust Board, incorporated societies, and trusts as waka umanga

This subpart clarifies that registration as a waka umanga does not have certain adverse consequences. For example, it does not constitute a breach of contract or entitle a party to cancel a contract.

This subpart also clarifies that registration as a waka umanga does not interrupt the continuity of employment agreements.

The remainder of this subpart deals with reading references in documents to the organisation the waka umanga was before registration, and the responsibilities of the Registrar-General of Land and other persons who keep registers and records to change them.

### *Miscellaneous matters*

*Subparts 7 and 8* contain provisions relating to offences, administrative penalties, regulations, and amendments to the Income Tax Act 2004 and the Privacy Act 1993.

#### Subpart 7—Enforcement provisions

*Subpart 7* sets out the summary offences and penalties arising under this Bill. These are in addition to certain offences and penalties arising under the Companies Act 1993 as a result of the incorporation of specified provisions of that Act, with the necessary modifications, into this Bill. A defence of having taken reasonable steps to comply or ensure compliance with the Bill is available.

The Bill also provides for administrative penalties to be imposed on a waka umanga by the Registrar of Waka Umanga in relation to specified failings. The same defence is available in relation to these penalties as is provided for summary offences. There is a right for a waka umanga or the Registrar to refer to the Māori Land Court a matter arising in relation to the imposition of an administrative penalty.

#### Subpart 8—Regulations, miscellaneous matters, and amendments to enactments

*Subpart 8* sets out the regulation-making powers that may be exercised under the Bill. It also includes a general rule as to the service of documents by incorporating relevant provisions of the Companies Act 1993.

An amendment to the Income Tax Act 2004 empowers a waka umanga to become a Māori authority under that Act, and an amendment to the Privacy Act 1993 brings the Register of Waka Umanga within the scope of the public register provisions of that Act.

There are 5 schedules. These provide as follows:

- *Schedule 1* sets out the matters that must be provided for in the charter of a waka umanga:
- *Schedule 2* provides further matters relating to the governance, management, and accountability of a waka umanga:
- *Schedule 3* sets out the requirements for a statement of intent of a subsidiary of a waka umanga:
- *Schedule 4* provides optional processes for the resolution of internal disputes:

- *Schedule 5* sets out procedures relevant to the jurisdiction of the Māori Land Court under this Bill.
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DRAFT ONLY

*Hon Horomia Parekura*

**Waka Umanga (Māori Corporations) Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Waka Umanga (Māori Corporations) Act **2007**.
- (2) This Act may also be cited as either—
  - (a) the Waka Umanga Act **2007**; or
  - (b) the Māori Corporations Act **2007**.

**2 Commencement**

- (1) **Subpart 5 of Part 4** comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on **1 July 2008**.

**Part 1**

**Preliminary provisions and key concepts**

Subpart 1—Purposes of Act and interpretation matters

**3 Outline of Part**

This Part sets out, as preliminary provisions, the purposes of the Act and matters of interpretation, and key concepts relating to the waka umanga, including—

- (a) the purpose of a waka umanga; and

**Waka Umanga (Māori Corporations)**

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- (b) the 2 categories of waka umanga: the waka pū and waka tumaha; and
- (c) the requirement that every waka umanga must have a charter setting out the governance and other arrangements for the waka umanga and the procedural requirements relating to those arrangements.

**4 Purposes of Act**

- (1) The purposes of this Act are to—
  - (a) assist the development of representative institutions for tribal groups, including hapū, as the traditional unit of Māori society recognised in the Treaty of Waitangi, and their confederation as iwi; and
  - (b) enable tribal groups to set up or re-form their representative institutions through independent, principled, and democratic processes; and
  - (c) promote certainty and stability for tribes and for third parties in their transactions with each other; and
  - (d) provide a mechanism for Māori associations to adopt structures that promote accountability to their members; and
  - (e) provide a process for establishing the rights and responsibilities of the constituent groups of a waka umanga; and
  - (f) assist waka umanga to fulfil their obligations as kaitiaki of the communal assets of tribal groups or Māori associations held for the benefit of present and future generations; and
  - (g) provide for internal disputes to be resolved as far as possible within tribal groups and Māori associations; and
  - (h) provide fair access to the courts in relation to formation and registration issues and when the dispute resolution processes for internal disputes have not succeeded.
- (2) In order to achieve those purposes, this Act provides for—
  - (a) the formation and registration of waka umanga for tribal groups and Māori associations; and
  - (b) the registration of existing entities as waka umanga; and
  - (c) the recognition of certain waka pū as the legitimate representatives of particular tribal groups for specified purposes; and

- (d) governance requirements to be included in the charters of every waka umanga; and
- (e) procedures for the resolution of internal disputes that arise in the course of forming or administering a waka umanga, as well as access to the courts.

## 5 Interpretation

In this Act, unless the context otherwise requires,—

**administrative penalty** means a penalty that may be imposed on waka umanga by the Registrar under **Part 5**

**adult** means a person 18 years of age or over

**annual plan** means a management plan required under **section 83**

**associated entity** has the meaning set out in **section 87**

**charter**, in relation to a waka umanga, means the document provided for under **section 11**, and as amended or substituted from time to time

**commissioner** means a person appointed by the Court under **section 119(2)(h)**

**communal assets** means assets owned or otherwise held by, or for the benefit of, a tribal group, and includes assets of any kind that are designated under the charter of a waka umanga as protected assets

**constituent group** means, in relation to—

- (a) a waka pū, a group such as a hapū or a combination of hapū, taurahere, marae, as provided for in the charter of the waka pū:
- (b) a waka tumaha, a Māori association, as provided for in the charter of the waka tumaha

**Court** means the Māori Land Court

**dispute resolution process** means procedures set out in the charter of a waka umanga, as provided for under **section 99**

**existing entity** means an entity that may be authorised under **Part 5** to register as a waka umanga

**governor**, in relation to a waka umanga, means a person who is a member of the rūnanganui of the waka umanga, as provided for under **section 56**

**interests register** means the register of the significant benefits and material financial interests required by **section 61(2)**

**internal dispute** has the meaning set out in **section 98**

**kairongomau** means the persons that may be appointed to that office if the dispute resolution process set out in **Part 1 of Schedule 4** is adopted in the charter of a waka umanga

**kaitiaki** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**long-term plan** means a plan required under **section 83**

**major transaction** has the meaning set out in **section 65** or as provided for in the charter of a waka umanga

**mandated iwi organisation** has the same meaning as in section 5 of the Maori Fisheries Act 2004

**Māori association** means a non-tribal group of Māori that has the attributes set out in **section 10**

**Maori Trust Board** has the same meaning as in section 2 of the Maori Trust Boards Act 1955

**Pānui** means the publication by that name issued by the Māori Land Court

**protected assets** means land or other tangible assets of a waka umanga that are—

- (a) designated as inalienable—
  - (i) in the charter of a waka umanga; or
  - (ii) by special resolution of a waka umanga; and
- (b) recorded in the protected assets register of the waka umanga

**protected assets register** means the register required under **section 68**

**provisional register of members** means the register required under **section 22(4)(b)**

**public notice**, in relation to a waka umanga, means a notice that—

- (a) is published in a newspaper or newspapers in New Zealand generally circulating in those areas in which a majority of the registered members of the waka umanga and those who qualify to be registered members reside; or
- (b) complies with **paragraph (a)** and any requirements for giving public notice—
  - (i) set out in the charter or scheme plan of the waka umanga; or

(ii) imposed by order of a court

**recognised waka pū** means a waka pū that is registered under this Act, as provided for in **section 9**; and **recognition** has a corresponding meaning

**register of members** means the register of individual registered members of a waka umanga required under **section 12**

**Register of Waka Umanga** and **Register** mean the register required under **section 39**

**registered member** means an adult registered as a member of a waka umanga in accordance with the provisions of the charter of that waka umanga

**Registrar** means the Registrar of Waka Umanga (Māori Corporations) required under **section 38** and includes any person appointed to act on behalf of the Registrar

**representative** means a person appointed under **section 18** to form and register a waka umanga

**rūnanganui**, in relation to a waka umanga, means the governing body of the waka umanga

**scheme plan** means the plan required under **subpart 3 of Part 2**

**scheme promoters** means the persons described in **section 27**

**solvency test** has the meaning set out in **section 6**

**special consultative procedures** means the procedures provided for in the charter of a waka umanga in accordance with **clauses (16), (17), and (18) of Schedule 1**

**subsidiary** has the meaning set out in **section 87**

**taurahere** means an association of members of a tribe in a location outside the tribal area

**Te Ohu Kai Moana Trustee Limited** has the same meaning as in section 5 of the Maori Fisheries Act 2004

**tikanga** means the customary values and practices of a tribal group by and on whose behalf a waka umanga is formed, as derived from or incorporated into the traditions of the tribal group

**Treaty of Waitangi settlement entity** means an entity that has received, or has been approved by the Crown to receive, Treaty of Waitangi settlement assets

**tribal area** means the area associated with a tribal group, whether or not it is exclusive to that tribal group



**tribal group** means a group comprising 1 or more iwi or hapū

**whakapapa** means genealogy

**waka pū** means a waka umanga registered for a tribal group, as provided for by **section 8**, and for the purposes of **subparts 2 to 5 of Part 2**, includes a proposed waka pū

**waka tumaha** means a waka umanga registered for a Māori association, as provided for under **section 10**, and for the purposes of **subparts 2 to 5 of Part 2**, includes a proposed waka tumaha

**waka umanga** means a Māori corporation registered under this Act as either a waka pū or a waka tumaha, and for the purposes of **subparts 2 to 5 of Part 2**, includes a proposed waka umanga

**whāngai** means—

- (a) a person adopted in accordance with tikanga Māori; but
- (b) does not include a person who is legally adopted by a Māori.

## **6 Meaning of solvency test**

- (1) For the purposes of this Act, a waka umanga satisfies the solvency test if—
  - (a) it is able to pay its debts as they become due in the normal course of business; and
  - (b) the value of the assets of the waka umanga is greater than the value of its liabilities, including contingent liabilities.
- (2) In determining, for the purposes of this Act, whether the value of assets of a waka umanga is greater than the value of its liabilities, including contingent liabilities, the governors—
  - (a) must have regard to—
    - (i) the most recent financial statements of the waka umanga that comply with the requirements for an annual report set out in **clause 28 of Schedule 2**; and
    - (ii) all other circumstances that the governors know or ought to know affect, or may affect, the value of the assets and liabilities of the waka umanga, including its contingent liabilities:
  - (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

- (3) In determining, for the purposes of this Act, the value of a contingent liability, account may be taken of—
- (a) the likelihood of the contingency occurring; and
  - (b) any claim the waka umanga is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

## Subpart 2—Key concepts

### *Waka umanga*

#### **7 Purpose of waka umanga**

A waka umanga is a body corporate registered in accordance with this Act to—

- (a) represent, as authorised by this Act and its charter, the tribal group or Māori association on whose behalf the waka umanga is formed; and
- (b) manage the communal assets of the tribal group or Māori association; and
- (c) achieve the objectives of the waka umanga set out in its charter; and
- (d) promote the social, economic, environmental, and cultural well being of the tribal group or Māori association in the present and for future generations.

#### **8 Waka pū**

A waka pū is a waka umanga registered for a tribal group—

- (a) whose members descend from 1 or more common named ancestors; or
- (b) that consists of a number of constituent groups.

#### **9 Recognised waka pū**

A waka pū may seek recognition as the legitimate representative of a tribal group and, if it meets the requirements of **section 24**, may be registered as a recognised waka pū.

#### **10 Waka tumaha**

A waka tumaha is a waka umanga registered for a Māori association whose members do not descend from a common tribal ancestor but is an association—

- (a) whose membership is predominantly Māori; and
- (b) that promotes Māori culture and tikanga; and

- (c) that has communal assets; and
- (d) whose purpose is to provide a wide range of services or benefits for its members.

*Charter of waka umanga*

**11 Requirement for charter**

- (1) Every waka umanga must at all times have a charter.
- (2) The charter is the constitution of the waka umanga.
- (3) The charter must set out the matters required by this Act, including the objectives of the waka umanga, and may include other matters not prohibited by this Act.
- (4) The charter must provide for how any assets (including any protected assets) are to be allocated on any winding up of the waka umanga, but must not provide for the distribution of assets amongst the registered members of the waka umanga upon dissolution of the waka umanga.
- (5) The charter must be prepared and adopted in accordance with **subpart 2 of Part 2**.

**12 Register of members**

Every waka umanga must compile, and take reasonable steps to maintain, a register of its members, in accordance with the requirements of the charter provided for under **subclause (1) of Schedule 1**.

**13 Act to bind the Crown**

This Act binds the Crown.

**Part 2**

**Formation and registration of waka umanga**

**14 Purpose and outline of this Part**

- (1) The purpose of this Part is to provide for the formation and registration of waka umanga, and for the recognition of certain waka pū as the legitimate representatives of their tribal groups.
- (2) This Part sets out—
  - (a) in **subpart 1**, the status, capacity, and powers of a waka umanga; and

- (b) in **subpart 2**, the requirements for the formation of a waka umanga by a tribal group or Māori association, including the steps that must be taken, prior to registration, to form—
  - (i) a waka pū not seeking recognition; or
  - (ii) a waka tumaha; and
- (c) in **subpart 3**, the requirements for—
  - (i) a waka pū seeking recognition; and
  - (ii) an existing entity to become a waka umanga and, in certain cases, to seek recognition; and
- (d) in **subpart 4**, the process for obtaining provisional approval of the name of a waka umanga; and
- (e) in **subpart 5**, the process for the registration of a waka umanga and how any objections must be dealt with.

Subpart 1—Status, capacity, and powers

**15 Status, capacity, and powers of waka umanga**

- (1) A waka umanga is—
  - (a) a body corporate with perpetual succession; and
  - (b) a legal entity in its own right and separate from—
    - (i) the tribal group or Māori association by and on whose behalf it is formed and registered; and
    - (ii) the individuals and constituent groups of that tribal group or Māori association.
- (2) For the purpose of exercising its powers and performing its duties under this Act, any other enactment, and its charter, a waka umanga has, both within and outside New Zealand,—
  - (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
  - (b) for the purposes of **paragraph (a)**, full rights, powers, and privileges.
- (3) **Subsection (2)** is subject to this Act, any other enactments, and the general law.
- (4) No governor, registered member, or employee of a waka umanga—
  - (a) has any rights or interest in the assets of the waka umanga; or
  - (b) is liable for any liability of the waka umanga by reason only of being a governor, registered member, or an employee.

- (5) The charter of a waka umanga may contain provisions relating to the capacity, rights, powers, or privileges of the waka umanga, but only if, and to the extent that, the provisions restrict the capacity of the waka umanga or its rights, powers, and privileges conferred by or under this Act.

*Validity of actions*

**16 Validity of actions**

- (1) No act of a waka umanga or transfer of property to or by a waka umanga is invalid merely because the waka umanga did not have the capacity, right, or power to do the act or transfer or take a transfer of the property.
- (2) **Subsection (1)** does not limit **section 105** (which provides for the jurisdiction of the Court to grant injunctions if a waka umanga is acting contrary to its charter or this Act).
- (3) The fact that an act is not, or would not be, in the best interests of a waka umanga does not affect the capacity of the waka umanga to do the act.

**17 Dealings between waka umanga and other persons**

- (1) A waka umanga or the guarantor of an obligation of a waka umanga may not assert against a person dealing with the waka umanga or with a person who has acquired or disposed of property, rights, or interests from or to the waka umanga that—
- (a) this Act or the charter of the waka umanga has not been complied with:
- (b) a person listed in the Register of Waka Umanga as a governor of the waka umanga—
- (i) is not a governor of the waka umanga; or
- (ii) has not been duly elected or appointed; or
- (iii) does not have authority to exercise a power that a governor of a waka umanga carrying on business of the kind carried on by the waka umanga customarily has authority to exercise:
- (c) a person held out by the waka umanga as a governor, employee, or agent of the waka umanga—
- (i) has not been duly appointed; or
- (ii) does not have authority to exercise a power that a governor, employee, or agent of a waka umanga carrying on business of the kind carried on by the

waka umanga customarily has authority to exercise:

- (d) a person held out by the waka umanga as a governor, employee, or agent of the waka umanga with authority to exercise a power that a governor, employee, or agent of a waka umanga carrying on business of the kind carried on by the waka umanga does not customarily have authority to exercise, does not have authority to exercise that power:
  - (e) a document issued on behalf of a waka umanga by a governor, employee, or agent of the waka umanga with actual or usual authority to issue the document is not valid or not genuine.
- (2) However, a waka umanga or the guarantor of an obligation of a waka umanga may assert any of the matters set out in **subsection (1)** if the person dealing with the waka umanga has knowledge of those matters, or ought to have that knowledge, by virtue of his or her position with, or relationship to, the waka umanga.
- (3) **Subsection (1)** applies even though a person of a kind referred to in **subsection (1)(b) to (e)** acts fraudulently or forges a document that appears to have been signed on behalf of the waka umanga, unless the person dealing with the waka umanga or with a person who has acquired or disposed of property, rights, or interests from or to the waka umanga has actual knowledge of the fraud or forgery.
- (4) A person is not affected by, and is not to be treated as having had notice of knowledge of the contents of, the charter of a waka umanga or other document relating to the waka umanga merely because it is available for inspection—
- (a) on the Register of Waka Umanga; or
  - (b) at the registered office of the waka umanga.

## Subpart 2—Formation of waka umanga

### **18 Appointment of representatives for waka umanga**

- (1) If a tribal group wishes to register as a waka pū, a meeting of the tribal group must first be called for the purpose of appointing representatives to act on its behalf to form and register a waka pū.

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- (2) A Māori association that wishes to form a waka tumaha must, at a meeting called for the purpose, appoint representatives to act on behalf of all the members of the Māori association to form and register a waka tumaha.

**19 Existing entity representing tribal group**

- (1) An existing entity that represents a tribal group, if it has been authorised under **Part 5** to register as a waka umanga, may—
- (a) apply to be registered as a waka pū; and
  - (b) if it meets the criteria set out in **section 24**, seek to be recognised as the legitimate representative of a tribal group under this Act.
- (2) However, **section 18(1)** (which requires a tribal group to appoint representatives) and **subpart 3** (which requires scheme promoters to prepare, and the waka pū to adopt, a scheme plan) do not apply to a tribal group that has a mandated iwi organisation or a Treaty of Waitangi settlement entity that wishes to form and register a waka pū or become a recognised waka pū.

**20 Existing entity representing Māori association**

An existing entity that represents a Māori association, if it complies with this Part and is authorised under **Part 5** to register as a waka umanga, may apply to be registered as a waka tumaha.

*Development of charter*

**21 Preparation of draft charter**

- (1) The representatives appointed under **section 18** must prepare a draft charter.
- (2) A draft charter for a waka pū must—
- (a) describe the tribal group by reference to an ancestor, shared whakapapa, marae, and other traditional criteria by which the tribal group may be identified; and
  - (b) describe the tribal area of the tribal group; and
  - (c) state the proposed name of the waka umanga.
- (3) A draft charter for a waka pū seeking recognition must also set out—
- (a) the intention to seek recognition; and
  - (b) the matters for which recognition is sought; and

- (c) any matters for which a constituent group, or any subsidiary or associated entity to be established by the waka pū, is to be the legitimate representative rather than the waka pū.
- (4) A draft charter for a waka tumaha must describe—
  - (a) the objectives of the waka tumaha that are for the benefit of Māori generally or for a specified group of Māori; and
  - (b) the criteria for membership of the Māori association seeking to form the waka tumaha; and
  - (c) the area where the waka tumaha will operate.
- (5) Every draft charter must define—
  - (a) the criteria for membership of the waka umanga; and
  - (b) the voting rights of registered members.

## **22 Consultation on draft charter**

- (1) The representatives appointed under **section 18** must—
  - (a) submit the draft charter for discussion at 1 or more meetings within the tribal area or area where the waka umanga operates and any other areas where the representatives consider a significant number of persons eligible for membership of the waka umanga reside; and
  - (b) give public notice of each meeting to be convened under **paragraph (a)**; and
  - (c) make copies of the draft charter available on request to adults eligible for membership of the waka umanga.
- (2) If there is an existing entity representing the same or a similar group of people as those eligible to attend a notified meeting, the representatives must—
  - (a) give notice of the meeting to the existing entity; and
  - (b) provide a copy of the draft charter to the existing entity.
- (3) If required to do so by a majority of those attending the meeting, the representatives must notify and convene further meetings for the purpose of settling the form and content of the charter.
- (4) Before the draft charter may be considered for ratification under **section 23**, the representatives must—
  - (a) give public notice of, and request applications for, membership of the waka umanga, when formed and registered; and



- (b) take steps to compile a provisional register of members of the waka umanga.

### **23 Ratification and adoption of charter**

- (1) A waka umanga may adopt a draft charter as its charter only if the draft charter is ratified in the manner provided for in the draft charter.
- (2) The draft charter must provide that the charter may be ratified only by—
  - (a) the adult persons named in the provisional register compiled under **section 22(4)(b)**; and
  - (b) a majority or special majority of those persons, as specified in the charter, voting either—
    - (i) at a special meeting called for the purpose, publicly notified not later than 1 month prior to the date of the meeting and attended by the quorum specified in the charter for a special meeting of registered members; or
    - (ii) by ballot posted to all those persons.

