



Te Ture Whenua Māori Amendment Act 2016

Public Act 2016 No 69
Date of assent 17 October 2016
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is Te Ture Whenua Maori Amendment Act 2016.

2 Commencement

This Act comes into force on 1 March 2017.

3 Principal Act

This Act amends Te Ture Whenua Maori Act 1993 (the **principal Act**).

4 Section 4 amended (Interpretation)

In section 4, insert in their appropriate alphabetical order:

Chief Justice has the meaning given by section 4(1) of the Senior Courts Act 2016

lawyer has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

5 Section 7 amended (Appointment of Judges)

(1) Replace section 7(3) with:

(3) A person may be appointed a Judge only if—

- (a) that person has for at least 7 years held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or
- (b) that person—
 - (i) holds a degree in law granted or issued by any university within New Zealand; and
 - (ii) has been admitted as a barrister and solicitor of the High Court; and
 - (iii) has held a practising certificate in a jurisdiction specified by Order in Council—
 - (A) for at least 7 years; or
 - (B) for a lesser number of years but when that number of years is added to the number of years the person has held a New Zealand practising certificate the total number of years is at least 7.

(2) Replace section 7(6) and (7) with:

(6) The Attorney-General must publish information explaining his or her process for—

- (a) seeking expressions of interest for the appointment of Judges of the court; and
- (b) nominating a person for appointment as a Judge of the court.

- (7) If the Attorney-General is not for the time being responsible for recommending the appointment of Judges of the court, he or she must publish information explaining the responsible Minister's process for doing the things referred to in subsection (6).
- (8) A Judge must not practise as a lawyer.

6 New sections 7AA and 7AB inserted

After section 7, insert:

7AA Judge not to undertake other employment or hold other office

- (1) A Judge of the court must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the Chief Judge.
- (2) An approval under subsection (1) may be given only if the Chief Judge is satisfied that undertaking the employment or holding the office is consistent with the Judge's judicial office.
- (3) However, subsection (1) does not apply to another office if an enactment permits or requires the office to be held by a Judge.

7AB Protocol relating to activities of Judges

- (1) The Chief Justice must develop and publish a protocol containing guidance on—
 - (a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge; and
 - (b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge.
- (2) The Chief Justice may develop and publish a protocol under subsection (1) only after consultation with the Chief Judge.

7 Section 9 amended (Appointment of temporary Judges)

After section 9(8), insert:

- (9) A superannuation subsidy must not be paid to a person who is appointed as a temporary Judge under this section.
- (10) Subsection (9) does not apply to a compulsory employer contribution within the meaning of section 101A of the KiwiSaver Act 2006.

8 Section 10 amended (Former Judges)

After section 10(3), insert:

- (3A) A superannuation subsidy must not be paid to a person who is appointed as an acting Judge under this section.
- (3B) Subsection (3A) does not apply to a compulsory employer contribution within the meaning of section 101A of the KiwiSaver Act 2006.

9 Section 90 replaced (Power to remove for contempt)

Replace section 90 with:

90 Contempt of court

- (1) This section applies if any person—
 - (a) wilfully insults a judicial officer, Registrar, officer of the court, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or
 - (b) wilfully interrupts the proceedings of a court or otherwise misbehaves in court; or
 - (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings.
- (2) If this section applies,—
 - (a) any constable or officer of the court, with or without the assistance of any other person, may, by order of a Judge, take the person into custody and detain him or her until the rising of the court; and
 - (b) the Judge may, if he or she thinks fit, sentence the person to—
 - (i) imprisonment for a period not exceeding 3 months; or
 - (ii) a fine not exceeding \$1,000 for each offence.
- (3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

Compare: 2011 No 81 s 365

10 New sections 98A to 98G inserted

After section 98, insert:

98A Information regarding reserved judgments

The Chief Judge must, in consultation with the Chief Justice,—

- (a) publish information about the process by which parties to proceedings before the court may obtain information about the status of any reserved judgment in those proceedings; and
- (b) periodically publish information about the number of judgments of the court that he or she considers are outstanding beyond a reasonable time for delivery; and
- (c) publish information about reserved judgments that he or she considers is useful.

98B Recusal guidelines

The Chief Judge must, in consultation with the Chief Justice, develop and publish guidelines to assist Judges to decide if they should recuse themselves from a proceeding.

98C Judge may make order restricting commencement or continuation of proceeding

- (1) A Judge may make an order restricting a person from commencing or continuing proceedings in the court.
- (2) The order may have—
 - (a) a limited effect (a **limited order**); or
 - (b) an extended effect (an **extended order**).
- (3) A limited order restrains a party from commencing or continuing proceedings on a particular matter in the court.
- (4) An extended order restrains a party from commencing or continuing proceedings on a particular or related matter in the court.
- (5) Nothing in this section limits the court's inherent power to control its own proceedings.

98D Grounds for making section 98C order

- (1) A Judge may make a limited order under section 98C if, in proceedings about the same matter in the court, the Judge considers that at least 2 or more of the proceedings are or were totally without merit.
- (2) A Judge may make an extended order under section 98C if, in at least 2 proceedings about any matter considered by the court, the Judge considers that the proceedings are or were totally without merit.
- (3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application or appeal involving the party to be restrained, but is not limited to those considerations.
- (4) The proceedings concerned must be proceedings commenced or continued by the party to be restrained, whether against the same person or different persons.
- (5) For the purpose of this section and sections 98E and 98F, an appeal in a proceeding must be treated as part of that proceeding and not as a distinct proceeding.

98E Terms of section 98C order

- (1) An order made under section 98C may restrain a party from commencing or continuing any proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the court.

- (2) An order made under section 98C, whether limited or extended, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period.

98F Procedure and appeals relating to section 98C orders

- (1) A party to any proceeding may apply for a limited order or an extended order.
- (2) A Judge may make an order under section 98C (a **section 98C order**) either on an application under subsection (1) or on his or her own initiative.
- (3) An application for leave to continue or commence a civil proceeding by a party subject to a section 98C order may be made without notice, but the court may direct that the application for leave be served on any specified person.
- (4) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be conducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice.
- (5) A Judge's determination of an application under subsection (3) for leave is final.
- (6) The party against whom a section 98C order is made may appeal against the order to the Maori Appellate Court.
- (7) The appellant in an appeal under subsection (6) or the applicant for the section 98C order concerned may, with the leave of the Maori Appellate Court, appeal against the determination of that appeal to the Court of Appeal.
- (8) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be.

98G References to Judge in sections 98C to 98F

The functions and powers of a Judge under sections 98C to 98F are exercisable by individual Judges of the Maori Land Court, and are exercisable also by the Judges acting as the Maori Appellate Court as if references in those sections to a Judge were references to the Judges acting as that court.

Legislative history

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as Bill 178–3V

11 October 2016

Third reading

17 October 2016

Royal assent

This Act is administered by Te Puni Kōkiri.