### Subpart 3—Waka pū seeking recognition

#### *Eligibility for recognition*

### **24 Eligibility of waka pū for recognition**

- (1) A waka pū may be recognised as the legitimate representative of a tribal group that—
  - (a) comprises several hapū or iwi that share a common whakapapa and tikanga; and
  - (b) holds communal assets on behalf of the tribal group or its constituent groups, or is likely to hold communal assets following a Treaty of Waitangi settlement; and
  - (c) has a charter defining the matters for which—
    - (i) the waka pū will represent the tribal group; and
    - (ii) a constituent group, associated entity, or subsidiary of the waka pū will represent the tribal group or constituent group, as the case may be.
- (2) The waka pū for a constituent group may seek recognition to the extent permitted by the charter for the waka pū of the tribal group.

### *Recognition*

#### **25 Effect of recognition on responsibilities of waka pū**

- (1) A recognised waka pū is the legitimate representative of the tribal group for which the waka pū is formed, in respect of the matters defined for the purpose in its charter under **section 24(1)(c)**.
- (2) A waka pū may specify in its charter the right to represent the tribal group on any matters that relate directly or indirectly to its representative functions, but must not claim the exclusive right to represent the tribal group on matters that relate directly to the delivery of social services to the registered members of the waka pū, such as health, education, housing, or similar services.
- (3) The charter may provide that a constituent group or other entity is the legitimate representative of the constituent or tribal group for matters specified for that purpose in the charter.

#### **26 Effect of recognition on third parties**

- (1) A person or body that wishes to transact or otherwise deal with a tribal group that has a recognised waka pū must do so with the recognised waka pū on the matters specified in the charter for the purpose under **section 24(1)(c)**.
- (2) However, recognition of a waka pū does not—
  - (a) require the Crown, a Crown entity, local authority, or any other body to transact or otherwise deal with that waka pū; or
  - (b) prevent a person or body from dealing directly with an individual member, constituent group, or subsidiary on matters that are not specified in the charter as matters for which the waka pū will represent the tribal group.

### *Scheme plan*

#### **27 Development of scheme plan**

- (1) If a tribal group seeks to form and register a recognised waka pū, the representatives appointed under **section 18(1)** are responsible, as the scheme promoters, for developing a draft scheme plan.
- (2) The draft scheme plan must set out in writing—
  - (a) the matters required by **section 28**; and

- (b) the steps to be taken—
  - (i) to form, and obtain a mandate for, a waka pū; and
  - (ii) to ratify and adopt the draft scheme plan.
- (3) In developing a draft scheme plan, the scheme promoters must consult by—
  - (a) giving public notice of meetings where the scheme plan is to be presented, which must include meetings—
    - (i) in the tribal area of the tribal group; and
    - (ii) at places outside the tribal area where the scheme promoters consider that a significant number of members of the tribal group reside; and
  - (b) presenting the draft scheme plan at those meetings in accordance with the notices; and
  - (c) advising on a submission process and receiving submissions on the draft scheme plan.
- (4) The draft scheme plan may be varied as necessary during or after the consultation process.

## 28 Contents of scheme plan

A scheme plan must include the following matters:

- (a) any groups within the tribal group that are to be constituent groups of the waka pū; and
- (b) the criteria for membership of the waka pū; and
- (c) a draft or outline charter for the waka pū; and
- (d) the fact that it is proposed to seek recognition for the waka and the matters for which the waka pū will seek to represent the tribal group; and
- (e) the method by which the scheme plan may be adopted.

## 29 Adoption of scheme plan

A scheme plan may be adopted only in the manner provided for in the draft scheme plan under **section 28(e)**.

## 30 Notification of scheme plan

- (1) When the consultation process required under **section 27** has been completed, the scheme promoters must—
  - (a) publicly notify the draft scheme plan; and
  - (b) on request, make copies of the draft scheme plan available to any adults eligible to be members of the waka pū.

- (2) A copy of the draft scheme plan of a waka pū must be provided to—
  - (a) any existing entity that represents or purports to represent the same tribal group or parts of that tribal group; and
  - (b) any entities representing adjacent tribal groups; and
  - (c) the representatives of any proposed constituent groups or associated entities of the waka umanga; and
  - (d) the Attorney-General; and
  - (e) Te Ohu Kai Moana Trustee Limited.
- (3) In notifying the Attorney-General under **subsection (2)(d)**, the scheme promoters must advise the Attorney-General whether there are, and if so, the details of,—
  - (a) any existing contractual or special consultative arrangements between existing entities or proposed constituent groups and any departments of State; and
  - (b) any agreements reached with associated entities about which entity represents the tribal group on particular matters.

*Review of scheme plan by Māori Land Court*

**31 Application for review**

- (1) At any time, whether before or after a scheme plan is adopted, persons representative of an entity referred to in **section 30(2)(a), (b), or (c)** that is directly affected by a proposal to register and seek recognition of a waka pū may apply to the Court under **section 103** for a review of the adequacy of the scheme plan or its implementation.
- (2) The only grounds for review are that the applicants are, or are likely, to be prejudicially affected by—
  - (a) a scheme plan that has not been publicly notified and adopted in accordance with this Act or is otherwise not adequate for the purposes of this Act;
  - (b) the inclusion or exclusion of any tribal group from the waka pū;
  - (c) any steps taken or proposed to be taken by the scheme promoters for, or in relation to, the formation of a waka pū.

**32 Variation of scheme plan**

The scheme promoters—

- (a) may, at their discretion, vary the scheme plan, provided notice of any significant variation is given as required by **section 30**; and
- (b) must vary the scheme plan if required to do so by the Court in response to an application for review of the scheme plan under **section 31**.

Subpart 4—Provisional approval of proposed name

**33 Proposed name must be approved**

Before a waka umanga may be registered under this Act, the proposed name of the waka umanga must be provisionally approved by the Court.

**34 Application for approval of proposed name**

- (1) An application for approval of a proposed name of a waka umanga must—
  - (a) be made in writing in the form approved for the purpose to—
    - (i) the Registrar; and
    - (ii) the Chief Registrar of the Court; and
  - (b) include, in the application to the Registrar, the fee prescribed for filing an application for the approval of a proposed name.
- (2) The Registrar must advise the applicant and the Chief Registrar of the Court as to whether—
  - (a) the use of the name would contravene any enactment; or
  - (b) the proposed name is identical or almost identical to—
    - (i) the name of any existing corporate entity, including an existing waka umanga; or
    - (ii) a name that the Registrar has already reserved and that is still available for registration—
      - (A) under the Companies Act 1993; or
      - (B) under this Act; or
  - (c) the proposed name is, in the opinion of the Registrar, offensive.
- (3) If the Registrar is satisfied that the criteria of **subsection (2)** do not apply in relation to the proposed name,—

- (a) he or she must publish the proposed name of the waka umanga in electronic form on a publicly accessible website of the Registrar of Waka Umanga; and
- (b) the Chief Registrar of the Court—
  - (i) must arrange to publish the proposed name in the Pānui of the Court, advising that any objections to the proposed name must be filed within 20 working days of the publication of the Pānui; and
  - (ii) must consider any objection to the proposed name; and
  - (iii) may consult with—
    - (A) the registrar of the relevant Court district;
    - (B) persons who in his or her opinion have knowledge and experience of the tikanga relevant to the proposed name.

**35 When approval of name must be declined**

- (1) The Chief Registrar of the Court must not approve a proposed name if—
  - (a) 1 or more of the criteria in **section 34(2)** applies to the proposed name; or
  - (b) he or she knows that there is an unincorporated entity with a similar name; or
  - (c) in his or her opinion, the proposed name may be offensive or contrary to tikanga Māori.
- (2) However, despite **subsection (1)**, the Chief Registrar of the Court may approve the proposed name if he or she is satisfied that—
  - (a) an existing corporate or unincorporated entity with a name sufficiently similar to the proposed name as to be likely to cause confusion has consented to the use of the proposed name; or
  - (b) the proposed name has been altered to ensure that the waka umanga is sufficiently identifiable as a different entity.

**36 Approval of name**

If the Registrar is satisfied that none of the criteria in **section 34(2)** apply in relation to the proposed name, the Chief Registrar of the Court must—

- (a) determine whether or not to approve the proposed name; and
- (b) advise the Registrar of that determination as required under **section 43(1)(c)(i)**.

**37 Dispute in relation to proposed name**

If a dispute in relation to a proposed name is not resolved through an informal dispute resolution process, the Chief Registrar of the Court must refer the matter to the Chief Judge of the Court under **section 103**, who must set the matter down for a hearing.

Subpart 5—Registration of waka umanga

*Registrar and Register*

**38 Registrar of waka umanga**

- (1) There must be a Registrar of Waka Umanga.
- (2) The person holding office as the Registrar of Companies under the Companies Act 1993 immediately before the commencement of this Act is appointed to be the Registrar of Waka Umanga.
- (3) To the extent that it is applicable, Part 20 of the Companies Act 1993 applies to the powers of the Registrar as if every reference to—
  - (a) the Registrar of Companies were a reference to the Registrar of Waka Umanga; and
  - (b) a company were a reference to a waka umanga; and
  - (c) the register of companies and the New Zealand register were a reference to the Register of Waka Umanga; and
  - (d) the Court includes the Māori Land Court.
- (4) To avoid doubt, Part 20 does not override this Act.

**39 Register of Waka Umanga**

- (1) The Registrar must ensure that a register of each waka umanga registered under this Act is kept in New Zealand.
- (2) The Register is to be known as the Register of Waka Umanga.
- (3) The Register must be—
  - (a) in electronic form; and
  - (b) maintained for the purposes of registration under this Act; and

- (c) operated at all times unless—
  - (i) the Registrar suspends the operation of the Register, in whole or in part, if the Registrar considers for any reason that it is not practicable to provide a service relating to the Register; or
  - (ii) as otherwise provided for in regulations.

#### **40 Contents of Register**

The Register must include the following data in respect of each waka umanga:

- (a) the name of the waka umanga; and
- (b) the registered office of the waka umanga and an address for service; and
- (c) the charter of the waka umanga; and
- (d) the name and an address for service of each of the governors of the waka umanga; and
- (e) each annual report of the waka umanga; and
- (f) the register of protected assets of the waka umanga; and
- (g) the register of mortgages and other charges secured over assets of the waka umanga; and
- (h) other information that the waka umanga, with the agreement of the Registrar, wishes to place on the Register.

#### *Requirements before registration*

#### **41 Prerequisites for registration**

Before a waka umanga may apply for registration, it must have—

- (a) a name that has been approved by the Court under **subpart 4**; and
- (b) a provisional register of members; and
- (c) persons who are to act as interim governors until the governors are elected under **section 57**; and
- (d) a charter that has been ratified and adopted in accordance with **section 23**.

#### **42 Right to apply for registration**

(1) An application for registration as a waka umanga may be made by—

- (a) any 15 persons who are eligible for membership under the draft charter of the waka umanga; or



- (b) an existing entity authorised under **Part 5** to be registered as a waka umanga.
- (2) An application must comply with **section 43**.

### **43 Application for registration**

- (1) An application for registration of a waka umanga must—
  - (a) be made to the Registrar in the form approved by the Registrar for the purpose; and
  - (b) be accompanied by the fee prescribed for the purpose; and
  - (c) include—
    - (i) a certificate from the Chief Registrar of the Court approving the proposed name of the waka umanga; and
    - (ii) a copy of the proposed charter; and
    - (iii) the physical address to be used as the registered office of the waka umanga; and
    - (iv) a postal address for the waka umanga; and
    - (v) a provisional register of members of the waka umanga; and
    - (vi) the names of 3 or more interim governors of the waka umanga (who may be members of the governing body of an existing entity if the applicant is an existing entity); and
    - (vii) a statutory declaration signed by each person named as an interim governor of the waka umanga, setting out the matters required by **subsection (2)**; and
    - (viii) any other matters required by the Registrar.
- (2) Each interim governor making the statutory declaration required by **subsection (1)(c)(vii)** must declare—
  - (a) his or her name and place of residence and record his or her consent to be a governor; and
  - (b) that he or she is not disqualified from appointment or from holding office as a governor under **clauses 1 to 3 of Schedule 2**; and
  - (c) that he or she has been elected or appointed in accordance with the procedure set out in the proposed charter or any scheme plan; and
  - (d) that, in his or her opinion, the proposed charter complies with this Act; and

- (e) that he or she is satisfied that, in developing the proposed charter,—
  - (i) in the case of a waka pū not seeking recognition (including existing entities except those referred to in **subparagraph (iii)**) or a waka tumaha, the representatives have complied with the requirements of **sections 21 to 23**:
  - (ii) in the case of a waka pū seeking recognition (including existing entities except those referred to in **subparagraph (iii)**), the scheme promoters have complied with the requirements of **sections 21 to 23 and 27 to 30**:
  - (iii) in the case of an existing entity that is a mandated iwi organisation or a Treaty of Waitangi settlement entity, the entity is authorised under **Part 5** to be registered as a waka umanga.
- (3) **Sections 138(2), 146(2), 151(2), and 155(2)** require an existing entity applying for registration as a waka umanga to include additional documents with its application for registration.

#### **44 Registrar must check application**

- (1) When the Registrar receives an application for registration the Registrar must be satisfied that the application complies with the requirements of this Act.
- (2) If the Registrar considers that the application does not comply with this Act in any respect, the Registrar may—
  - (a) refer the application back to the applicant for amendment; or
  - (b) may request further information from the applicant.

#### *Notification of intended registration*

#### **45 Notification of application to register**

- (1) When the Registrar receives an application to register a waka umanga, the Registrar must give notice in accordance with **subsection (2)** that unless a notice of objection is received under **section 46 or 47**, as the case may be, the proposed waka umanga will be registered under **section 49 or 50**, as the case may be.
- (2) The notice required under **subsection (1)**—

- (a) must be published in electronic form on a publicly accessible website of the Registrar of Waka Umanga; and
  - (b) may be a public notice, within the meaning of the Companies Act 1993.
- (3) The Chief Registrar of the Court must arrange to publish in the Pānui of the Court the matters of which the Registrar must give notice under **subsection (1)**.
- (4) In the case of an application for registration of a waka pū seeking recognition, the Registrar must also direct the applicant to give public notice of the application and provide a copy of the notice to—
- (a) the local authorities with jurisdiction in the tribal area; and
  - (b) Te Ohu Kai Moana Trustee Limited, if the waka pū is a mandated iwi organisation; and
  - (c) the Attorney-General; and
  - (d) any persons or bodies that the Registrar specifies.
- (5) The Registrar may seek the guidance of the Chief Registrar of the Court as to the appropriate persons to be notified under **subsection (4)(d)**.

*Objections to registration*

**46 Objections in case of waka umanga not seeking recognition**

- (1) Any person may file a notice of objection to the intended registration of a waka umanga (other than a waka pū that is seeking recognition).
- (2) A notice of objection must be filed with the Registrar within 20 working days of a notice being given under **section 45(1)**.
- (3) The only grounds for objection under this section are that—
  - (a) the proposed name of the waka umanga is not appropriate;
  - (b) the charter does not comply with this Act.
- (4) The Registrar must—
  - (a) direct that the objector file the notice of objection in the Court under **section 103** if, in the Registrar's opinion, the matter is unlikely to be resolved by the parties; and

- (b) unless and until the matter has been resolved, not enter an application in the Register of Waka Umanga or issue a certificate of registration.

#### **47 Objections in case of waka pū seeking recognition**

- (1) Any person may file a notice of objection to the intended registration of a waka pū seeking recognition.
- (2) A notice of objection must be filed with the Registrar within 20 working days of a notice being given by the Registrar under **section 45(1)** or the last public notice given by the applicant under **section 45(4)**, whichever is the later.
- (3) The notice of objection must be provided to the applicant and any person or body that the applicant was required to give notice to under **section 45(4)**.
- (4) The only grounds for an objection to the registration of a recognised waka pū are that—
  - (a) the waka pū lacks a sufficient mandate of the tribal group seeking to form and register the waka pū;
  - (b) the charter should restrict the right for the waka pū to be recognised because—
    - (i) a constituent group has not agreed to being represented by the waka pū; or
    - (ii) an existing entity already represents the tribal group on specified aspects of the group's affairs; or
    - (iii) it is inappropriate for reasons such as economy of scale that the waka pū be recognised as the legitimate representative of the tribal group on the matters specified in the charter:
  - (c) the objectors did not have an adequate opportunity to be heard in the formation process or the process was unfair, and the objectors have been prejudiced as a result;
  - (d) there is insufficient clarity about the matters specified for recognition under **section 24(1)(c)**.

#### **48 Adjournment**

- (1) The Registrar may hold any application for registration or any objection to registration for a time to be specified by the Registrar, to allow further consideration by the parties if the Registrar believes, after making any inquiries that he or she

thinks fit, that the grounds of objection relate to a matter that could be resolved between the parties.

- (2) If, after the process allowed for by **subsection (1)**, an agreement is reached by the parties, the Registrar may register the waka umanga in accordance with the agreement reached.
- (3) If no agreement is reached under **subsection (2)**, the Registrar must direct the objectors to file the notice of objection in the Court under **section 103**.

### *Registration*

#### **49 Registration of waka umanga not seeking recognition**

If no objections to the registration of a waka umanga (other than a waka pū seeking recognition) are received under **section 46** within the specified time, the Registrar must—

- (a) enter the details of the waka umanga in the Register of Waka Umanga; and
- (b) issue a certificate of registration under this Act.

#### **50 Registration of waka pū seeking recognition**

- (1) This section applies if the Registrar has approved an application of a waka pū seeking recognition and both the Registrar and the applicant have given notice as required by **section 45**.
- (2) If no objections are received under **section 47** within the specified time, the Registrar must—
  - (a) enter the details of the waka pū in the Register of Waka Umanga; and
  - (b) issue a certificate of registration under this Act.

#### **51 Certificate of registration**

- (1) A certificate of registration issued under **section 49 or 50** is conclusive evidence that—
  - (a) all the requirements for registration under this Act have been complied with; and
  - (b) on and from the date of registration stated in the certificate, the waka umanga is registered under this Act.
- (2) The certificate must record the registered name of the waka umanga with the suffix “Waka Umanga” (**WU**) or “Māori Corporation” (**MC**) which, whether or not abbreviated, must be used on all official documents of the waka umanga.

- (3) After the commencement of this Act, no person may be incorporated or registered under any other enactment or in any other manner using the terms “Māori Corporation”, “MC”, “Waka Umanga”, or “WU”.

*Change of name*

**52 Change of name of waka umanga**

- (1) The requirements of **subpart 4** for approval of a proposed name apply, with any necessary modifications, if a waka umanga wishes to change its registered name.
- (2) A change of name—
- (a) takes effect from the day that the certificate is issued by the Registrar; but
  - (b) does not affect the rights or obligations of the waka umanga.
- (3) Legal proceedings commenced by or against the waka umanga under its former name, or that might have been commenced or continued against the waka umanga under its former name, may be commenced or continued against it under its new name.

**53 Direction to change name**

- (1) If the Registrar believes on reasonable grounds that the name under which a waka umanga is registered should not have been reserved, he or she may serve a written notice on the waka umanga at its registered office, directing the waka umanga to change its name not later than 20 working days after the date on which the notice is served.
- (2) If the waka umanga does not comply with the notice served under **subsection (1)** within the specified time, the Registrar may select and enter on the Register of Waka Umanga a new name for the waka umanga.
- (3) If the Registrar enters a new name for the waka umanga under **subsection (2)**, he or she must issue a new certificate of incorporation for the waka umanga.
- (4) **Section 52(3)** applies to the registration of the new name as if the name of the waka umanga had been changed under **section 52**.

### Part 3

## Governance, management, and accountability of waka umanga, associated entities, and subsidiaries

#### 54 Purpose and outline of subparts 1 to 3

- (1) **Subparts 1 to 3** provide for the key governance, management, and accountability requirements that must be observed by every waka umanga, setting out, in—
  - (a) **subpart 1**, provisions relating to the establishment and role of the rūnanganui and its governors and their conduct of the business of the waka umanga; and
  - (b) **subpart 2**, the management requirements for a waka umanga; and
  - (c) **subpart 3**, the accountability obligations of the rūnanganui, including requirements for—
    - (i) consultation and meetings; and
    - (ii) the access of registered members to information of the waka umanga; and
    - (iii) planning and reporting by the waka umanga.
- (2) Additional matters relevant to the governance of a waka umanga are included in—
  - (a) **Schedule 1**, which sets out the governance, management, and accountability matters that must be included in the charter; and
  - (b) **Schedule 2**, which sets out further provisions relating to the governance, management, and accountability of a waka umanga.

#### Subpart 1—Governance of waka umanga

##### *Rūnanganui*

#### 55 Rūnanganui is governing body of waka umanga

- (1) Every waka umanga must have a rūnanganui to exercise the powers and perform the duties of the waka umanga under this Act and the charter, as kaitiaki of the tribal group or Māori association for which the waka umanga is formed and registered.
- (2) The rūnanganui—
  - (a) has the authority and the powers necessary for the purposes of **subsection (1)**; and

- (b) is accountable to the tribal group or Māori association on whose behalf the waka umanga is formed and registered.
- (3) A rūnanganui must consist of the number of governors specified in the charter.

### *Governors*

#### **56 Governors of rūnanganui**

- (1) A natural person who is not disqualified from office under this Act or the charter may be a governor.
- (2) The charter may specify the qualifications required of a governor.
- (3) A governor must be either—
  - (a) elected in accordance with **section 57** and the charter; or
  - (b) appointed in accordance with **section 58** and the charter.
- (4) Before election or appointment, a governor must—
  - (a) give written consent to being a governor; and
  - (b) make a written statement that he or she is not disqualified from being a governor.
- (5) **Clauses 1 to 3 of Schedule 2** apply to the qualification requirements for governors.

### *Election and appointment of governors*

#### **57 Election of governors**

An election of governors must be conducted—

- (a) not later than 6 months after the date of registration of the waka umanga under **Part 2**; and
- (b) when a governor's term of office expires; and
- (c) as soon as is reasonably possible after a vacancy arises on the rūnanganui, unless the period of time before the next election is less than 1 year, or any shorter time that the charter may specify.

#### **58 Appointment of governors**

The charter—

- (a) may provide that up to 25% of the maximum number of governors may be appointed; and



- (b) if it does so, must specify how governors are to be appointed, including the matters set out in **subclause (7) of Schedule 1**.

#### **59 Validity of governor's acts**

The acts of a person acting as a governor are valid, even if—

- (a) the person's election or appointment was defective; or
- (b) the person was or has become disqualified from being a governor.

### *Duties*

#### **60 Duties of governors**

- (1) Every governor, when acting as a governor, must—
  - (a) act in good faith, honestly, and with integrity; and
  - (b) act in a manner that the governor has reasonable grounds to believe is in the best interests of the waka umanga and the tribal group or Māori association that it represents; and
  - (c) not contravene, or cause the waka umanga to contravene, this Act, the charter, policies, or formal resolutions of the waka umanga, or the general law; and
  - (d) avoid acting in a way that would unfairly prejudice or discriminate against any constituent group of the waka umanga, unless the governor believes on reasonable grounds that it is necessary to so act in the best interests of the tribal group or Māori association as a whole; and
  - (e) take reasonable steps to prevent—
    - (i) the business of the waka umanga being carried on in a manner that is likely to cause serious loss to the registered members of the waka umanga or its creditors; or
    - (ii) the waka umanga from incurring obligations that it cannot perform.
- (2) In undertaking the duties of a governor, a governor must—
  - (a) exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others; and
  - (b) be guided by this Act and the charter, the long-term plan, and the policies of the waka umanga.

**61 Obligation of disclosure**

- (1) A governor of a waka umanga must disclose any significant benefit or material financial interest that he or she derives or may derive from a transaction of, or other matter relating to, the waka umanga in accordance with **section 62**.
- (2) The rūnanganui must create and maintain an interests register for the purposes of the disclosure required by **subsection (1)**.
- (3) For the purposes of this section and **sections 62 and 63**, a governor—
  - (a) derives or may derive a **significant benefit** if he or she—
    - (i) is a close relative of a person who will or may, directly or indirectly, derive a benefit from a transaction or other matter relating to the waka umanga; or
    - (ii) holds a position of influence or has a material financial interest in an entity that will or may, directly or indirectly, derive a benefit from the transaction or other matter; and
  - (b) has a **material financial interest** if a reasonable observer, informed of all the relevant facts, would conclude that the governor or a close relative will or may, directly or indirectly, derive a financial gain or loss from the transaction or other matter.
- (4) In this section, **close relative**, in relation to a governor, means—
  - (a) the governor's spouse, de facto partner, or civil union partner; or
  - (b) the governor's parent, including step-parent or parent of a whāngai; or
  - (c) the governor's child, including step-child or whāngai; or
  - (d) any other person with whom the governor is, or has been, in a relationship of financial dependence or interdependence.
- (5) In this section and **sections 62 and 63**, **transaction or other matter** includes a proposed transaction or other matter.
- (6) A governor does not derive a significant benefit or have a material financial interest for the purpose of disclosure under **subsection (1)** if the only benefit or interest is—
  - (a) the same or substantially the same as—

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- (i) the benefit or interest of most other members of the tribal group or Māori association to which the governor belongs; or
- (ii) the benefit or interest of the general public in the transaction or other matter; or
- (b) so remote or insignificant that it cannot reasonably be regarded as likely to influence the governor in carrying out his or her duties as a governor.

**62 Scope and method of disclosure required**

- (1) As soon as a governor becomes aware that he or she may derive a significant benefit from, or may have a material financial interest in, a transaction or other matter, he or she must ensure that the benefit or interest is—
  - (a) disclosed to—
    - (i) the chairperson of the rūnanganui; or
    - (ii) if the governor making the disclosure is the chairperson, to the rūnanganui as a whole; and
  - (b) entered in the interests register.
- (2) Disclosure of a significant benefit or material financial interest must include—
  - (a) the monetary value, if it can be quantified, and the nature of the benefit or interest; or
  - (b) if no monetary value can be quantified, the nature and extent of that benefit or interest.
- (3) A failure by a governor to comply with **subsection (1)** does not affect the validity of a transaction entered into by the waka umanga or by the governor with a third party.

**63 Consequences of benefit or interest**

- (1) A governor who derives or may derive a significant benefit from, or has or may have a material financial interest in, a transaction of, or other matter relating to, a waka umanga—
  - (a) must not vote on, or take part in, any discussion or decision by the rūnanganui or a committee of the rūnanganui relating to the transaction or other matter; and
  - (b) must not sign any document relating to the transaction or other matter; and
  - (c) must be disregarded for the purpose of forming a quorum for the part of the meeting of the rūnanganui or

committee when a discussion or decision relating to the transaction or other matter takes place or is made.

- (2) Despite **subsection (1)**, if a governor derives or may derive a significant benefit (that does not amount to a material financial interest) from a transaction or other matter, the rūnanganui—
  - (a) may resolve, prior to the decision being made by the rūnanganui or committee, that the governor may take part in some or all of the discussion and decision making on the relevant transaction or matter, despite being in a position of deriving a significant benefit; but
  - (b) must not make such a resolution unless it is satisfied that the governor's significant benefit will not impair his or her judgement in relation to the transaction or other matter.
- (3) A resolution made under **subclause (2)** must be entered in the minutes of the relevant meeting, together with details of the nature of the significant benefit and any conditions imposed in relation to the governor's participation in the part of the meeting dealing with the transaction or other matter concerned.
- (4) A waka umanga must publish in its annual report a list of the transactions or other matters it was involved in for the relevant financial year, and from or by which a governor derived a significant benefit or had a material financial interest.

#### **64 Confidentiality of information of waka umanga**

- (1) This section applies if a governor has information about or relating to the waka umanga—
  - (a) in his or her capacity as a governor; and
  - (b) that would not otherwise be available to that governor.
- (2) Unless the charter of a waka umanga provides otherwise, a governor must not disclose information to any person or make use of it or act on it except—
  - (a) in performing the functions of the waka umanga;
  - (b) as required by law;
  - (c) if the policy of the waka umanga authorises the disclosure of particular information;
  - (d) in compliance with the requirements for governors to disclose their interests;
  - (e) if the rūnanganui has first authorised that governor to disclose, make use of, or act on the information, or to make any public statement.

- (3) Despite **subsections (1) and (2)**, unless the rūnanganui has, by resolution, prohibited the disclosure of particular information on the grounds of privacy or commercial sensitivity, this section does not prevent the activities of the waka umanga being reported on generally,—
  - (a) by the chairperson; or
  - (b) by any governor, to his or her constituent group (if any).
- (4) The charter may set out any circumstances when a governor may disclose or make use of information about or relating to the waka umanga.

*Major transactions and protected assets*

**65 Major transactions**

- (1) No major transaction may be entered into by a waka umanga unless the transaction is authorised by a special resolution of the rūnanganui after consultation with the registered members of the waka umanga in accordance with the special consultative procedures of the waka umanga.
- (2) Major transactions of a waka umanga include the following:
  - (a) amending or substituting the charter:
  - (b) adopting or amending—
    - (i) a distribution policy required by **section 70**; and
    - (ii) a long-term plan or financial policy required by **section 83**; and
    - (iii) any other significant plans or policies of the waka umanga, such as a plan or policy for the sale of land of the waka umanga:
  - (c) classifying any assets of the waka umanga as protected assets and removal of that classification:
  - (d) providing for a mortgage or other charge to be given over a specified proportion of the assets of a waka umanga:
  - (e) establishing or disestablishing a subsidiary, acquiring or disposing of a subsidiary, or making material changes to the form or constitution of a subsidiary:
  - (f) acquiring or disposing of an interest in an associated entity or making material changes to the form and constitution of an associated entity:
  - (g) amalgamating the waka umanga with another waka umanga or other entity:

- (h) appointing an administrator for the waka umanga under **Part 4**.
- (3) The charter may include other matters that are to be treated as major transactions.

**66 Classification of assets as protected assets**

- (1) A rūnanganui may classify any assets of the waka umanga as protected assets, as long as the procedures adopted under **section 65** for major transactions are followed.
- (2) A rūnanganui must not classify an asset as a protected asset unless—
  - (a) the rūnanganui is satisfied that the waka umanga will meet the solvency test immediately after the asset is so classified; and
  - (b) each governor voting in support of classifying the asset as a protected asset certifies in writing that he or she is satisfied that the waka umanga will meet the solvency test immediately after the asset is so classified.
- (3) The governors' certificates referred to in **subsection (2)(b)** must be filed in the office of the Registrar when notice is given under **section 68(1) or 69(2)**, as the case may be.

**67 Status of protected assets**

- (1) The protected assets of a waka umanga must be reported on separately in the annual report of the waka umanga.
- (2) A rūnanganui must not grant a mortgage or other charge over a protected asset.
- (3) Protected assets are not—
  - (a) available to satisfy the demands of creditors, whether or not the waka umanga is in voluntary administration under **Part 4** or in liquidation; or
  - (b) part of the assets of the waka umanga for the purposes of the solvency test.
- (4) An asset over which a mortgage or other charge is granted (not being a protected asset) must not be classified or reclassified as a protected asset unless—
  - (a) the mortgage or other charge has been discharged; or
  - (b) the person in whose favour the mortgage or other charge was granted has given consent.

- (5) A copy of the register of protected assets must be attached to every document that creates a mortgage or other charge over an asset of a waka umanga.
- (6) Unless consent is given in the circumstance provided for by **subsection (4)(b)**, a protected asset is available to satisfy the demands of a creditor (whether or not the waka umanga is in voluntary administration or in liquidation), if the asset was not a protected asset at the time when the liability to the creditor was incurred.

#### **68 Registers required in relation to certain assets**

- (1) Every rūnanganui must notify the Registrar of—
  - (a) mortgages and other charges granted over any assets of the waka umanga; and
  - (b) assets of the waka umanga classified as protected assets.
- (2) The Registrar must create and maintain for the waka umanga—
  - (a) a register of mortgages and other assets granted over the assets of the waka umanga; and
  - (b) a register of the protected assets of the waka umanga.
- (3) The registers referred to in **subsection (2)** must be held by the Registrar and made available for inspection at the office of the Registrar.
- (4) The register of protected assets is the authoritative register for all purposes of the protected assets of a waka umanga.

#### **69 Amendments to registers**

- (1) This section applies if—
  - (a) a mortgage or other charge over assets of a waka umanga is discharged; or
  - (b) a waka umanga wishes to add further assets to the register of protected assets or remove that classification from an asset.
- (2) The rūnanganui must notify the Registrar of the amendment required in the relevant register within 10 working days of—
  - (a) a discharge referred to in **subsection (1)(a)** being effected; or
  - (b) a change to the classification of any protected asset referred to in **subsection (1)(b)**.

- (3) In the case of a change to the classification of an asset as a protected asset, the rūnanganui must certify in writing to the Registrar that it has complied with **section 66**.

*Distribution of benefits*

**70 Preparation of distribution policy**

- (1) Every rūnanganui must prepare and approve any distribution policy for the waka umanga that sets out the basis for the distribution of benefits to registered members, constituent groups, subsidiaries, or other groups.
- (2) The distribution policy may be implemented only if the policy is authorised by a special resolution passed by the rūnanganui following consultation with registered members in accordance with the procedure adopted for major transactions under **section 65**.

**71 Contents of distribution policy**

- (1) A distribution policy must provide that distributions must be made—
- (a) prudently and in a manner that promotes the current and future well-being of the tribal group or Māori association for which the waka umanga is formed and registered; and
  - (b) only if the waka umanga satisfies the solvency test immediately after a distribution is made.
- (2) A distribution policy must include—
- (a) the objectives for which distributions are able to be made; and
  - (b) how the rūnanganui will determine each year what proportion (if any) of the net income and other assets—
    - (i) is to be distributed in that year; and
    - (ii) is to be reinvested in, or applied to, the activities of the waka umanga or its subsidiaries; and
  - (c) the form in which the rūnanganui may make distributions, for example by way of grants, loans, or scholarships; and
  - (d) the categories of persons, groups, or entities that the rūnanganui is permitted to make distributions to; and
  - (e) the procedures and criteria by which decisions must be made on any specific distributions; and



- (f) how the rūnanganui must report on the distributions made in a financial year.

**72 Further provisions in Schedule 2**

Further provisions relating to the governance of a waka umanga are set out in **clauses 1 to 18 of Schedule 2**.

Subpart 2—Management of waka umanga

**73 Appointment of chief executive**

- (1) A rūnanganui must appoint a chief executive to be the administrative head of the waka umanga.
- (2) The chief executive is accountable to the rūnanganui for the performance of his or her duties, functions, and responsibilities—
- (a) set out in **clause 19 of Schedule 2** or arising under this Act or any other enactment; or
  - (b) delegated to him or her by the rūnanganui.
- (3) In making an appointment under **subsection (1)**, a rūnanganui must have regard to—
- (a) the skills, attributes, and experience required of the chief executive; and
  - (b) the nature and scope of the activities of the waka umanga; and
  - (c) the other responsibilities placed on the chief executive by or under this Act and other enactments.
- (4) A chief executive may be a registered member of the waka umanga.
- (5) Further provisions relating to the management of a waka umanga are set out in **clauses 20 and 21 of Schedule 2**.

**74 Delegation of powers**

- (1) Unless the charter of a waka umanga provides otherwise, the rūnanganui may delegate in writing to the chief executive any of its powers except this power of delegation.
- (2) The chief executive may delegate to 1 or more employees of the waka umanga who are specified by name or office in the delegation, any of the powers or functions that—
- (a) he or she has under this Act; or
  - (b) are delegated to him or her.
- (3) Every delegation made under this section—

- (a) is subject to any conditions or limitations imposed by the delegator in making the delegation to the delegate; and
  - (b) is revocable at will; and
  - (c) continues in force according to the terms of the delegation until it is revoked.
- (4) A delegator that delegates a power under this section is responsible for the exercise of the power by the delegate as if the power had been exercised by the delegator, unless the delegator—
- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in accordance with the duties of governors under this Act and the charter; and
  - (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

### Subpart 3—Accountability of waka umanga to registered members

#### *Consultation and information*

#### **75 Consultation and communication policy**

- (1) A rūnanganui must approve policies on how the waka umanga will communicate and consult with its registered members.
- (2) The policies must include provisions that—
  - (a) assist the rūnanganui to recognise at an early stage when consultation with registered members is required; and
  - (b) enhance the effectiveness of the communication and consultation processes by stating, for example,—
    - (i) how registered members will be informed of the activities of the waka umanga; and
    - (ii) any additional information that registered members may seek, and how to do so.

#### **76 Registered members' rights of access to information**

- (1) A waka umanga must make the following information available to its registered members at the registered office of the waka umanga and by any other means provided for by the charter:
  - (a) the minutes of—

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- (i) every meeting of the rūnanganui; and
  - (ii) the annual general meeting and any special meetings of the waka umanga; and
  - (b) planning and reporting information that—
    - (i) the waka umanga must prepare under **section 83**; and
    - (ii) any subsidiaries must prepare under **subpart 4**; and
  - (c) the registers required by this Act and held at the registered office of the waka umanga; and
  - (d) any other information that the charter requires be available to the registered members of the waka umanga.
- (2) The rūnanganui may restrict access to information in the minutes that is confidential or private, such as, for example, commercially sensitive matters or employment matters.

**77 Information that may be requested**

- (1) A registered member of a waka umanga may request in writing that any information held by and relating to the waka umanga that is not available under **section 76** be made available to the registered member under this section.
- (2) Information that may be requested under **subsection (1)** does not include—
  - (a) information held by associated entities or subsidiaries of the waka umanga, unless it is information given by associated entities or subsidiaries to the waka umanga; or
  - (b) information created for the purpose of, or in the course of, a dispute resolution process.

**78 Provision of information requested**

- (1) A waka umanga must make the information requested under **section 77(1)** available upon request, unless—
  - (a) the information is of a kind referred to in **section 77(2)**; or
  - (b) there are good reasons to withhold access under **clause 22(1) of Schedule 2**; or
  - (c) **clause 22(2) of Schedule 2** applies.
- (2) Within 20 working days of receiving a request for information, a waka umanga must—
  - (a) comply with the request; or
  - (b) advise the registered member—

- (i) that an extension of time will be required, the reason for the extension, and the amount of extra time required; or
  - (ii) of the reason for declining the request and that he or she may seek to resolve the matter through a dispute resolution procedure of the waka umanga; or
  - (iii) that the information will be released, but only on specified conditions that may be imposed under **clause 22 of Schedule 2**.
- (3) Information made available to a registered member under **section 76 or 77** may be—
- (a) inspected at the registered office of the waka umanga;
  - (b) made available by other means, such as in electronic form or a paper copy, as provided for in the charter.

*Meetings of waka umanga*

**79 Annual general meeting**

- (1) Every rūnanganui must call an annual general meeting of the registered members of the waka umanga to be held not later than 6 months after the annual balance date of the waka umanga.
- (2) The primary purposes of the annual general meeting are to—
  - (a) present the annual report and audited accounts prepared for the previous financial year; and
  - (b) provide an opportunity for the registered members of the waka umanga to question the rūnanganui on the contents, and the implications for the waka umanga, of the annual report and audited accounts, the long-term plan, and the annual plan.

**80 Special meetings**

- (1) Special meetings of the registered members of a waka umanga—
  - (a) may be called at any time by—
    - (i) the chairperson of the rūnanganui; or
    - (ii) a majority of the governors; and
  - (b) must be called by the rūnanganui if a written request, with the reasons for that request, is received from 15 registered members of the waka umanga.

- (2) A special meeting called under **subsection (1)(b)** must be held not later than 30 working days after receiving a request under **subsection (1)**.

### **81 Procedures for meetings of waka umanga**

The procedures for meetings of a waka umanga must comply with—

- (a) any provisions of the charter made under **subclauses (19) and (20) of Schedule 1**; and  
(b) **clauses 24 and 25 of Schedule 2**.

### *Governance documents*

### **82 Key governance document of waka umanga**

- (1) The charter, as provided for by **section 11**, is the key governance document that must be prepared for every waka umanga.
- (2) The charter must be lodged with the Registrar when the waka umanga is registered.
- (3) The charter held by the Registrar is the authoritative charter for all purposes.
- (4) The Registrar must make the charter available for inspection at the office of the Registrar of Waka Umanga.
- (5) The charter may be amended or substituted in accordance with the requirements for major transactions provided for under **section 65**.
- (6) The rūnanganui must notify the Registrar of any amendments to, or substitution of, the charter within 10 working days after their adoption by the rūnanganui.
- (7) To avoid doubt, amendments to the charter, or a substituted charter, are of no effect until they are notified to the Registrar, as required by **subsection (6)**.

### **83 Other governance documents**

- (1) In addition to the charter, each waka umanga must have the following governance documents:
- (a) a long-term plan; and  
(b) an annual plan; and  
(c) an annual report; and  
(d) an annual return; and  
(e) financial policies; and  
(f) accounting records; and

- (g) financial records.
- (2) An audit report on the financial records will be required if—
  - (a) the charter requires it; or
  - (b) 15 or more registered members of the waka umanga request it at a meeting of the waka umanga or in writing to the rūnanganui; or
  - (c) the Court orders that an audit report be obtained.
- (3) The rūnanganui may decide to obtain an audit report of its own motion or in order to meet any obligations, such as contractual requirements.

*Auditor*

**84 Appointment of auditor**

- (1) If required under this Act, a rūnanganui must appoint (or continue the appointment of) an auditor.
- (2) An auditor appointed under **subsection (1)** may resign at any time by giving written notice to the rūnanganui.
- (3) If the rūnanganui does not appoint an auditor within 2 months of a vacancy occurring, the Registrar of Waka Umanga may appoint an auditor.
- (4) Sections 197, 198, 199, 203, 204, 205, and 206 of the Companies Act 1993 apply as if every reference—
  - (a) to a company were a reference to a waka umanga; and
  - (b) to the Registrar were a reference to the Registrar of Waka Umanga; and
  - (c) director were a reference to a governor; and
  - (d) related company were a reference to an associated entity or subsidiary; and
  - (e) shareholders were a reference to registered members.

**85 Further provisions**

Further provisions relating to the accountability requirements for a waka umanga to its registered members are set out in **clauses 22 to 31 of Schedule 2**.

Subpart 4—Associated entities and subsidiaries

**86 Purpose**

The purpose of this subpart is to provide certain requirements in relation to entities in which waka umanga have a significant or controlling interest.

**87 Meaning of associated entity and subsidiary**

- (1) In this subpart, unless the context otherwise requires,—
- associated entity**, in relation to a waka umanga, means an entity in respect of which the waka umanga has—
- (a) control, directly or indirectly, of 20% or more but not more than 50% of the votes at any meeting of the members or controlling body of the entity; or
  - (b) the right, directly or indirectly, to appoint 20% or more but not more than 50% of the directors of the entity
- controlling body**, in relation to an entity, means—
- (a) in the case of a company under the Companies Act 1993, the company's board;
  - (b) in the case of any other entity, the person or persons who manage or supervise the affairs and activities of the entity
- director**, in relation to an entity, means a person (whether called a director, trustee, or by some other designation) who is, or is a member of, the controlling body of the entity
- subsidiary**, in relation to a waka umanga or an entity, means another entity in respect of which the waka umanga or entity has—
- (a) control, directly or indirectly, of more than 50% of the votes at any meeting of the members or controlling body of the entity; or
  - (b) the right, directly or indirectly, to appoint more than 50% of the directors of the entity.
- (2) If **entity A** is a subsidiary of a waka umanga or another entity and entity A—
- (a) controls, directly or indirectly, more than 50% of the votes at any meeting of the members or controlling body of **entity B**; or
  - (b) has the right, directly or indirectly, to appoint more than 50% of the directors of entity B,—
- then, for the purposes of this Part, entity B is also a subsidiary of the waka umanga or the other entity.
- (3) For the purposes of this section, **entity** means—
- (a) a body corporate, including a company under the Companies Act 1993 and an incorporated society under the Incorporated Societies Act 1908:

- (b) a partnership, trust, arrangement for the sharing of profits, joint venture, or other similar arrangement.

**88 Acquisition or establishment of associated entities and subsidiaries**

- (1) A waka umanga may—
  - (a) acquire or dispose of an interest in an associated entity; or
  - (b) establish or disestablish a subsidiary.
- (2) However, a waka umanga may do so only if—
  - (a) the rūnanganui of the waka umanga has adopted a policy on associated entities and subsidiaries; and
  - (b) the policy has been adopted by the waka umanga in accordance with the relevant provisions of this Act and the waka umanga's charter for the approval of major transactions; and
  - (c) the waka umanga has, for the purposes of **subsection (1)**, acted in accordance with the policy.

*Directors*

**89 Appointment of directors**

- (1) A waka umanga must adopt a policy that sets out an objective and transparent process for—
  - (a) the identification and consideration of the skills, knowledge, and experience required of directors of an associated entity or subsidiary; and
  - (b) the appointment of directors to an associated entity or subsidiary; and
  - (c) the remuneration of directors of an associated entity or subsidiary.
- (2) The policy must also state—
  - (a) whether governors of the rūnanganui and employees of the waka umanga can be appointed as directors of an associated entity or subsidiary; and
  - (b) if so, any terms and conditions on which an appointment can be made; and
  - (c) whether there is a limit on the number of governors of the waka umanga's rūnanganui who can be appointed as directors of an associated entity or subsidiary; and
  - (d) if there is, what the limit is.



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- (3) A waka umanga may appoint a person to be a director of an associated entity or subsidiary only if the person has, in the opinion of the waka umanga, the skills, knowledge, and experience to—
  - (a) contribute to the achievement of the objective of the associated entity or subsidiary; and
  - (b) contribute to the effective governance of the associated entity or subsidiary, given the nature and scope of its activities.
- (4) An employee of a subsidiary who is appointed to be a director of the subsidiary must resign from his or her position as an employee of the subsidiary before taking up his or her position as a director.
- (5) However, **subsection (4)** does not apply to the employee if the rūnanganui of the waka umanga resolves, before the employee takes up his or her position as director, that the employee does not have to resign his or her position as an employee.

*Subsidiaries*

**90 Directors**

- (1) The directors of a subsidiary are accountable to the waka umanga for the governance of the subsidiary in accordance with the statement of intent of the subsidiary.
- (2) The directors must ensure that the subsidiary complies with—
  - (a) its statement of intent; and
  - (b) any other obligations under any other enactment.
- (3) This section does not limit or affect any other duties that directors of a subsidiary have.

**91 Subsidiary must have statement of intent**

- (1) A subsidiary of a waka umanga must have a statement of intent that complies with **Schedule 3**.
- (2) However, if the subsidiary has issued shares which are listed on a stock exchange, the subsidiary is not required to have a statement of intent.
- (3) A statement of intent in force at the time that **subsection (2)** first applies to the subsidiary ceases to have effect from that time.
- (4) A statement of intent must not be inconsistent with the constitution of the subsidiary.

**92 Purposes of statement of intent**

The purposes of a statement of intent are to—

- (a) state the activities and intentions of a subsidiary for the year, and the objectives to which the activities will contribute; and
- (b) provide an opportunity for the waka umanga to determine the activities, intentions, and objectives of the subsidiary; and
- (c) provide a basis for the accountability of the directors of the subsidiary to the waka umanga for the performance of the subsidiary.

*Monitoring and reporting*

**93 Performance monitoring**

A waka umanga must, at intervals of not more than 3 months, undertake performance monitoring of each associated entity and subsidiary to evaluate its contribution to the achievement of—

- (a) the objectives of the waka umanga for the associated entity or subsidiary; and
- (b) the long-term outcomes of the waka umanga.

**94 Annual report**

- (1) Within 3 months after the end of each financial year, the directors of a subsidiary must deliver to the waka umanga a report on the subsidiary's operations during that year.
- (2) The report must include the information required to be included by—
  - (a) **sections 95 and 96**; and
  - (b) the subsidiary's statement of intent.
- (3) This section does not apply to a subsidiary if it has issued shares which are listed on a stock exchange.

**95 Content of reports**

A report on the operations of a subsidiary under **section 94** must—

- (a) contain the information that is necessary to enable an informed assessment of the operations of the subsidiary, including—
  - (i) a comparison of the performance of the subsidiary with the statement of intent; and

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- (ii) an explanation of any material variances between that performance and the statement of intent; and
- (b) if the subsidiary is a company, state the dividend (if any) authorised to be paid or the maximum dividend proposed to be paid by the subsidiary on its shares (other than fixed-interest securities) for the financial year to which the report relates; and
- (c) state the remuneration and fees paid to each director of the subsidiary.

**96 Financial statements and auditor's report**

A report on the operations of a subsidiary under **section 94** must include—

- (a) financial statements for that financial year for the subsidiary prepared in accordance with the requirements in the subsidiary's statement of intent; and
- (b) if required by a subsidiary's statement of intent, an auditor's report on—
  - (i) the financial statements; and
  - (ii) the performance standards and other measures by which performance was judged in relation to the subsidiary's objectives.

**Part 4**

**Dispute resolution, judicial intervention, voluntary administration, and liquidation**

*Dispute resolution*

**97 Purposes and outline of subparts 1 to 3**

- (1) The purposes of **subparts 1 to 3** are—
  - (a) to make provision for resolving internal disputes, where possible, by the use of dispute resolution processes within the waka umanga itself; and
  - (b) to facilitate access to the courts for disputes that cannot be resolved by dispute resolution processes; and
  - (c) to provide a procedure for the courts to hear objections in relation to the formation and registration of waka umanga.
- (2) As a means for achieving those purposes,—
  - (a) **subpart 1** requires the charter to include dispute resolution processes for addressing internal disputes; and

- (b) **subpart 2** provides—
  - (i) for applications to be made to the Māori Land Court under the extended jurisdiction conferred on that Court by this Act to deal with—
    - (A) internal disputes; and
    - (B) disputes between or among waka umanga, or between or among waka umanga and other entities; and
    - (C) certain matters relating to the formation and registration of waka umanga; and
  - (ii) a mechanism for transferring matters from the Māori Land Court to the High Court; and
- (c) **subpart 3** provides for appeal rights; and
- (d) associated with these subparts,—
  - (i) **Schedule 4** sets out key features of certain dispute resolution processes that may be included in the charter of a waka umanga; and
  - (ii) **Schedule 5** sets out certain procedures for the Māori Land Court.

#### Subpart 1—Processes for resolution of internal disputes

##### 98 Meaning of internal dispute

- (1) In this Act, unless the context otherwise requires, **internal dispute** means—
  - (a) a dispute arising between a registered member, or person claiming to be eligible to a registered member, and a waka umanga or any of its constituent groups, in relation to—
    - (i) membership of the waka umanga;
    - (ii) the rights and obligations of registered members;
    - (iii) a decision of the rūnanganui of the waka umanga;
    - (iv) a decision of a governor or employee of the waka umanga, acting in the capacity of a governor or employee, as the case may be;
    - (v) requests for information under **section 77**, to the extent provided for in **clause 22(6) of Schedule 2**;
    - (vi) other matters arising under this Act; and
  - (b) a dispute between or among constituent groups, subsidiaries, or associated entities and a waka umanga relating to—

- (i) their respective rights and obligations under this Act or the charter:
  - (ii) any of the matters under **paragraph (a)(iii) to (vi)**.
- (2) However, an internal dispute does not include—
- (a) matters that are within the exclusive jurisdiction of the Court under—
    - (i) Te Ture Whenua Maori Act 1993; or
    - (ii) the Maori Fisheries Act 2004; or
    - (iii) the Foreshore and Seabed Act 2004; or
    - (iv) the Maori Commercial Aquaculture Claims Settlement Act 2004; or
  - (b) matters that are, by virtue of an enactment, within the exclusive jurisdiction of another court or tribunal, such as employment matters, certain family relationship matters, or criminal matters.

### **99 Dispute resolution processes to be included in charter**

- (1) A waka umanga must include in its charter—
- (a) 1 or more dispute resolution processes that—
    - (i) are consistent with the principles of natural justice; and
    - (ii) provide, as far as possible, for resolution of internal disputes by the parties concerned; and
  - (b) procedures relevant for the implementation of those processes, including matters such as any timetable requirements.
- (2) To comply with **subsection (1)**, a waka umanga may—
- (a) adopt 1 or all of the dispute resolution processes set out in **Schedule 4**; or
  - (b) vary those processes in accordance with its own tikanga, as long as the conditions specified in **subsection (1)(a)** are met.

### **100 Further matters for charter**

In setting out dispute resolution processes for a waka umanga, a charter—

- (a) must provide that 1 or more of the dispute resolution processes set out in the charter must be followed in respect of an internal dispute before a party is entitled to issue proceedings in relation to that internal dispute, unless—

- (i) **section 103(1)(a)(ii)** applies; or
- (ii) an interim injunction is sought under **section 105**;  
and
- (b) may provide that internal disputes proceed through more than 1 kind of dispute resolution process, by commencing with the least formal process and, if the internal dispute is not resolved, proceeding to a more formal process.

#### **101 Disputes with other entities**

- (1) If a dispute arises between a waka umanga and a person or entity not subject to a dispute resolution process, the waka umanga and other entity may consent in writing to refer the dispute to a dispute resolution process under this subpart.
- (2) A referral under **subsection (1)** does not prejudice any rights the parties may have under other enactments or the common law.

#### Subpart 2—Jurisdiction of Māori Land Court

#### **102 Application of Te Ture Whenua Maori Act 1993**

- (1) The provisions of Te Ture Whenua Maori Act 1993 do not apply to the jurisdiction of the Court under this Act.
- (2) However, despite **subsection (1)**, the following provisions of Te Ture Whenua Maori Act 1993 apply, with the necessary modifications:
  - (a) sections 6 to 16 (which relate to the appointment and tenure of Judges); and
  - (b) section 24A (which provides for the powers of the Court under the Contracts (Privity) Act 1982 and the Contractual Remedies Act 1979); and
  - (c) sections 34 and 35 (which relate to additional members); and
  - (d) section 38 (which relates to the exercise of the powers of the Court by a Judge); and
  - (e) section 40 (which relates to the power of a Judge to refer matters to a Registrar of the Court); and
  - (f) sections 42 and 43 (which relate to orders of, and rehearings by, the Court); and
  - (g) the provisions of Part 3 (which relate to both the Māori Land Court and the Māori Appellate Court); but—
    - (i) only as far as they relate to the Māori Land Court and are applicable under this Act; and

- (ii) not including sections 76, 77, 82 to 84, or 87; and
  - (h) provisions of Te Ture Whenua Maori Act 1993 expressly applied by or under this Act.
- (3) To the extent that they are not inconsistent with this Act, the Māori Land Court Rules 1994, or any alternative or additional rules made under section 95 of Te Ture Whenua Maori Act 1993, apply to the jurisdiction of the Court under this Act.

*Applications to Māori Land Court*

**103 What applications may be made to Court**

- (1) Applications may be made to the Court in relation to—
- (a) an internal dispute, if—
    - (i) the dispute resolution processes provided for by the charter have been undertaken in good faith in relation to the internal dispute, but have failed to resolve it; or
    - (ii) in the opinion of the parties and with the concurrence of the Court, it is inappropriate to order the parties to engage in a dispute resolution process; or
    - (iii) any timetable or other procedural requirements set out in the charter for a dispute resolution process have not been complied with; or
    - (iv) an injunction is sought under **section 105**:
  - (b) an internal dispute, to enforce a settlement agreement entered into in the course of a dispute resolution process provided for by the charter of the waka umanga, if the agreement has not been complied with in accordance with the terms of that agreement:
  - (c) a review of a scheme plan of a waka pū seeking recognition, as provided for by **section 31**:
  - (d) an objection to the proposed name of a waka umanga, as provided for in **section 37**:
  - (e) an objection to the registration of a waka umanga under **section 46 or 47**:
  - (f) the imposition of an administrative penalty by the Registrar under **section 166**:
  - (g) a dispute that relates to other duties imposed by this Act.
- (2) **Schedule 5** applies to applications made to the Court under this subpart.

#### **104 Who may make applications**

- (1) An application may be made to the Court—
  - (a) under **section 103(1)(a), (b), or (g)**, by 1 or more parties to the dispute; and
  - (b) under **section 103(1)(c) to (e)**, by—
    - (i) not fewer than 15 persons claiming that they are affected by the proposed scheme plan, proposed name of the waka umanga, or application to register a waka umanga, as the case may be; or
    - (ii) a proposed constituent group of a waka umanga; or
    - (iii) a group that believes it is entitled to be a constituent group of a waka umanga; or
    - (iv) an existing entity or associated entity that is affected by a proposal to form and register a waka umanga; and
  - (c) under **section 103(1)(f)**, by the waka umanga or the person on which or whom the penalty is imposed.
- (2) A Judge may waive the requirement of **subsection (1)(b)(i)** if the Judge is satisfied that the application—
  - (a) requires an urgent hearing, and it is not practicable to require the application to be made by the required number of persons; or
  - (b) affects fewer than the specified number of persons.

#### **105 Injunctions**

- (1) The Court may, at any time, by order grant an interim injunction in relation to an application made under **section 103** if, in the opinion of the Court,—
  - (a) the waka umanga, its governors, its employees, or any of its constituent groups, subsidiaries, or registered members are acting in a manner contrary to this Act or the charter of the waka umanga; and
  - (b) it is necessary to do so to preserve the position of the applicant.
- (2) The Court may, by way of injunction, grant a final order to restrain a person or body from a threatened or actual breach of this Act or the charter of a waka umanga.
- (3) **Clause 9 of Schedule 5** applies to the Court's jurisdiction to grant injunctions.



*Review of scheme plans*

**106 Powers of Court to review scheme plan**

- (1) In determining an application made under **section 31(1)** to review a scheme plan of a waka pū, the Court must consider whether—
  - (a) the scheme promoters have given adequate notice to, and consulted with, the affected constituent groups; and
  - (b) the process (or the proposed process) for deciding whether a particular constituent group is to be included in or excluded from the waka umanga is fair; and
  - (c) the scheme promoters have acted, or propose to act, fairly in their implementation of the scheme plan.
- (2) In considering the matters provided for by **subsection (1)**, the Court may determine whether the scheme plan—
  - (a) includes adequate voting procedures, including appropriate criteria to determine who may vote at the meetings of the tribal group or of any constituent group; and
  - (b) has adequate provisions to take account of the tikanga and traditional decision-making of the tribal group (provided they do not conflict with the requirements of natural justice and human rights); and
  - (c) otherwise provides for a fair process.

**107 Determination of Court**

- (1) If the Court finds that the applicants are, or are likely to be, unduly prejudiced by the scheme plan reviewed under **section 106**, it may direct, on any terms and conditions it considers appropriate, that—
  - (a) changes be made to the scheme plan; or
  - (b) any step in the scheme plan be varied or taken again.
- (2) In making orders under **subsection (1)**, the Court may—
  - (a) direct the scheme promoters to take action to remove the prejudice and, if the Court thinks fit, prescribe the action that the promoters must take;
  - (b) direct that elections be held and how those elections must be conducted;
  - (c) direct that an amended scheme plan be prepared, prescribing the matters to be included in that plan;
  - (d) grant leave for 1 or more of the parties to bring the matter back to the Court if—

- (i) implementation of the directions is not practicable; or
  - (ii) the directions have not been implemented.
- (3) Despite **subsections (1) and (2)**, the Court must not give directions—
  - (a) as to the merits of the proposal to form and register a recognised waka pū, unless the parties consent to the Court—
    - (i) determining that matter; and
    - (ii) including that determination in an order of the Court; or
  - (b) determining the most appropriate representatives of a class or group of Māori.

*Objections to registration*

**108 Jurisdiction of Court to determine objections to registration**

- (1) If a notice of objection is received by the Court under **section 46 or 47** within the specified time, the Court may—
  - (a) uphold or dismiss the objection and direct the Registrar as to whether the registration may proceed; or
  - (b) make the relevant orders, as set out in **subsection (2), (3), or (4)**.
- (2) In the case of a notice received under **section 46**, the Court may—
  - (a) order a change to the proposed name of the waka umanga; or
  - (b) refer any objection relating to the draft charter to the tribal group or Māori association, with any directions necessary to ensure that—
    - (i) any amendments to the draft charter are considered;
    - (ii) a fair process is followed; or
  - (c) with the consent of the parties, refer the matter to a mediator appointed by the Court in accordance with **clause 6 of Schedule 5** or to another agreed dispute resolution process.
- (3) In the case of a notice received under **section 47**, the Court may—
  - (a) make any order referred to in **subsection (2)**; or

- (b) direct that all or part of the formation process be undertaken, or undertaken again, in the manner and on conditions that the Court directs; or
  - (c) direct the parties to take steps to resolve specified issues and report back to the Court for a final determination; or
  - (d) order that a waka pū be recognised as the legitimate representative of the relevant tribal group.
- (4) If an objection relates to the inclusion or exclusion of a constituent group of a waka umanga, the Court may order that a waka umanga be registered and granted recognition, as proposed, if a majority of the constituent groups of the waka umanga have voted in favour of the proposal.
- (5) However, an order must not be made under **subsection (4)** unless the Court is satisfied that the prejudice to the whole tribal group from including or excluding a constituent group would be likely to exceed the prejudice to that constituent group by its inclusion or exclusion.

*Transfer to High Court*

**109 Transfer of proceedings to High Court**

- (1) Any application to the Māori Land Court under this Act may, at any time before the proceedings are heard in that Court, be transferred to the High Court—
- (a) on application by an applicant or defendant to the proceedings; or
  - (b) with the consent of the parties; or
  - (c) by the Māori Land Court, of its own motion.
- (2) **Subsection (1)** does not exclude proceedings being transferred to the High Court after the hearing of any related interlocutory application in the Māori Land Court.
- (3) If all the parties to the proceedings consent to transferring the proceedings, the Māori Land Court must order the transfer unless—
- (a) there are related proceedings in that Court; and
  - (b) the interests of justice require that they be heard together.
- (4) However, if an application to transfer proceedings is opposed by a party or if the Māori Land Court of its own motion proposes to transfer proceedings, that Court must, before

determining whether or not to transfer proceedings, consider—

- (a) the views of all the parties; and
- (b) whether the dispute that is the subject of the application relates primarily to tikanga Māori or other matters within the specialist expertise of the Māori Land Court; and
- (c) whether there are related proceedings in the Māori Land Court or the High Court; and
- (d) where the balance of convenience lies for the parties, having regard to the likely costs and any delay; and
- (e) whether the proceedings raise issues of public importance that should be determined at first instance by the High Court; and
- (f) any other matter that, in the opinion of the Māori Land Court, it should have regard to in the public interest.

### Subpart 3—Appeals

#### **110 Appeals to High Court**

- (1) Appeals against the whole or part of any interlocutory or final order of the Māori Land Court under this Act may be made only to the High Court.
- (2) However, an appeal must not be brought under **subsection (1)** if, before the final order of the Māori Land Court was made, all parties to the proceedings agreed in writing not to appeal against an order of the Māori Land Court in those proceedings.
- (3) An appeal against an interlocutory order of the Māori Land Court may only be made by leave of that Court or, if leave is declined, by leave of the High Court.

#### **111 Scope of appeal rights**

An appeal to the High Court may be brought by—

- (a) a party to the proceedings in which an order under appeal was made by the Māori Land Court; or
- (b) any other person who is bound by the order of the Māori Land Court or materially affected by that order.

#### **112 Hearing of appeal**

- (1) An appeal to the High Court is by way of rehearing.

- (2) No party to the appeal may produce evidence that was not produced in the Māori Land Court.
- (3) However, the High Court may allow further evidence to be produced if, in its opinion, it is necessary to enable a just determination of the appeal.

**113 Powers of High Court on appeal**

In determining an appeal under this subpart, the High Court may—

- (a) make the decision it thinks should have been made by the Māori Land Court; or
- (b) direct the Māori Land Court to rehear the proceedings as a whole or any specified part of the proceedings; or
- (c) make any further orders that it thinks fit, including orders as to costs.

**114 Appeals to Court of Appeal**

- (1) A party may, without leave, appeal to the Court of Appeal in relation to a matter transferred from the Māori Land Court to the High Court under **section 109**.
- (2) A party may appeal to the Court of Appeal against a determination of the High Court under **section 110** on a point of law—
  - (a) by leave of the High Court; or
  - (b) if leave is declined by the High Court, by leave of the Court of Appeal.

**115 Appeals to Supreme Court**

A party to an appeal under **section 114** may, with the leave of the Supreme Court, appeal on a point of law to the Supreme Court against all or part of the determination of the Court of Appeal.

*Judicial intervention, voluntary administration,  
and liquidation*

**116 Purpose of subparts 4 to 6**

The purpose of **subparts 4 to 6** is to provide for—

- (a) the Māori Land Court to make certain orders in relation to the affairs and administration of a waka umanga; and
- (b) the voluntary administration of a waka umanga in financial difficulty; and

- (c) the liquidation of a waka umanga in financial difficulty that cannot be overcome or where its members wish to bring its existence to an end.

#### Subpart 4—Judicial intervention

##### 117 Who may apply

The following persons may apply to the Court for 1 or more orders under **section 119**:

- (a) 15 or more members of the waka umanga;
- (b) the Registrar;
- (c) a secured creditor of the waka umanga.

##### 118 Grounds

An application for an order under **section 119** may be made only on one or both of the following grounds:

- (a) that the waka umanga, its rūnanganui, any governors of its rūnanganui, or any of the employees of the waka umanga, has acted, is acting, or proposes to act in a manner that is inconsistent with this Act or the charter of the waka umanga; or
- (b) that the rūnanganui of the waka umanga cannot function because of—
  - (i) a lack of a quorum; or
  - (ii) substantial disagreement.

##### 119 Orders

- (1) The Court may make 1 or more of the orders specified in **subsection (2)** only if the Court is satisfied that—
  - (a) the applicant has made out—
    - (i) one or both of the grounds in **section 118**; and
    - (ii) where relevant, the additional ground specified in **subsection (2)(d) or (e)**; and
  - (b) the making of the order or orders is the most appropriate way to remedy the matter or matters in relation to which the orders are sought.
- (2) The orders are as follows:
  - (a) an order appointing 1 or more persons to review and prepare a report on the activities and operations of the rūnanganui and the waka umanga:

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- (b) an order requiring the rūnanganui, a governor of the rūnanganui, or an employee of the waka umanga to act or omit to act in accordance with this Act or its charter:
  - (c) an order declaring a provision of the charter of the waka umanga to be inconsistent with this Act:
  - (d) an order removing a governor of the rūnanganui of the waka umanga on the ground that the governor is not eligible to hold office under the provisions of this Act or of the charter of the waka umanga:
  - (e) an order removing a governor of the rūnanganui of the waka umanga on the ground—
    - (i) that the governor has failed to comply with any obligation imposed on a governor by this Act or the charter of the waka umanga; or
    - (ii) that it is in the best interests of the waka umanga to remove the governor:
  - (f) an order requiring an election to be held to fill a vacancy in the rūnanganui of the waka umanga:
  - (g) an order appointing 1 or more persons to be governors of the rūnanganui of the waka umanga for a specified period for specified purposes:
  - (h) an order suspending some or all of the powers and functions of the rūnanganui of the waka umanga, and appointing a commissioner to exercise the suspended powers and functions:
  - (i) an order referring any matter to the Attorney-General to determine whether criminal proceedings in relation to the matter should be brought:
  - (j) an order requiring a governor of the rūnanganui of the waka umanga to pay compensation to a member of the waka umanga for any loss the member has suffered as a result of the governor failing to comply with any obligation imposed on a governor by this Act:
  - (k) any other order that is appropriate to remedy the matter or matters made out by the applicant.
- (3) An order made under **subsection (2)(a) to (h), (j), or (k)** may be made on any terms and conditions that the Court considers appropriate.

## Subpart 5—Voluntary administration

### 120 Purpose of voluntary administration

The purpose of voluntary administration is to provide for the operations, property, and activities of a waka umanga that is insolvent or that may become insolvent to be administered in a way that—

- (a) maximises the chances of the waka umanga continuing in existence; or
- (b) if that is not possible, results in a better return for the creditors and members of the waka umanga than would result from an immediate liquidation of the waka umanga.

### 121 Who may appoint administrator

- (1) An administrator may be appointed to a waka umanga by—
  - (a) the rūnanganui of the waka umanga; or
  - (b) if the waka umanga is in liquidation, the liquidator; or
  - (c) if an interim liquidator has been appointed, the interim liquidator; or
  - (d) a secured creditor holding a charge over the whole, or substantially the whole, of the property of the waka umanga (other than any protected assets); or
  - (e) the Court.
- (2) If the waka umanga is already in administration, an administrator may be appointed only by—
  - (a) the Court; or
  - (b) the creditors, as a replacement administrator for an administrator that the creditors have removed; or
  - (c) the appointor of the first administrator, if that administrator has died, resigned, or become disqualified.

### 122 Appointment by rūnanganui

- (1) The rūnanganui of a waka umanga may appoint an administrator if the rūnanganui has resolved that,—
  - (a) in the opinion of the governors voting for the resolution, the waka umanga is insolvent or may become insolvent; and
  - (b) an administrator of the waka umanga should be appointed.
- (2) To avoid doubt, the provisions of **sections 61 to 63** apply in relation to the appointment of an administrator.



- (3) The appointment must be in writing and must state the date of the appointment.
- (4) The rūnanganui must not appoint an administrator if the waka umanga is already in liquidation.
- (5) If an application has been filed for the appointment of a liquidator of the waka umanga by the Court under section 241(2)(c) of the Companies Act 1993 (as applied by **section 131(2)** of this Act), the rūnanganui may appoint an administrator only if the administrator is appointed within 10 working days after service on the waka umanga of the application.
- (6) **Subsection 5** does not apply once the application has been finally disposed of.

### **123 Appointment by liquidator or interim liquidator**

- (1) The liquidator or interim liquidator of a waka umanga may appoint an administrator if he or she thinks that the waka umanga is insolvent or is likely to become insolvent.
- (2) The appointment must be in writing and must state the date of the appointment.
- (3) The liquidator or interim liquidator may appoint himself or herself administrator if he or she first obtains—
  - (a) the permission of the Court; or
  - (b) in the case of a liquidator but not an interim liquidator, the approval of the creditors of the waka umanga in the form of a resolution passed at a meeting of the creditors.
- (4) A liquidator or interim liquidator must not appoint as administrator a person who is the liquidator's or interim liquidator's business or professional partner, employer, or employee, unless the appointment has been approved by the creditors of the waka umanga in the form of a resolution passed at a creditors' meeting.
- (5) An administrator who is appointed to a company already in liquidation may apply to the Court for an order under section 250 of the Companies Act 1993 (as applied by **section 129(3) or 131(2)** of this Act) terminating the liquidation.

### **124 Appointment by secured creditor**

- (1) A person who holds a charge over the whole, or substantially the whole, of the property of a waka umanga (other than any

protected assets) may appoint an administrator if the charge has become, and is still, enforceable.

- (2) The appointment must be in writing and must state the date of the appointment.
- (3) A secured creditor must not appoint an administrator if the waka umanga is already in liquidation.

### **125 Appointment by Court**

- (1) The Court may appoint an administrator on the application of a creditor, the liquidator (if the waka umanga is in liquidation), or the Registrar.
- (2) The Court may appoint an administrator if—
  - (a) the Court is satisfied that the waka umanga is or may become insolvent and that an administration is likely to result in a better return for the creditors and members of the waka umanga than would result from an immediate liquidation of the waka umanga; or
  - (b) it is just and equitable to do so.

### **126 Administrator's role**

- (1) While a waka umanga is in administration, the administrator—
  - (a) has control of the operations, property, and activities of the waka umanga; and
  - (b) may carry on and manage the operations, property, and activities; and
  - (c) may terminate or dispose of all or part of the operations, property, and activities; and
  - (d) may perform any function, and exercise any power, that the waka umanga or any of its officers could perform or exercise if the waka umanga were not in administration.
- (2) However, an administrator must not dispose of any property of a waka umanga that is a protected asset except with the prior consent of the Court.

### **127 Application of Part 15A of the Companies Act 1993**

- (1) Part 15A of the Companies Act 1993 applies in relation to a waka umanga in voluntary administration (with all necessary modifications) as if the waka umanga were a company in voluntary administration under that Act.

- (2) For the purposes of **subsection 1**, Part 15A of the Companies Act 1993 applies as if—
  - (a) references to “company” were references to “waka umanga”; and
  - (b) references to “board” were references to “rūnanganui”; and
  - (c) references to “director” were references to “governor”; and
  - (d) references to “Court” were references to the “Māori Land Court”; and
  - (e) references to “Registrar” were references to the “Registrar of Waka Umanga”.
- (3) This section applies subject to the other provisions of this subpart.

**128 Application of section 239AB of Companies Act 1993 to subsidiary of waka umanga**

Section 239AB(2) and (3) of the Companies Act 1993 do not apply to a company that is a subsidiary of a waka umanga.

Subpart 6—Liquidation

**129 Members may resolve to put waka umanga into liquidation**

- (1) A waka umanga may be put into liquidation if—
  - (a) the waka umanga, at a general meeting of its members, passes a resolution appointing a liquidator; and
  - (b) the resolution is confirmed at a subsequent general meeting of the waka umanga called for the purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.
- (2) For the purposes of **subsection (1)**, a resolution is passed or confirmed if the resolution or confirmation is carried by a majority of the valid votes cast by registered members voting at the general meeting in person or, if so allowed by the charter of the waka umanga, by proxy.
- (3) Part 16 and Part 17 (to the extent that Part 17 relates to liquidations) of the Companies Act 1993 apply to the liquidation of the waka umanga, with such modifications as may be necessary, as if the waka umanga were a company that had been put into liquidation under section 241(2)(a) of that Act.

- (4) **Subsection (3)** applies subject to the other provisions of this subpart.
- (5) Without limiting **subsection (4)**, the Registrar must not remove a waka umanga from the register without the prior approval of the Court.

**130 Court may put waka umanga into liquidation**

- (1) A waka umanga may be put into liquidation by the Court appointing, as liquidator, a named person or an Official Assignee for a named district.
- (2) The grounds on which the Court may appoint a liquidator to a waka umanga are—
  - (a) that the waka umanga does not have the resources to—
    - (i) comply with this Act; or
    - (ii) pay its debts as and when they fall due for payment; or
  - (b) that there has been a fundamental change in the circumstances of the members of the waka umanga such that the waka umanga can no longer perform its role; or
  - (c) that the Court is satisfied that putting the waka umanga into liquidation accords with the views of the membership of the waka umanga.

**131 Application to Court to appoint liquidator**

- (1) An application to the Court for the appointment of a liquidator of a waka umanga may be made by—
  - (a) the waka umanga; or
  - (b) not fewer than 15 members of the waka umanga; or
  - (c) a creditor of the waka umanga; or
  - (d) the Registrar.
- (2) Part 16 and Part 17 (to the extent that Part 17 relates to liquidations) of the Companies Act 1993 apply, with such modifications as may be necessary,—
  - (a) to the application for the appointment of a liquidator as if the application were an application under section 241(2)(c) of that Act; and
  - (b) to the liquidation as if the liquidator had been appointed under section 241(2)(c) of that Act.
- (3) **Subsection (2)** applies subject to the other provisions of this subpart.

- (4) Without limiting **subsection (3)**, the Registrar must not remove a waka umanga from the register without the prior approval of the Court.

### 132 Appointment of interim liquidator

- (1) If an application has been made to the Court for an order that a waka umanga be put into liquidation, the Court may, if it is satisfied that it is necessary or expedient for the purpose of maintaining the value of assets owned or managed by the waka umanga, appoint a named person, or an Official Assignee for a named district, as interim liquidator.
- (2) An interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the waka umanga.
- (3) However, the Court may limit the rights and powers of an interim liquidator in such manner as it thinks fit.
- (4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order appointing the interim liquidator is made.
- (5) The Court must record in the order appointing the interim liquidator the date on which, and the time at which, the order was made.
- (6) If any question arises as to whether, on the date on which an interim liquidator was appointed, an act was done or a transaction was entered into or effected before or after the time at which the interim liquidator was appointed, the act or transaction is, in the absence of proof to the contrary, to be treated as having been done or entered into or effected, as the case may be, after that time.

### 133 Vesting of surplus assets

- (1) On the liquidation of a waka umanga or its dissolution by the Registrar all surplus assets (after payment of all costs, debts, and liabilities) must be disposed of in accordance with the charter of the waka umanga.
- (2) However, **subsection (1)** does not apply to the extent that—
- (a) the surplus assets cannot be disposed of in accordance with the charter of the waka umanga; or
  - (b) the surplus assets are subject to a trust; or

- (c) the disposition of the surplus assets would be inconsistent with this Act.
- (3) Any surplus assets that cannot be disposed of under **subsection (1)** are to be held by the Māori Trustee, or a trustee company (within the meaning of the Trustee Companies Act 1967) appointed by the Court, pending an order of the Court under **subsection (4)**.
- (4) For the purposes of **subsection (3)**, the Court may give 1 or more of the following directions:
  - (a) a direction vesting all or any of the assets of the waka umanga without transfer, conveyance, or assignment in the person or persons specified in the direction, subject to all charges, encumbrances, estates, and interests affecting the assets:
  - (b) if anything remains to be done to complete any matters outstanding on the liquidation or dissolution of the waka umanga or to provide for the payment of all costs, debts, and liabilities of and in relation to the waka umanga and its liquidation or dissolution, a direction that may be necessary or expedient to make provision for the completion and payment:
  - (c) a direction conferring on any person the powers that may be necessary or expedient to enable the person to carry out the functions and duties imposed on him or her by any direction given under this section.
- (5) Every direction given under **subsection (4)** has effect according to its tenor as soon as the direction becomes final.
- (6) For the purposes of **subsection (5)**, a direction becomes final on the latest of the following dates:
  - (a) any date specified in the direction:
  - (b) the date by which an appeal may be lodged against the direction and no appeal has been lodged:
  - (c) if an appeal has been lodged against the direction, the date by which the appeal has been finally disposed of.

#### **134 Directions relating to Land Transfer land**

- (1) This section applies in relation to a direction under **section 133** that vests any estate or interest in land under the Land Transfer Act 1952 in any person.
- (2) The Registrar-General of Land, on application made to him or her by the person concerned, must make such entries in the

register and generally do all the things that may be necessary to give effect to the direction.

- (3) For the purposes of **subsection (2)**, the person making the application must—
- (a) make the application on the prescribed form, if one has been prescribed; and
  - (b) deposit such documents or plans as the Registrar-General of Land may require.

## Part 5

### Registration of existing entities, and miscellaneous matters

#### 135 Purpose of subparts 1 to 6

The purpose of **subparts 1 to 6** is to—

- (a) provide for the registration of Maori Trust Boards, incorporated societies, and trusts as waka umanga; and
- (b) clarify the effect of registration of these entities as waka umanga for the purposes of Inland Revenue legislation.

#### 136 Interpretation

In **subparts 1 to 6**, unless the context otherwise requires,—

**incorporated society** means a society incorporated under the Incorporated Societies Act 1908

**trust** means a trust that the Trustee Act 1956 applies to.

#### Subpart 1—Registration of Maori Trust Board as waka umanga

#### 137 When Maori Trust Board may apply for registration as waka umanga

- (1) A Maori Trust Board may apply to be registered as a waka umanga if—
- (a) a resolution authorising the Board to do so is passed at a duly constituted meeting of the Board by not less than 75% of the Board's members who are present and cast a valid vote; and
  - (b) the resolution passed under **paragraph (a)** is confirmed in a postal ballot of the Board's adult beneficiaries by not less than 75% of the adult beneficiaries who cast a valid vote; and

- (c) the Minister of Māori Affairs has (whether before or after the passing of the resolution under **paragraph (a)** or the confirmation of the resolution under **paragraph (b)**) given his or her consent in writing to the Board applying to be registered as a waka umanga.
- (2) A postal ballot conducted for the purposes of **subsection (1)(b)** must be conducted in accordance with the provisions of the Maori Trust Boards Act 1955 relating to the election of members by postal ballot, and those provisions (with all necessary modifications) apply accordingly.

**138 Maori Trust Board authorised to apply for registration as waka umanga must comply with Part 2**

- (1) A Maori Trust Board that is authorised under **section 137** to apply for registration as a waka umanga must, as soon as is reasonably practicable, proceed to seek registration as a waka umanga in accordance with **Part 2**.
- (2) For the purposes of **section 43**, an application by a Maori Trust Board for registration as a waka umanga must include, in addition to the matters specified in **section 43**,—
  - (a) copies of the resolution, confirmation, and consent under **section 137(1)**; and
  - (b) a copy of the roll of adult beneficiaries prepared under section 42 of the Maori Trust Boards Act 1955; and
  - (c) a statutory declaration by a member of the Board stating either—
    - (i) that the membership of the waka umanga will comprise the same persons as in the copy of the roll provided under **paragraph (b)**; or
    - (ii) that the membership of the waka umanga will not be the same as the persons in the copy of the roll provided under **paragraph (b)**, indicating in general terms how and why it differs; and
  - (d) a copy of the Board's most recent statement furnished to the Minister of Māori Affairs under section 32 of the Maori Trust Boards Act 1955 (together with the documents required to accompany it), and the Minister's approval under section 32(2) of that Act; and
  - (e) a list of the members of the Board and the date on which each person was elected as a member of the Board.



**139 Registrar must not register Maori Trust Board as waka umanga until Order in Council made**

The Registrar must not register a Maori Trust Board as a waka umanga until an Order in Council is made under **section 140**.

**140 Order in Council declaring Maori Trust Board registered as waka umanga ceases to be Maori Trust Board**

- (1) The Governor-General may by Order in Council declare that a Maori Trust Board, on and from the date of its registration as a waka umanga, ceases to be a Maori Trust Board.
- (2) An Order in Council under **subsection (1)** may be made only—
  - (a) on the recommendation of the Minister of Māori Affairs; and
  - (b) after the Minister of Māori Affairs has been advised by the Registrar that the registration of the Maori Trust Board as a waka umanga is ready to proceed.

**141 Effect of registration**

- (1) On and from the date on which the Maori Trust Board is registered as a waka umanga, the Maori Trust Board ceases to be a Maori Trust Board under the Maori Trust Boards Act 1955, and that Act ceases to apply to it.
- (2) The registration of a Maori Trust Board as a waka umanga does not—
  - (a) create a new legal entity; or
  - (b) affect proceedings by or against the Maori Trust Board immediately before its registration as a waka umanga.
- (3) The property, rights, and obligations of the Maori Trust Board immediately before its registration as a waka umanga become the property, rights, and obligations of the waka umanga.
- (4) Proceedings that could have been commenced or continued by or against the Maori Trust Board before its registration as a waka umanga may be commenced or continued by or against the waka umanga.

**142 Continuation of certain provisions of Maori Trust Boards Act 1955**

- (1) Despite **section 141**, if a provision of the Maori Trust Boards Act 1955 specified in **subsection (2)** applied to a Maori Trust

Board immediately before its registration as a waka umanga, the provision continues to apply as if the waka umanga were the Maori Trust Board concerned.

- (2) The provisions are sections 10(2) and (3), 19A, 24A, and 41A of the Maori Trust Boards Act 1955.

#### **143 Taxes and duties**

- (1) This section applies for the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) and any other enactment that imposes or provides for the collection of any tax, duty, levy, rate, or other charge.
- (2) Any declaration of trust executed by a Maori Trust Board under section 24B of the Maori Trust Boards Act 1955 and approved by the Commissioner under that section before the registration of the Maori Trust Board as a waka umanga—
  - (a) applies only in relation to property that before the registration was acquired by or vested in the Board and (before that date) has been subjected to that declaration of trust; but
  - (b) does not apply to—
    - (i) any redress provided under a deed of settlement or any other property acquired by or vested in the Maori Trust Board pursuant to or consequent upon the settlement of the Board's historical claims against the Crown in respect of the Crown's breaches of its obligations under the Treaty of Waitangi; or
    - (ii) any property acquired by or vested in the Board on or after its registration as a waka umanga under this Act.

#### **144 Final accounts of waka umanga as Maori Trust Board**

- (1) As soon as is reasonably practicable after the registration of a Maori Trust Board as a waka umanga, the waka umanga must cause to be prepared final accounts of the Maori Trust Board as at the close of the day immediately before the date on which it was registered as a waka umanga.
- (2) A copy of the final accounts, together with a copy of the report of the Auditor-General on the accounts, must be sent by the waka umanga to the Minister of Māori Affairs.

- (3) A copy of the final accounts, together with a copy of the report of the Auditor-General on the accounts, must be presented to the House of Representatives by the Minister of Māori Affairs as soon as practicable after their receipt by the Minister.

### Subpart 2—Registration of incorporated society as waka umanga

#### **145 When incorporated society may apply for registration as waka umanga**

- (1) The officers of an incorporated society may apply for the incorporated society of which they are officers to be registered as a waka umanga if—
  - (a) the society at a general meeting of its members passes a resolution authorising the society's officers to do so; and
  - (b) the resolution passed under **paragraph (a)** is confirmed by another resolution passed at a general meeting of the society's members held not earlier than 30 days after the date on which the resolution to be confirmed was passed.
- (2) In **subsection (1)**, **resolution** means a resolution carried by a majority of the valid votes cast by members voting—
  - (a) at the general meeting in person; or
  - (b) if allowed by the society's rules, by proxy.

#### **146 Incorporated society authorised to apply for registration as waka umanga must comply with Part 2**

- (1) The officers of an incorporated society authorised under **section 145** to apply for registration of the society as a waka umanga must, as soon as is reasonably practicable, proceed to apply for the society to be registered as a waka umanga in accordance with **Part 2**.
- (2) For the purposes of **section 43**, an application to register an incorporated society as a waka umanga must include copies of the resolutions passed under **section 145(1)**.

#### **147 Effect of registration of incorporated society as waka umanga**

- (1) On and from the date on which an incorporated society is registered as a waka umanga, the society—

- (a) ceases to be an incorporated society under the Incorporated Societies Act 1908, and that Act ceases to apply to it; and
  - (b) becomes a waka umanga.
- (2) The registration of an incorporated society as a waka umanga does not—
- (a) create a new legal entity; or
  - (b) affect proceedings by or against the society immediately before its registration as a waka umanga.
- (3) The property, rights, and obligations of the incorporated society immediately before its registration as a waka umanga become the property, rights, and obligations of the waka umanga.
- (4) Proceedings that could have been commenced or continued by or against the incorporated society before its registration as a waka umanga may be commenced or continued by or against the waka umanga.

**148 Final accounts of waka umanga as incorporated society**

- (1) As soon as is reasonably practicable after the registration of an incorporated society as a waka umanga comes into effect, the waka umanga must cause to be prepared final accounts of the incorporated society as at the close of the day immediately before the date on which its registration as a waka umanga came into effect.
- (2) A copy of the final accounts must be made available, on request, to any person who, immediately before the registration of the incorporated society as a waka umanga, was a member of the incorporated society.

**Subpart 3—Registration of trust as waka umanga**

**149 Application**

This subpart does not apply to a trust that is a charitable trust.

**150 When trustees of trust may apply for registration as waka umanga**

- (1) The trustees of a trust may apply for the trust to be registered as a waka umanga if—
- (a) a resolution authorising the trustees to do so is passed at a duly constituted meeting of the adult beneficiaries of

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- the trust by not less than 75% of the adult beneficiaries who are present and cast a valid vote; and
- (b) the resolution passed under **paragraph (a)** is confirmed at a subsequent meeting of adult beneficiaries by not less than 75% of the adult beneficiaries who are present and cast a valid vote; and
  - (c) the Court has approved the resolution and the confirmation of the resolution.
- (2) A meeting of adult beneficiaries to be held for the purposes of **subsection (1)** must not be held before a written notice is sent to each adult beneficiary—
- (a) specifying the date, time, place, and purpose of the meeting; and
  - (b) not less than 1 month before the date of the meeting.
- (3) The Court must not approve a resolution and its confirmation under this section unless satisfied that the adult beneficiaries who did not vote in favour of the resolution or its confirmation will not be unfairly prejudiced by the registration of the trust as a waka umanga.

**151 Trustees authorised to apply for registration of trust as waka umanga must comply with Part 2**

- (1) Trustees authorised under **section 150** to apply for registration of the trust as a waka umanga must, as soon as is reasonably practicable, proceed to seek registration as a waka umanga in accordance with **Part 2**.
- (2) For the purposes of **section 43**, an application by the trustees for registration of the trust as a waka umanga must include, in addition to the matters specified in **section 43**, copies of the resolutions passed under **section 150(1)(a) and (b)** and the Court order made under **section 150(1)(c)**.

**152 Effect of registration of trust as waka umanga**

- (1) On and from the date on which a trust is registered as a waka umanga, the trust comes to an end and is cancelled.
- (2) The registration of a trust as a waka umanga does not affect proceedings by or against the trustees in relation to the trust immediately before its registration as a waka umanga.
- (3) The property, rights, and obligations of the trustees in relation to the trust immediately before its registration as a waka

umanga become the property, rights, and obligations of the waka umanga.

- (4) Proceedings that could have been commenced or continued by or against the trustees in relation to the trust before its registration as a waka umanga may be commenced or continued by or against the waka umanga.

**153 Final accounts of waka umanga as trust**

- (1) As soon as is reasonably practicable after the registration of a trust as a waka umanga comes into effect, the waka umanga must cause to be prepared final accounts of the trust as at the close of the day immediately before the date on which its registration as a waka umanga came into effect.
- (2) A copy of the final accounts must be made available, on request, to any person who, immediately before the registration of the trust as a waka umanga, was a beneficiary of the trust.

**Subpart 4—Registration of charitable trust**

**154 When trustees of charitable trust may apply for registration as waka umanga**

- (1) The trustees of a charitable trust may apply for the trust to be registered as a waka umanga if—
  - (a) a resolution authorising them to do so is passed at a duly constituted meeting of the trustees by not less than 75% of trustees who are present and cast a valid vote; and
  - (b) the Court has approved the resolution.
- (2) The Court must not approve a resolution unless—
  - (a) a copy of the application has been served on the Attorney-General, and the Court has heard any submissions that the Attorney-General wishes to make on the matter; and
  - (b) a copy of the application has been served on any other persons that the Court considers appropriate, and the Court has heard any submissions that those persons wish to make on the matter.
- (3) For the purposes of deciding whether to give its approval, the Court may require the applicants to convene meetings of any groups of persons the Court considers appropriate in order to ascertain their views on the matter.

**155 Trustees authorised to apply for registration of charitable trust as waka umanga must comply with Part 2**

- (1) Trustees authorised under **section 154** to apply for registration of the charitable trust as a waka umanga must, as soon as is reasonably practicable, proceed to seek registration as a waka umanga in accordance with **Part 2**.
- (2) For the purposes of **section 43**, an application by the trustees for registration of the trust as a waka umanga must include, in addition to the matters specified in **section 43**, copies of the resolution passed under **section 154(1)(a)** and the Court order made under **section 154(1)(b)**.

**156 Effect on registration of charitable trust as waka umanga**

- (1) On and from the date on which a charitable trust is registered as a waka umanga, the trust comes to an end and is cancelled.
- (2) If the charitable trust is registered as a charitable trust board under the Charitable Trusts Act 1957, the charitable trust ceases to be a charitable trust board under that Act, and that Act ceases to apply to it.
- (3) The registration of a charitable trust as a waka umanga does not affect proceedings by or against the trustees in relation to the trust immediately before its registration as a waka umanga.
- (4) The property, rights, and obligations of the trustees in relation to the charitable trust immediately before its registration as a waka umanga become the property, rights, and obligations of the waka umanga.
- (5) Proceedings that could have been commenced or continued by or against the trustees in relation to the charitable trust before its registration as a waka umanga may be commenced or continued by or against the waka umanga.

**157 Final accounts of waka umanga as charitable trust**

- (1) As soon as is reasonably practicable after the registration of a charitable trust as a waka umanga comes into effect, the waka umanga must cause to be prepared final accounts of the trust as at the close of the day immediately before the date on which its registration as a waka umanga came into effect.

- (2) A copy of the final accounts must be forwarded to the Attorney-General.

### Subpart 5—Taxes and duties

#### **158 Taxes and duties**

- (1) This section applies—
- (a) for the purpose of the Inland Revenue Acts and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge; and
  - (b) only if the membership of an organisation immediately before and immediately after its registration as a waka umanga is the same or substantially the same.
- (2) A waka umanga registered as a result of an authorisation given under this Part and the organisation that it was immediately before its registration as a waka umanga are to be treated as the same person in relation to the property, rights, and obligations of the organisation that, on the registration of the organisation as a waka umanga, become the property, rights, and obligations of the waka umanga.
- (3) All transactions entered into by, and all acts of, the organisation before its registration as a waka umanga in relation to those property, rights, and obligations are to be treated as having been entered into or performed by the waka umanga on the date on which they were entered into or performed by the organisation.
- (4) In this section,—
- Inland Revenue Acts** has the meaning given to it in section 3(1) of the Tax Administration Act 1994
- membership** means,—
- (a) in relation to a Maori Trust Board, the adult beneficiaries of the Board:
  - (b) in relation to an incorporated society, the members of the society:
  - (c) in relation to a trust that is not a charitable trust, the adult beneficiaries of the trust:
  - (d) in relation to a charitable trust, the class or classes of persons who may receive benefits from the trust.
- organisation** means a Maori Trust Board, incorporated society, or trust authorised under this Part to register as a waka umanga.



Subpart 6—Other matters relating to registration of  
Maori Trust Boards, incorporated societies, and trusts as  
waka umanga

**159 Matters not affected by registration**

The registration of a waka umanga authorised under this Part—

- (a) is not to be treated as placing a person in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or as otherwise making the person guilty of a civil wrong; and
- (b) is not to be treated as entitling a person to—
  - (i) terminate or cancel or modify a contract, agreement, or arrangement; or
  - (ii) enforce or accelerate the performance of an obligation; or
  - (iii) require the performance of an obligation not otherwise arising for performance; and
- (c) does not release any surety wholly or in part from all or any obligation; and
- (d) does not invalidate or discharge any contract or security.

**160 Employees**

- (1) This section applies to a person who is an employee of a Maori Trust Board, incorporated society, or trust immediately before its registration as a waka umanga.
- (2) The registration does not affect the employee's employment agreement.
- (3) The employee is an employee of the waka umanga and, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of the employee,—
  - (a) his or her employment agreement is unbroken; and
  - (b) the period of his or her service with the Maori Trust Board, incorporated society, or trust, and every other period of service that is recognised by the Maori Trust Board, incorporated society, or trust as his or her continuous service, is a period of service with the waka umanga.

- (4) The terms and conditions of the employment of the employee with the waka umanga are (until varied) identical to the terms and conditions of his or her employment immediately before the registration and are capable of variation in the same manner.
- (5) The employee is not entitled to receive any payment or other benefit by reason only of the registration.

**161 References in documents**

On and from its registration as a waka umanga, references to a Maori Trust Board, incorporated society, or trust in any contract, lease, notice, order, proceedings, or other document has effect as a reference to the waka umanga.

**162 Records and registers**

- (1) Neither the Registrar-General of Land nor any other person charged with the keeping of any records or registers is obliged solely by reason of any provision of this Part to change any name in those records or registers or in any document.
- (2) In the absence of evidence to the contrary, it is sufficient proof that any property, rights, or obligations become, under this Part, the property, rights, and obligations of a waka umanga if a person presents to the Registrar-General of Land or the other person, as the case may require, an instrument, whether or not comprising an instrument of transfer,—
  - (a) executed or purporting to be executed by or on behalf of the waka umanga; and
  - (b) relating to any property, rights, or obligations in existence immediately before the registration of the waka umanga; and
  - (c) containing a recital that the property, rights, or obligations have become the property, rights, or obligations of the waka umanga under this Act.

*Miscellaneous matters*

**163 Outline of subparts 7 and 8**

**Subparts 7 and 8** provide,—

- (a) in **subpart 7**, for the enforcement of specified provisions of this Act, by setting out—
  - (i) offences and penalties in relation to specified matters; and

- (ii) the imposition of administrative penalties on waka umanga and governors for failing to comply with specified directions of the Registrar; and
- (b) in **subpart 8**, for regulation-making powers, service of documents, and related and consequential amendments to other enactments.

### Subpart 7—Enforcement provisions

#### **164 Offences and penalties**

- (1) A waka umanga, a governor, an employee of a waka umanga, or other person, as the case may be, commits an offence against this Act who—
  - (a) misuses or fails to use the correct name of a waka umanga, as required by **section 51**;
  - (b) fails to appoint an auditor, if required to do so under **section 83(2)**;
  - (c) having appointed an auditor, fails to give that person access to information and explanations that the person requests, as provided for under **section 84(4)**;
  - (d) fails to create, maintain, and retain accurate records of the waka umanga, as required by **clause 16 of Schedule 2**;
  - (e) exercises a discretion under **section 66** without satisfying the solvency test.
- (2) Every person who commits an offence against **subsection (1)** is liable, on summary conviction, to a fine—
  - (a) in the case of a waka umanga, not exceeding \$5,000; or
  - (b) in the case of an individual, not exceeding \$2,000.
- (3) Every person commits an offence against this Act and is liable, on summary conviction, to a fine not exceeding \$10,000 who—
  - (a) fails to make accurate declarations as required by **section 43(2)**;
  - (b) fails to comply with a lawful direction or request of the Registrar, including a direction under **section 53** to change the name of a waka umanga;
  - (c) fails to disclose an interest, as required by **section 61(1)**;
  - (d) fails to comply with the requirements of **sections 65 to 69** and the charter in relation to protected assets or major transactions.
- (4) Information for an offence under this section may be laid at any time within 3 years after the date of the alleged offence.

## 165 Defence

It is a defence to an offence under **section 164** that the waka umanga, governor, employee of the waka umanga, or other person took reasonable steps to comply, or ensure compliance, with the provisions of the Act relevant to the offence for which the charge is laid.

### *Administrative penalties*

## 166 Power to impose administrative penalty

- (1) The Registrar may, by written notice to a waka umanga, require the waka umanga to pay the Registrar an amount prescribed by regulations made under this Act by way of penalty for a failure of the waka umanga to—
  - (a) comply with a lawful direction or request of the Registrar, including a direction under **section 53** to change the name of a waka umanga:
  - (b) send or deliver to the Registrar, within any specified time, a notice under—
    - (i) **section 69** (which requires a waka umanga to notify the Registrar of amendments that must be made to the register of mortgages and other charges or to the register of protected assets):
    - (ii) **section 82(6)** (which requires notice to be given to the Registrar of changes to the charter):
    - (iii) **clause 5 of Schedule 2** (which requires notice to be given to the Registrar about changes relevant to a governor):
    - (iv) **clause 29 of Schedule 2** (which requires an annual return to be provided to the Registrar).
- (2) The amounts payable under this section—
  - (a) must be paid to the Registrar by the date specified in the notice; and
  - (b) are recoverable on application by the Registrar as a debt due to the Registrar in any court or tribunal of competent jurisdiction, including the Māori Land Court.
- (3) The Registrar may refuse to perform a function or exercise a power until the amount payable under this section is paid.

**167 Defence to administrative penalty**

It is a defence to an administrative penalty imposed by the Registrar under **section 166** that the waka umanga took reasonable steps to comply with the provisions of the Act in respect of which the administrative penalty is imposed.

**168 Powers to refer matters to Māori Land Court**

- (1) In relation to an administrative penalty imposed under **section 166**, a waka umanga may apply to the Court under **section 103** for orders in relation to—
  - (a) the liability of the waka umanga for the administrative penalty:
  - (b) the amount of that penalty.
- (2) If, in the opinion of the Registrar, there has been a persistent failure of a waka umanga to pay an administrative penalty imposed on it under **section 166**, the Registrar may refer the matter to the Court under **Part 4**.
- (3) An application under **subsection (1)** must be made within 20 working days of a notice being received by a waka umanga under **section 166(1)**.

Subpart 8—Regulations, miscellaneous matters, and amendments to enactments

*Regulations*

**169 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing forms for the purposes of this Act:
  - (b) prescribing how documents must be sent or delivered for registration:
  - (c) prescribing criteria for determining the governance documents required in respect of the reporting obligations of a waka umanga or class of waka umanga:
  - (d) prescribing fees payable to the Registrar in respect of any matter under this Act or the manner in which fees must be calculated:
  - (e) prescribing the amounts payable to the Registrar under **section 166** by way of administrative penalty, which must not exceed \$1,000:

- (f) prescribing procedures, requirements, and other matters for the Register of Waka Umanga, including matters relating to the operation of that Register:
  - (g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) An Order in Council made under **subsection (1)** may authorise the Registrar to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee or amount payable under this Act by or in relation to any waka umanga.

*Service of documents*

**170 Service of documents on waka umanga**

- (1) Sections 387, 388, and 392 of the Companies Act 1993 apply to the service of documents on a waka umanga as if every reference in those sections to—
- (a) a company were a reference to a waka umanga; and
  - (b) a director were a reference to a governor; and
  - (c) the address for service were a reference to the registered office of the waka umanga.
- (2) Service by email may be accepted if the charter or rules of the waka umanga provide for that method of service.

*Amendments to enactments*

**171 Amendments to other Acts**

- (1) Section HI 2 of the Income Tax Act 2004 is amended by adding the following paragraphs:
- “(m) a waka pū that has been granted recognition under **subpart 3 of Part 2** of the Waka Umanga (Māori Corporations) Act **2007**:
  - “(n) a waka pū that is authorised under **Part 5** of the Waka Umanga (Māori Corporations) Act **2007** to register under **Part 2** of that Act if, immediately before its registration, it was a Māori authority.”
- (2) Part 1 of Schedule 2 of the Privacy Act 1993 is amended by inserting, in its appropriate alphabetical order, the following item:
- Waka Umanga (Māori Corporations) **section 39**  
Act **2007**

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## Schedule 1 Contents of charter relating to governance

### Matters that must be included in charter

Without limiting what may be included in the charter of a waka umanga, every charter must include provisions that provide for the following matters, as long as they are not inconsistent with this Act:

#### *General matters*

- (1) The essential information about the waka umanga, including—
  - (a) the name of the waka umanga; and
  - (b) the constituent groups of the waka umanga; and
  - (c) rules relating to how the register of members of a waka umanga is compiled, maintained, and made available to members for inspection at the registered office of the waka umanga; and
  - (d) rules relating to how decisions are made by the rūnanganui and the registered members.

#### *Rūnanganui*

- (2) A schedule of the duties and functions of the rūnanganui.
- (3) If the waka umanga has a common seal, procedures for the custody and use of the common seal.

#### *Governors*

- (4) The criteria to be taken into account when electing or appointing governors, including matters such as the relevant experience and key competencies required for the operation of the rūnanganui.
- (5) Any matters that will disqualify a person from holding office as a governor, in addition to those specified in **clauses 1 and 3 of Schedule 2**.
- (6) The number of governors required for the rūnanganui, which must not be fewer than 3.
- (7) The term of office for a governor, which must not exceed 4 years, and the maximum number of consecutive terms for which a governor may hold office.
- (8) How a governor may be removed from office.

#### *Election of governors*

- (9) A system for the election of governors, including—



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- (a) whether governors are to be elected by direct election or indirectly by an elected electoral college; and
- (b) if an electoral college is to be set up for the election of governors, how the electoral college must be elected; and
- (c) whether governors are to be elected by constituent groups, and if so—
  - (i) the number and names of the constituent groups and a requirement that there be a register of members of each constituent group; and
  - (ii) the number of governors for each constituent group; and
- (d) how notice must be given to members that an election is to be held, including—
  - (i) how long before an election that notice must be given; and
  - (ii) the method by which notice must be given, including both public notice and personal notification to all registered members, whether by post or by electronic means; and
  - (iii) the contents of a notice; and
- (e) how and when nominations must be invited for candidates for election; and
- (f) the information about a candidate that must be provided with his or her nomination, the date by which nominations must be submitted, and the contact details of the officer of the waka umanga responsible for receiving nominations; and
- (g) the method of voting, whether by post or in person, whether both methods will be permitted, and whether electronic voting is permitted; and
- (h) how the election will be managed to ensure that the election is free and fair; and
- (i) how disputes relating to election results are to be dealt with, including—
  - (i) who may apply for review of the election results; and
  - (ii) the time by which any application must be made; and
  - (iii) the grounds on which review may be sought; and

- (iv) the appointment and powers of an officer of the waka umanga with responsibility for undertaking a review.

*Appointment of governors*

- (10) If the charter provides for the appointment of governors, requirements as to—
  - (a) the skills, qualifications, or other attributes required of persons appointed; and
  - (b) who may make appointments; and
  - (c) how appointments must be notified; and
  - (d) the role and rights of appointed governors, including matters such as whether an appointed governor—
    - (i) has the same rights to vote as an elected governor:
    - (ii) is part of the quorum:
    - (iii) is subject to the same duties, liabilities, and conditions of office as an elected governor.

*Chairperson and deputy chairperson of rūnanganui*

- (11) The procedures for the appointment of a chairperson and deputy chairperson (if any) of a rūnanganui, including—
  - (a) how and by whom the chairperson and deputy chairperson (if any) are to be selected; and
  - (b) the term, and number of consecutive terms, for which the chairperson may hold that office; and
  - (c) how the chairperson may be removed from that office.
- (12) The role and powers of the chairperson and deputy chairperson (if any).

*Meetings of rūnanganui*

- (13) How notice must be given of meetings of the rūnanganui, including—
  - (a) the minimum period of notice required; and
  - (b) the contents of a notice; and
  - (c) who is entitled to receive notices of meetings of the rūnanganui; and
  - (d) the consequences if adequate notice is not received by a governor.
- (14) The requirements for a quorum at ordinary and special meetings of the rūnanganui, including—
  - (a) the number of governors constituting a quorum; and

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- (b) how a meeting is to proceed if a quorum is not present at the time scheduled for the meeting; and
  - (c) how meetings may be conducted, whether with all members being present or by audio or video conference links; and
  - (d) in the case of meetings conducted by audio or video conference links, any conditions that must apply.
- (15) The conduct of the business of the rūnanganui, including provisions for—
- (a) making and recording resolutions, as long as they are not less stringent than is required by **clause 13 of Schedule 2**; and
  - (b) regulating the conduct of meetings, such as the power—
    - (i) to adjourn a meeting for any reason; and
    - (ii) to exclude a governor from the whole or part of a meeting if he or she breaches standing orders or the code of conduct.

*Decision making in relation to major transactions*

- (16) Procedures for the rūnanganui when making decisions on major transactions that must include—
- (a) any particular voting requirements; and
  - (b) the procedures for making special resolutions, which must be no less stringent than those that apply for making ordinary resolutions; and
  - (c) the special consultative procedures.

*Special consultative procedures*

- (17) Special consultative procedures, including how the rūnanganui will—
- (a) notify registered members of a matter; and
  - (b) make information on a matter available to registered members of the waka umanga; and
  - (c) undertake consultation on a matter with registered members; and
  - (d) receive submissions on a matter; and
  - (e) make the decision on a matter and advise registered members of the decision.
- (18) Procedures that allow the rūnanganui, in relation to specified major transactions or specified protected assets, to—

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- (a) find out the views of registered members on a specified matter using the special consultative procedures; and
- (b) take into account the range of views it has received on the specified matter before the rūnanganui makes its decision by special resolution.

*Annual general meeting and special meetings of waka umanga*

- (19) Provisions for the conduct of an annual general meeting of the waka umanga, including—
  - (a) the percentage of the registered members and of the governors of the registered members of the waka umanga required for a quorum; and
  - (b) a requirement that each of the constituent groups of the waka umanga be represented; and
  - (c) further provisions relating to the conduct of the annual general meeting, including voting rights, how voting procedures must be determined, and whether voting is to be by voice, show of hands, or secret ballot; and
  - (d) whether the chairperson is to have a deliberative and casting vote or a deliberative, but no casting, vote.
- (20) Provisions relating to special meetings of the registered members of a waka umanga, which must—
  - (a) not be inconsistent with the requirements of **section 80**; and
  - (b) specify the number of registered members of the waka umanga required to call a special meeting (which must be not fewer than 15).
- (21) The requirements for passing ordinary and special resolutions at meetings of the registered members of a waka umanga.

*Reporting*

- (22) The manner in which the annual report will be published, which must include electronic publication as well as the provision, on request, of a paper copy.

*Notice requirements*

- (23) Notice requirements, so long as they are not inconsistent with the provisions of this Act, for—
  - (a) meetings of the rūnanganui; and

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- (b) the annual general meeting and any special meetings of the registered members of the waka umanga; and
  - (c) any other meetings required by or under this Act.
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85, 98, 164, 166

## Schedule 2

### Further provisions on governance, management, and accountability of waka umanga

#### *Eligibility for office of governor*

#### **1 General disqualification**

- (1) The following persons are not qualified to be elected or appointed to, or hold office as, a governor of a waka umanga:
  - (a) a person who is under 18 years of age;
  - (b) a person who is an undischarged bankrupt;
  - (c) a person who is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under sections 382, 383, or 385 of the Companies Act 1993;
  - (d) a person who has been convicted of a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961) and has been sentenced for that crime within the last 7 years;
  - (e) a person who is subject to—
    - (i) a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992;
    - (ii) a property order or personal order under the Protection of Personal and Property Rights Act 1988.
- (2) In addition, the charter may include provisions to disqualify a person from holding the office of governor on the basis of having been convicted of a specified criminal charge within a specified period of time.

#### **2 Waiver of general disqualification**

- (1) A rūnanganui or a registered member of the waka umanga may apply to the Court for an order waiving the application of a disqualifying factor set out in **clause 1(1)** in relation to—
  - (a) a governor of a waka umanga; or
  - (b) a person who seeks election to the office of governor; or
  - (c) a person who is nominated for appointment to the office of governor.

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- (2) A person who is granted an order waiving the application of a disqualifying factor must not be treated as being disqualified by reason of the factor for which the waiver was granted.
- (3) An order may be granted under **subclause (1)** on any terms and conditions that the Court thinks fit.

**3 Particular disqualifications**

- (1) A person is not qualified to be elected or appointed to hold office—
  - (a) as a governor, if the person is—
    - (i) the chief executive of the waka umanga; or
    - (ii) disqualified for any other reason specified in the charter, including, for example, if the person is an employee of the waka umanga or a director or employee of an associated entity or subsidiary; or
  - (b) as chairperson of the rūnanganui, if the person is an employee of the waka umanga.
- (2) However, a person who is an employee of a waka umanga is not disqualified under **subclause (1)** if the rūnanganui determines by resolution that it would be in the best interests of the tribal group or Māori association for the employee also to be a governor.

*Tenure and conduct of governors*

**4 Resignation or dismissal from office**

- (1) A governor may resign from office by giving written notice to the chairperson of the rūnanganui.
- (2) The rūnanganui may, by ordinary resolution, dismiss a governor from office if the rūnanganui believes, on reasonable grounds, that—
  - (a) the person has become ineligible under the disqualification provisions of **clause 1 or 3** or under the charter; or
  - (b) the person is unable to perform the role or duties of a governor; or
  - (c) the person has seriously neglected a duty as a governor under this Act; or
  - (d) the person has brought the waka umanga into disrepute; or
  - (e) the person has failed to declare a significant benefit or material financial interest, as required by **section 61(1)**.

- (3) The chairperson of the rūnanganui must give written notice to the person of the resolution of the rūnanganui, with reasons.

**5 Notice of change of governors**

- (1) The rūnanganui must ensure that the Registrar is notified, in the form approved for the purpose by the Registrar, of—
- (a) the persons who are appointed to be governors of the waka umanga; and
  - (b) any change in those who hold office as governors.
- (2) A notice under **subclause (1)** must—
- (a) specify the date of the change; and
  - (b) include the full name and place of residence of every person who is a governor of the waka umanga from the date of the notice; and
  - (c) in the case of a new governor, be accompanied by—
    - (i) his or her consent to be a governor; and
    - (ii) a declaration that he or she is not disqualified from holding office as a governor.
- (3) The notice required by this section must be delivered to the Registrar within 20 working days of any change taking effect.

**6 Effect of dismissal or vacancy**

- (1) A governor is not entitled to compensation or other payment or benefit if he or she for any reason ceases to hold office as a governor.
- (2) The powers and functions of a rūnanganui are not affected by a vacancy in its membership, provided it has the quorum required by the charter.

*Remuneration and indemnity*

**7 Policy for remuneration of governors**

A waka umanga must develop and publish in its annual plan its policy for—

- (a) the remuneration and other benefits to be paid to governors for their services as governors; and
- (b) the reimbursement of governors for their actual and reasonable expenses incurred in carrying out their duties as governors.



## 8 Indemnity and insurance

A waka umanga—

- (a) must indemnify the governors of the rūnanganui in respect of—
  - (i) costs and damages incurred by 1 or more governors for any civil liability arising from an action brought by a third party, as long as the governors concerned were acting in their capacity as governors in accordance with—
    - (A) this Act, including the duty to act in good faith, honestly, and with integrity; and
    - (B) the duties set out for governors in the charter of the waka umanga;
  - (ii) costs arising from a successfully defended criminal action relating to acts or omissions of 1 or more governors in their capacity as governors; and
- (b) may effect insurance cover for a governor or employee in relation to his or her acts or omissions, except an act or omission that is—
  - (i) in bad faith; or
  - (ii) not in the performance or intended performance of the activities of the waka umanga.

### *Conduct of business of rūnanganui*

## 9 Procedures of rūnanganui

A rūnanganui may regulate its own procedures, except to the extent provided for by or under—

- (a) this Act; or
- (b) the charter of the waka umanga; or
- (c) any code of conduct adopted by the waka umanga.

## 10 Meetings of rūnanganui

- (1) Every rūnanganui must hold regular ordinary meetings in order to perform its functions and carry out its duties.
- (2) Special meetings of a rūnanganui may be convened at any time by—
  - (a) ordinary resolution of the rūnanganui; or
  - (b) written request to the chairperson signed by not fewer than half of the governors of the rūnanganui; or
  - (c) the chairperson.

- (3) A rūnanganui must give notice of its meetings to the governors and the registered members of the waka umanga in the manner provided for in the charter under **subclause (13) of Schedule 1**.

#### **11 Conduct of meetings**

- (1) The chairperson of the rūnanganui must preside at meetings of the rūnanganui if he or she is present, but, if the chairperson is absent or unable to preside for any reason (for example, because of a conflict of interest in a matter to be dealt with at the meeting), the deputy chairperson (if any) or 1 of the governors elected by the governors present must preside.
- (2) A deputy chairperson or governor presiding has and may exercise the powers, duties, and functions of the chairperson of the rūnanganui.

#### **12 Attendance at meetings of rūnanganui**

- (1) Unless a governor is excluded from a meeting of a rūnanganui under a provision of the charter, every governor has the right to attend every meeting of the rūnanganui or of any committee of the rūnanganui appointed under **clause 17**.
- (2) If permitted by ordinary resolution of a rūnanganui, other persons who do not have voting rights may attend meetings of that rūnanganui, unless the charter provides otherwise.
- (3) The chief executive is responsible for providing executive assistance to the rūnanganui for the preparation and distribution of agendas, minutes, and any documents required for meetings of the rūnanganui.
- (4) If persons other than governors are attending a meeting of a rūnanganui, the chairperson may close the meeting to all but the governors if there are matters that must be treated as confidential or private, such as commercially sensitive or employment matters, or if a person unduly disrupts a meeting.
- (5) Every person attending a meeting of a rūnanganui under this section is bound by the requirements of **section 64** (which relates to the confidentiality of information).

#### **13 Resolutions of rūnanganui**

- (1) The following principles apply to the passing of resolutions by a rūnanganui:

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- (a) unless provided otherwise in the charter, each governor has 1 vote; and
  - (b) the voting rights of the chairperson are deliberative only and do not include the right to make a casting vote; and
  - (c) voting may be done by a show of hands unless the chairperson determines that voting is to be by formal ballot; and
  - (d) in the event of a tied vote on a resolution, the status quo prevails.
- (2) Ordinary resolutions of the rūnanganui require a majority of the governors entitled to vote and voting, and special resolutions require a majority of not less than two-thirds of the governors entitled to vote and voting.
- (3) A resolution in writing, signed or assented to by all the governors entitled to receive notice of a meeting of the rūnanganui, is as valid and effective as if it had been made at a meeting of the rūnanganui duly called and held.
- (4) A resolution made under **subclause (3)** may consist of exact copies of documents (including documents transmitted by facsimile or electronic means) each assented to by 1 or more governors.
- (5) A copy of every resolution made under **subclause (3)** must be entered in the minute book of the proceedings of the rūnanganui.

**14 Reliance on information**

- (1) Unless the charter of a waka umanga provides otherwise, a governor, when acting as a governor, is entitled to rely on reports, statements, financial data, and other information prepared or supplied, or professional or expert advice given, by—
- (a) an employee of the waka umanga whom the governor believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
  - (b) a professional adviser or expert in relation to matters which the governor believes on reasonable grounds to be within that person's professional or expert competence;
  - (c) any other governor in relation to matters within that person's designated authority;

- (d) a committee of which the governor was not a member, in relation to matters within that committee's designated authority.
- (2) **Subclause (1)** applies to a governor only if that governor—
  - (a) acts in good faith; and
  - (b) makes proper inquiry where the circumstances indicate that inquiry is needed; and
  - (c) has no knowledge that reliance on the information is not warranted.

### **15 Minutes**

- (1) The proceedings and decisions of every meeting of the rūnanganui must be—
  - (a) recorded in writing and distributed to the governors; and
  - (b) confirmed at the next meeting of the rūnanganui by those present at the previous meeting; and
  - (c) certified as a true and correct record by the chairperson.
- (2) As soon as is reasonably possible, the certified copy of the minutes must be made available in accordance with **section 76**.

### **16 Records of waka umanga**

The rūnanganui must ensure that all the records it is required to create and maintain by or under this Act are retained for a period of not less than 12 years.

### *Committees*

### **17 Appointment of committees**

- (1) A rūnanganui may—
  - (a) establish 1 or more committees as it considers appropriate; and
  - (b) delegate in writing, whether generally or specifically, any of its powers, except this power of delegation, to any committee established under **paragraph (a)**; and
  - (c) set out any objectives for the committee or rules of procedure it considers appropriate for the conduct of the business of the committee.
- (2) For the purposes of **subclause (1)(a)**, the rūnanganui has the sole power to—
  - (a) appoint the persons to serve on a committee, who—

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- (i) may, but need not, be governors; and
  - (ii) if not governors, must have the skills, experience, and knowledge that, in the opinion of the rūnanganui, will assist the work of the committee; and
  - (b) discharge any or all of the members of a committee; and
  - (c) reconstitute a committee.
- (3) A committee may regulate its own procedure, except to the extent provided for by the rūnanganui under **subclause (1)(c)**.

**18 Status of committees**

- (1) A committee is subject to the control of the rūnanganui and must carry out the directions of the rūnanganui to the committee.
- (2) A person appointed to a committee who is not a governor is subject, when discharging his or her duties or functions as a member of that committee, to the duties of a governor under this Act.
- (3) A rūnanganui that delegates a power to a committee is responsible for the exercise of the power by the committee, unless the rūnanganui—
- (a) had reasonable grounds to believe that the committee would exercise the power in accordance with the objectives and rules of procedure set out by the rūnanganui under **clause 17(1)(c)**; and
  - (b) has properly monitored the exercise of the power by the committee.

*Provisions relating to management of waka umanga*

**19 Role of chief executive**

- (1) The chief executive appointed under **section 73** is responsible for—
- (a) ensuring the prudent and effective management of the resources and activities of the waka umanga; and
  - (b) maintaining systems and processes to enable effective planning and accurate reporting of the financial performance of, and activities undertaken by, the waka umanga; and
  - (c) providing adequate advice and information to the rūnanganui; and
  - (d) implementing the resolutions of the rūnanganui; and

- (e) ensuring, as far as practicable, that the management structures and processes of the waka umanga reflect and reinforce—
  - (i) the need for the separation of governance and management responsibilities; and
  - (ii) the need for the separation of commercial and non-commercial activities; and
  - (iii) the tikanga of the waka umanga; and
  - (iv) best management practices; and
  - (v) the delivery of adequate advice and information to the rūnanganui; and
  - (vi) achievement of the long-term objectives of the waka umanga.
- (2) The rūnanganui and chief executive must enter into a written agreement as to how—
  - (a) performance requirements will be set for the chief executive; and
  - (b) the performance of the chief executive will be assessed.

*Contracting and employment policies*

**20 Contracting policy**

- (1) The chief executive must ensure that the waka umanga has a contracting policy that requires competitive and transparent tendering of contracts above a stated minimum sum, as determined by the rūnanganui.
- (2) Section 180 of the Companies Act 1993 applies to the method by which a waka umanga enters into contracts as if every reference in that section—
  - (a) to a company were a reference to a waka umanga; and
  - (b) to a director were a reference to a governor; and
  - (c) to a constitution of a company were a reference to the charter of a waka umanga.

**21 Employees of waka umanga**

- (1) The chief executive is responsible for—
  - (a) employing, on behalf of the waka umanga, the staff of the waka umanga; and
  - (b) exercising the rights, duties, and powers of an employer, including negotiating the terms of employment of the staff of the waka umanga; and
  - (c) providing leadership for the staff of the waka umanga.

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- (2) The chief executive must establish and maintain a system for the impartial selection of staff of the waka umanga to ensure that persons best suited to positions or functions in the waka umanga are appointed, including policies for—
  - (a) competitive and transparent employment processes; and
  - (b) rules for the management of conflicts of interest.
- (3) The chief executive may appoint members of the waka umanga to the staff, as long as the appointment is made having regard to the skill, attributes, and experience required for the position.

*Access to information for registered members*

**22 Limits to availability of information**

- (1) Information of a waka umanga that may be requested by a registered member of a waka umanga under **section 77** may be withheld under **section 78(1)(b)**, but only to the extent that this is necessary to—
  - (a) avoid prejudice to the maintenance of law; or
  - (b) avoid endangering the safety of any person; or
  - (c) avoid prejudice to the commercial position of the waka umanga or of another person; or
  - (d) protect the privacy of natural persons; or
  - (e) respect traditional knowledge and the culture and practices of the tribal group or Māori association; or
  - (f) protect information supplied in confidence or under a legal obligation, if release would prejudice the supply of further information and be against the best interests of the waka umanga; or
  - (g) protect the free and frank expression of opinion within the waka umanga, and protect its governors and employees from improper pressure or harassment; or
  - (h) maintain legal professional privilege; or
  - (i) protect negotiations in which the waka umanga is involved, including industrial relations and commercial negotiations; or
  - (j) prevent disclosure or use of information for improper gain or advantage.
- (2) A waka umanga may decline to make information available if—

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- (a) the information requested is already available to the member or will shortly be available; or
  - (b) the information requested cannot be made available without substantial collation or research; or
  - (c) the particular request for information, or series of requests, is vexatious or trivial.
- (3) If a waka umanga considers that the information requested is sensitive, it may, before releasing the information, require an undertaking that the information will not be disclosed to persons who are not registered members of the waka umanga.
- (4) Every request for information must be made to the chief executive or an employee with delegated power to consider requests.
- (5) In appropriate cases, the chief executive may refer a request for information to the rūnanganui for a decision.
- (6) In the following circumstances, a dispute may be referred to a dispute resolution procedure of the waka umanga in accordance with **subpart 1 of Part 4**:
- (a) if a request for information is declined by the waka umanga;
  - (b) if a restriction is placed on the terms of the release of information;
  - (c) if there is a breach of an undertaking given under **sub-clause (3)**.

**23 Provision for further information to be made available**

The charter may provide that there is a right of access, for registered members of the waka umanga, to more information than is available under **section 76**, with any conditions that are to apply to its disclosure.

*Meetings of waka umanga*

**24 Notice requirements for meetings of waka umanga**

- (1) The annual general meeting of the registered members of a waka umanga must be notified not later than 20 working days before the date of the meeting, in accordance with the method of notification provided for in the charter of the waka umanga.
- (2) A special meeting of the registered members of a waka umanga must be notified not later than 10 days after a request has been received under **section 80**.



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- (3) The notices required by **subclauses (1) and (2)** must state—
- (a) the time and place of the meeting; and
  - (b) the agenda for the meeting; and
  - (c) whether votes to be taken at the meeting are to be—
    - (i) determinative of the relevant matter; or
    - (ii) indicative only, requiring the rūnanganui to consider the results of the indicative vote; and
  - (d) in the case of the annual general meeting, where copies of the annual report, audited accounts, and any other reports may be obtained; and
  - (e) in the case of a special meeting, where copies of the relevant papers may be obtained.

**25 Conduct of meetings of waka umanga**

In addition to the matters required to be included in the charter under **subclauses (19) and (20) of Schedule 1**, the following provisions apply to the conduct of meetings of the registered members of a waka umanga:

*Agenda*

- (a) the agenda must state—
- (i) the matters to be transacted at the meeting; and
  - (ii) whether matters of general business may be raised by members and, if so, whether notice is required in advance of such matters; and

*Minutes*

- (b) minutes must be taken to record the proceedings of the meeting and must be made available for inspection by any registered member; and

*Chairperson of meeting*

- (c) the chairperson of the rūnanganui (or if he or she is not available, the deputy chairperson, if there is one) must preside at a meeting, but if neither of those officers is available—
- (i) the rūnanganui may appoint a governor or an independent person to preside; or
  - (ii) failing such appointments, the registered members present at the meeting may, by majority vote, appoint a member to preside; and

*Quorum*

- (d) no business may be transacted at a meeting unless a quorum is present; and
- (e) unless a quorum is present within 60 minutes after the time appointed for the meeting, the meeting must be adjourned to another date appointed and notified in accordance with **clause 24** by the rūnanganui; and
- (f) if, at the adjourned meeting, a quorum is not present within 60 minutes after the time appointed for that meeting, the registered members present are a quorum, as long as the meeting is not one at which the votes taken are determinative.

*Key governance documents*

**26 Long-term plan**

- (1) As a basis for the rūnanganui to be accountable to the registered members of the waka umanga for its long-term intentions for the waka umanga, every rūnanganui must prepare a long-term plan that provides—
  - (a) a focus for the activities of the waka umanga over a period of not less than 5 years; and
  - (b) a statement of the projected income and expenditure over the period to which the plan relates and information on funding of the proposed activities; and
  - (c) a framework for managing—
    - (i) the resources of the waka umanga, including its cash and commercial assets, lands (whether or not classified as protected assets), and its human resources; and
    - (ii) the distribution policies of the waka umanga; and
  - (d) information on how progress will be measured and reported on during the period to which the plan relates.
- (2) However, a resolution of the rūnanganui to adopt a long-term plan—
  - (a) does not constitute a decision to undertake any specific activity included in the plan; and
  - (b) no person is entitled to require a waka umanga to implement the provisions of the long-term plan.
- (3) A long-term plan must—

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- (a) be prepared and adopted by the rūnanganui in accordance with the requirements provided for major transactions by the charter; and
  - (b) be adopted before the commencement of the first year to which it relates by special resolution of the rūnanganui.
- (4) If a rūnanganui wishes the waka umanga to undertake activities that differ significantly from those provided for in its long-term plan, it must amend the long-term plan in accordance with the requirements for a major transaction.

**27 Annual plan**

- (1) Every rūnanganui must prepare an annual plan for the waka umanga that must—
- (a) set out the matters in the long-term plan that are relevant to the year to which the plan relates; and
  - (b) set out the proposed budget for the year to which the plan relates; and
  - (c) identify any variation from the funding information included in the long-term plan for the waka umanga for the year to which the annual plan relates; and
  - (d) provide a basis for the waka umanga to be accountable to its members.
- (2) The annual plan must be prepared and adopted by the rūnanganui in accordance with the requirements for major transactions.

*Financial reporting documents*

**28 Annual report**

- (1) Every rūnanganui must prepare an annual report for the waka umanga within 4 months of the end of the financial year to which it relates.
- (2) Section 211 of the Companies Act 1993 (except subsections (1)(c) and (2) of that section) applies with any necessary modifications to the requirements for the annual report of a waka umanga, as if every reference to—
- (a) a company were a reference to a waka umanga; and
  - (b) a director were a reference to a governor; and
  - (c) shareholders were a reference to the registered members of a waka umanga.
- (3) The annual report must—

- (a) be prepared and adopted by the rūnanganui by ordinary resolution; and
- (b) be made available to registered members—
  - (i) not later than 20 working days before the annual general meeting of the waka umanga; and
  - (ii) in the manner set out in the charter under **sub-clause (22) of Schedule 1**; and
- (c) provide the information necessary to enable registered members of the waka umanga to make an informed assessment of the operations and performance of the waka umanga for the relevant financial year.

**29 Annual return**

Every rūnanganui must provide to the Registrar an annual return containing matters prescribed by regulations.

**30 Accounting records**

- (1) Every rūnanganui must create and maintain accounting records that—
  - (a) record accurately and explain every financial transaction made by the waka umanga; and
  - (b) enable the financial position of the waka umanga to be determined at any time with reasonable accuracy; and
  - (c) facilitate an accurate audit to be made of the financial statements of the waka umanga.
- (2) The accounting records of a waka umanga must be completed not later than 5 months after the end of the financial year to which they relate.

*Financial management*

**31 Financial plan**

- (1) Every rūnanganui must prepare a financial plan to provide for the prudent management of the revenue, assets, liabilities, investments, procurements, and all other financial dealings of the waka umanga.
- (2) The purposes of a financial plan are—
  - (a) to promote the current and future well-being of the waka umanga; and
  - (b) to provide certainty in relation to the financial management of the waka umanga.

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- (3) The financial plan must be prepared and adopted by the rūnanganui in accordance with the requirements for major transactions under the charter.
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## Schedule 3 Statements of intent

### 1 Statements of intent for subsidiaries

The directors of a subsidiary must deliver, in each year, to the waka umanga a draft statement of intent not less than 4 months before the end of the waka umanga's financial year.

### 2 Completion of statements of intent

The directors of a subsidiary must—

- (a) consider, not less than 2 months before the end of the waka umanga's financial year, any comments made by the waka umanga to the directors on the draft statement of intent; and
- (b) deliver the completed statement of intent to the waka umanga before the end of the waka umanga's financial year.

### 3 Waka umanga must agree or disagree with statement of intent

A waka umanga must, as soon as practicable after a statement of intent is delivered to it,—

- (a) agree to the statement of intent; or
- (b) if it does not agree, require the statement of intent to be modified under **clause 4**.

### 4 Modifications of statements of intent by resolution of waka umanga

- (1) Despite any other provision of this Act or of the constitution of a subsidiary, a waka umanga may, by resolution, require the directors of the subsidiary to modify the subsidiary's statement of intent by including or omitting any provision or provisions of the kind referred to in **clause 7(1)**, and the directors to whom notice of the resolution is given must comply with the resolution.
- (2) Before giving notice of the resolution under **subclause (1)**, the waka umanga must consult the directors as to the matters to be referred to in the notice.

**5 Modifications of statements of intent by directors**

The directors of a subsidiary may modify its statement of intent at any time if—

- (a) the directors have given the waka umanga written notice of the proposed modification; and
- (b) the waka umanga has agreed to the modification.

**6 Obligation to make statements of intent available**

A completed statement of intent and each modification that is adopted to a statement of intent must be made available, on request, to registered members of the waka umanga.

**7 Contents of statements of intent**

(1) A statement of intent must, to the extent that is appropriate given the organisational form of a subsidiary, specify for the subsidiary in respect of the financial year immediately following the financial year in which it is required by **clause 1** to be delivered, and each of the immediately following 2 financial years, the following information:

- (a) the objectives of the subsidiary; and
- (b) the principles of sound governance that the directors of the subsidiary will apply to the governance of the subsidiary; and
- (c) the nature and scope of any activities to be undertaken by the subsidiary and how the activities will contribute to the objectives of the subsidiary and to the waka umanga's long-term focus as specified in its long-term plan; and
- (d) if applicable, the ratio of consolidated shareholders' funds to total assets, and the definitions of those terms; and
- (e) the accounting policies of the subsidiary; and
- (f) whether the subsidiary's financial statements must be audited; and
- (g) the performance standards and other measures by which the performance of the subsidiary may be judged in relation to its objectives, and any assumptions on which they are based; and
- (h) any internal and external factors that will or may affect the extent to which the subsidiary is likely to achieve its objectives, and how these factors have been taken into

- account when setting the objectives, performance standards, and performance measures; and
- (i) if applicable, an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the waka umanga; and
  - (j) the kind of information to be provided to the waka umanga by the subsidiary during the course of those financial years, including the information to be included in each report to the waka umanga (and, in particular, what prospective financial information is required and how it is to be presented); and
  - (k) the procedures to be followed before the subsidiary—
    - (i) subscribes for, purchases, or otherwise acquires any interest or investment in another entity; or
    - (ii) purchases or acquires any land or interest in land; and
  - (l) any activities for which the directors seek payment from the waka umanga; and
  - (m) the directors' estimate of the commercial value of the waka umanga's investment in the subsidiary and the manner in which, and the times at which, that value is to be reassessed; and
  - (n) any other matters that are agreed by the waka umanga and the directors.
- (2) If a subsidiary has undertaken to obtain, or has obtained, payment from the waka umanga in respect of any activity, this undertaking or the amount of the payment obtained must be recorded in—
- (a) the annual report of the subsidiary; and
  - (b) the annual report of the waka umanga.

## **8 Saving of certain transactions**

A failure by a subsidiary to comply with any provision of this schedule or with any provision in its statement of intent does not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by the subsidiary.

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## Schedule 4

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### Optional processes for resolution of internal disputes

If any or all of the dispute resolution processes included in this schedule are adopted by a waka umanga, they must be included in the charter of the waka umanga, but may be varied as the waka umanga considers appropriate.

#### Part 1

#### Kairongomau (peacemaker)

##### 1 Role

- (1) The function of a kairongomau is to consider complaints from—
  - (a) registered members of the waka umanga or those claiming they are entitled to be registered members;
  - (b) constituent groups;
  - (c) associated entities or subsidiaries.
- (2) The purpose of the kairongomau is to ensure, as far as possible, that—
  - (a) the persons lodging complaints are treated fairly in their dealings with the waka umanga; and
  - (b) a resolution of a dispute is achieved that satisfies all parties; and
  - (c) the future relationship between the person or group and the waka umanga is improved, by making recommendations, for example, for changes to policies and practices; and
  - (d) if the complaint is that access to information has been declined, for release of information on a general or limited basis, if and as appropriate.

##### 2 Appointment of kairongomau

- (1) A person or committee of persons may be appointed by the rūnanganui to be kairongomau for a term of not more than 5 years, but may be reappointed in the same manner for further terms, as provided for in the charter.
- (2) Kairongomau—
  - (a) may, but need not, be registered members of the waka umanga; but

Part 1—*continued*

- (b) must not be governors of the rūnanganui or directors of a subsidiary.
- (3) The rūnanganui must make available to the registered members of the waka umanga—
  - (a) the terms and conditions on which kairongomau are appointed; and
  - (b) the remuneration that is to be paid to kairongomau.

**3 Complaint procedure**

- (1) The persons or bodies entitled to make complaints under this Part must do so in writing to the kairongomau.
- (2) Complaints may relate to a decision or action of the waka umanga affecting the complainant, directly or indirectly.
- (3) Kairongomau may consider complaints in the manner they think fit, as long as the principles of natural justice are observed by means such as—
  - (a) hearing individually from complainants and the person or body that is the subject of complaint, and if relevant, any other person with an interest in the matter complained of;
  - (b) convening formal or informal meetings of those involved in, or with an interest in, the matter complained of;
  - (c) receiving written submissions.
- (4) Kairongomau may also seek expert assistance, for example, on accounting or legal questions, to assist the kairongomau or the parties.
- (5) The cost of advice received under **subclause (4)** must be met by the waka umanga unless the kairongomau directs otherwise.

**4 Determination**

- (1) In determining complaints, kairongomau must endeavour to seek a resolution that satisfies all the parties involved in, or who have an interest in, a matter complained of.
- (2) A rūnanganui or person or body that is the subject of a complaint is not obliged to adopt the recommendations of the kairongomau, but the rūnanganui, person or body that is the subject of complaint and the complainant must give reasons in

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Part 1—*continued*

writing to the kairongomau in relation to any recommendations that are not adopted.

- (3) A settlement reached as a result of a recommendation of a kairongomau is binding on the parties.

**5 Reporting obligations of kairongomau**

- (1) Kairongomau must report in writing annually to the rūnanganui as to the outcome of any complaints referred to them, in a way that does not breach the confidentiality of the complainants.
- (2) The report of the kairongomau must be included in the annual report of the waka umanga.

Part 2  
Mediation

**6 Interpretation**

In this Part, unless the context otherwise requires,—

**dispute** means the internal dispute described in the dispute notice

**dispute notice** means a notice relating to an internal dispute, as provided for by **clause 8**

**mediation agreement** means an agreement, whether or not in writing, as to the process by which the mediation is to be conducted, as provided for by **clause 11**

**mediator** means an impartial third person appointed under **clause 10** to assist the parties to reach an agreed settlement of the dispute

**notice in response** means a notice provided for by **clause 9**

**party** means a person, including a group of persons, whether or not incorporated

**settlement agreement** means an agreement, whether or not in writing, reached at or after a mediation in settlement of part or all of a dispute.

Part 2—*continued*

**7 Reference to mediation**

Any party to an internal dispute may refer an internal dispute to mediation, in accordance with this Part, or as this Part is varied by the waka umanga in its charter.

**8 Dispute notice**

- (1) A party to an internal dispute may serve a dispute notice on any party to that dispute.
- (2) A dispute notice must—
  - (a) state that it is served under this Act; and
  - (b) state the nature of the dispute and give a brief description of the subject matter of, and the parties to, the dispute; and
  - (c) describe where and when the dispute arose; and
  - (d) set out the names and contact addresses of the parties; and
  - (e) state that the party issuing the dispute notice wishes the dispute to proceed to mediation; and
  - (f) provide the full name and contact address of the party or person serving the dispute notice.
- (3) The dispute notice may nominate 1 or more mediators.

**9 Notice in response**

- (1) Each party on whom a dispute notice is served under **clause 8** must, not later than 10 working days after receiving the dispute notice, serve a notice in response on—
  - (a) the party that served the dispute notice; and
  - (b) every party named in the dispute notice.
- (2) A notice in response must state—
  - (a) that it is served under this Act; and
  - (b) whether the party serving the notice in response agrees—
    - (i) with the description of the dispute set out in the dispute notice; and
    - (ii) that the dispute notice correctly identifies the parties to the dispute; and
    - (iii) to the dispute being mediated; and
  - (c) which of the mediators nominated in the dispute notice, if any, are acceptable to the party responding.

Part 2—*continued*

- (3) A notice in response may nominate 1 or more alternative mediators.

**10 Appointment of mediator**

- (1) A mediator may be appointed as soon as the parties have agreed on who is to be appointed.
- (2) If the parties are unable to agree on a mediator, the parties must jointly request that a mediator be appointed by the person designated for that purpose in the charter.

**11 Mediation agreement as to procedure**

The mediator and the parties must, within 20 working days after the mediator has been agreed under **clause 10(1)** or appointed under **clause 10(2)**, settle the procedure for the mediation, which must include agreements on the following matters:

- (a) who has the authority to represent and bind the parties:
- (b) who may attend the mediation, including legal counsel and experts:
- (c) an agreement as to whether the mediation is to be confidential, including who may be informed about any confidential matter:
- (d) the extent, if any, to which the marae procedures are to be adopted:
- (e) requirements as to privilege in respect of the mediator, the parties, and other persons attending the mediation:
- (f) how the costs of the mediation are to be met:
- (g) whether te reo Māori is to be used and, if so, whether there is to be a translator present:
- (h) whether the mediator may engage an expert assessor or co-mediator for a stated or any purpose:
- (i) exclusion of liability for the mediator:
- (j) disclosure of conflict of interest by the mediator:
- (k) how the mediation agreement may be terminated:
- (l) any other matter that the mediator and the parties agree, having regard to the nature of the dispute, is appropriate to best meet the needs and interests of the parties.

Part 2—*continued*

**12 When mediation must proceed**

A dispute must proceed to mediation as soon as is reasonably practicable after all notices in response have been served under **clause 9**, as long as all parties agree—

- (a) that the dispute should be mediated; and
- (b) as to the mediator; and
- (c) on the procedure for the mediation, as recorded in the mediation agreement required by **clause 11**.

**13 When mediation cannot proceed**

(1) The mediation of a dispute cannot proceed if—

- (a) a party on whom a dispute notice is served does not serve a notice in response in accordance with **clause 9**; or
- (b) a mediation agreement is not entered into in accordance with **clause 11**; or
- (c) at any time, a party to the dispute gives notice of that party's withdrawal from the mediation.

(2) However, if 1 party to the dispute gives notice of withdrawal from the mediation, that does not prevent other parties to the dispute from agreeing to enter into a new mediation agreement.

**14 Confidentiality, privilege, and costs**

(1) Except as required by law or unless otherwise agreed in the mediation agreement, the matters discussed, raised, agreed, admitted, or determined in, or in the course of, a mediation—

- (a) must not be disclosed by the parties, the mediator, or persons attending the mediation; and
- (b) are not admissible in a court, tribunal or other forum or before a person acting judicially, unless for the purpose of enforcing a settlement agreement.

(2) A breach of the confidentiality required by **subclause (1)(a)** is a breach of an essential term of the settlement agreement.

(3) Unless the charter or the mediation agreement provides otherwise, the parties must—

- (a) meet their own costs and expenses in relation to the mediation; and
- (b) pay on an equally shared basis the fees and expenses of the mediator.

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Part 2—*continued*

**15 Resolution of dispute**

- (1) If resolution is reached on the whole or part of a dispute as a result of or in the course of mediation, the terms of the settlement must be recorded in a settlement agreement.
- (2) A settlement agreement is binding on the parties.
- (3) A party may enforce the settlement agreement (including the time within which the parties agree to comply with the agreement) by way of an application to the Court under **section 103(1)(b)**.

**16 No court proceedings or enforcement action**

- (1) If a dispute notice is served under **clause 8**, no party may commence or continue proceedings in any court or tribunal in relation to any matter related to the dispute described in the dispute notice until—
  - (a) the steps required by **clauses 9 to 11** have been completed; and
  - (b) the mediation agreement entered into under **clause 11** has been terminated.
- (2) However, **subclause (1)** does not prevent a party from applying to the Court for—
  - (a) an interim injunction under **section 105**, pending the resolution of the dispute by mediation or other dispute resolution process provided for by the charter; or
  - (b) a stay of proceedings commenced or continued in breach of **subclause (1)**.

Part 3  
Arbitration

**17 Arbitration for internal dispute**

- (1) If the parties consent, an internal dispute may be referred to arbitration under the Arbitration Act 1996.
- (2) The arbitrator must be appointed—
  - (a) by agreement of the parties to the internal dispute; or
  - (b) if the parties are unable to agree,—
    - (i) by the person designated for the purpose in the charter; or

Part 3—*continued*

- (ii) if the parties so request, by the President of the Arbitrators' and Mediators' Institute of New Zealand.

**18 Application of Arbitration Act 1996**

If a dispute is referred to arbitration under **section 101(1) or clause 17**, the rights of the parties are limited to those conferred by the Arbitration Act 1996.

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## Schedule 5

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### Applications to Māori Land Court

#### 1 Contents of applications to Māori Land Court

- (1) An application to the Court must be made in form 1 of the Māori Land Court Rules 1994.
- (2) If the applicant seeks—
  - (a) an interim injunction, the application must include a memorandum of the grounds on which it is sought and any undertaking offered in respect of damages or other matters:
  - (b) to transfer the proceedings to the High Court, the application must include—
    - (i) a memorandum of the grounds on which the transfer is sought; and
    - (ii) if applicable, the consent of the other parties.
- (3) Applications must be filed in the office of the Chief Registrar of the Court, regardless of the location of the registered address of the relevant waka umanga.

#### 2 Persons who may be heard

The persons entitled to appear and be heard in proceedings relating to an application made under **subpart 2 of Part 4** are—

- (a) the applicant; and
- (b) registered members of the tribal group or Māori association on whose behalf an application is made; and
- (c) persons who, by order of the Court, must be served; and
- (d) other persons whom it is sought to bind by the decision of the Court or whose presence the Court considers necessary for the just determination of the issues.

#### *Interlocutory matters*

#### 3 Applications to be assigned to Judge

- (1) Within 10 working days of receiving an application under **subpart 2 of Part 4** (other than an application for an interim injunction), the Chief Judge of the Māori Land Court must assign the matter to a Māori Land Court Judge for consideration.
- (2) The Judge to whom an application is assigned may be from a district other than the district in which the registered office of the relevant waka umanga is located.

#### **4 Judicial conference required**

- (1) Within 20 working days of an application being assigned to a Judge under **clause 3**, the Judge must convene a judicial conference of the parties to give directions as to how the case is to proceed.
- (2) The parties may agree to a longer period than 20 working days.

#### **5 Orders that may be made at judicial conference**

- (1) In addition to the powers of a Māori Land Court Judge under section 67 of Te Ture Whenua Maori Act 1993, the Judge may, at a judicial conference convened under **clause 4**, make orders in relation to the substantive issues of the application, as by—
  - (a) agreeing to any consent orders requested by the parties:
  - (b) in relation to an internal dispute, declining to hear the application unless the appropriate dispute resolution processes required under the charter have been completed:
  - (c) with the consent of the parties, referring the application to a mediator appointed by the Court in accordance with **clause 6** or to another agreed dispute resolution process:
  - (d) dismissing the application as vexatious or an abuse of process.
- (2) The Māori Land Court Judge may, by order, in relation to the future conduct of an application,—
  - (a) add or remove any party to the proceedings:
  - (b) give directions as to discovery and inspection of documents by the parties in relation to specified matters:
  - (c) if required under **Part 4**, appoint an investigator, commissioner, receiver, or liquidator:
  - (d) if the Court considers it necessary, appoint counsel to assist a party or the Court, on terms specified by the Court, including terms as to the payment from the Māori Land Court Special Aid Fund.
- (3) Section 98 of Te Ture Whenua Maori Act 1993 applies with any necessary modifications to any order made under **subclause (2)(d)**.

## **6 Power to appoint mediator**

- (1) Before a Māori Land Court Judge may make an order under **clause 5** to refer an application to a mediator, he or she must consult the parties about who to appoint as the mediator.
- (2) The parties may, by agreement, appoint 1 or more persons with the skills and experience to undertake mediation on the issues relevant to the application.
- (3) If the parties do not agree on the person to be appointed as the mediator, the Judge to whom the application is assigned must—
  - (a) appoint 1 or more persons to act as mediator; but
  - (b) before doing so, be satisfied that the person appointed has the skills and experience to undertake mediation on the issues relevant to the application.

## **7 Power to appoint additional members**

- (1) The Chief Judge of the Court, or any other Judge of the Court with the consent of the Chief Judge, may, in relation to an application made under **subpart 2 of Part 4**, appoint 1 or 2 additional members of the Court who are not Judges of the Court.
- (2) In making appointments under **subclause (1)**, the Chief Judge or other Judge must be satisfied that—
  - (a) the appointment of persons with particular knowledge and experience will assist the determination of the application; and
  - (b) the proposed additional members have the knowledge and experience relevant to the application.
- (3) Before making an appointment under **subclause (1)**, the Chief Judge or other Judge must consult with the parties as to whether—
  - (a) it is appropriate to appoint additional members to the Court; and
  - (b) the proposed additional members have the relevant knowledge and experience.

## **8 Decision of Court**

- (1) In a proceeding where 1 or 2 additional members are appointed under **clause 7**,—
  - (a) the decision of a majority of the members present at a sitting of the Court is the decision of the Court; and

- (b) if, in a proceeding, the members present are equally divided in opinion, the decision of the Judge is the decision of the Court.

### *Injunctions*

## **9 Jurisdiction to grant injunctions**

- (1) In any application made to the Court under this Act, the Court may grant an interim or final injunction to prohibit a defendant to the proceedings from taking further action in relation to a matter that is the subject of the proceedings while the proceedings are before the Court.
- (2) The Court may also—
  - (a) record an undertaking by a defendant not to take an action that is the subject of the proceedings;
  - (b) require an applicant to give an undertaking in respect of damages—
    - (i) that are sustained by any other party through the granting of the interim injunction; and
    - (ii) that the Court decides the applicant ought to pay;
  - (c) fix security for costs and order any payment into the Court;
  - (d) set the proceedings down for an urgent substantive hearing;
  - (e) make other interim orders that the Court considers fit.
- (3) An interim injunction must not be granted without notice being served on all parties, unless the Court is satisfied that—
  - (a) it would cause undue prejudice to the applicant to require the application to proceed on notice; or
  - (b) the interests of justice require the application to be determined without notice being served on all parties.
- (4) A final injunction must not be granted unless—
  - (a) notice has been served on all parties; and
  - (b) the Court has heard from all parties.