

Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced under Standing Order 263(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy). The Bill seeks to ensure that the laws governing Māori land work better for whānau by making practical and technical changes to reduce the complexity and compliance requirements that Māori encounter when they engage with the courts about their Māori land.

The Bill includes a suite of amendments to Te Ture Whenua Maori Act 1993 (the **Act**) designed to—

- enhance the intergenerational well-being of owners of Māori land, supporting opportunities for owners to use their land to meet their aspirations:
- simplify the complexity and requirements that owners of Māori land encounter when engaging with the Māori Land Court, while preserving the integrity of the Māori land tenure system:
- promote the efficient operation of the Māori Land Court, decrease the costs of resolving issues relating to Māori land, and ensure that the remedies available to enforce a decision are practical and effective:
- ensure that the Māori land tenure system is fit for purpose, clear, user-friendly, and future-proofed.

The Act has been in operation for over 25 years and continues to provide a sound legislative framework for Māori land tenure, supporting owners of Māori land to retain, as well as develop and utilise, their land. However, the Act would benefit from some practical and technical changes that support the Māori Land Court and strengthen the legislative framework for Māori land tenure.

Succession

Simplifying the succession process

To succeed to an interest in Māori land, a person must apply to the Māori Land Court. The Act currently requires all succession applications to be heard at a sitting of the Māori Land Court. The length, complexity, and costs of participating in this process have been a disincentive to whānau applying for succession, and have contributed to Māori not succeeding to their land interests.

The Bill will enable simple and uncontested succession applications to be received, confirmed, and recorded by a Registrar of the Māori Land Court, instead of going through a full court hearing process.

Whāngai

Whāngai are entitled to succeed to interests only if the Māori Land Court determines that they have been formally recognised as being the whāngai of the deceased owner. The Bill clarifies that the tikanga of the relevant iwi or hapū will determine whether whāngai are eligible to succeed. If the court finds that the relevant tikanga does not recognise a relationship of descent, the whāngai will be eligible to receive income or grants from the estate and the right to occupy the family home.

Surviving spouse or partner

Currently, after the death of an owner, their surviving spouse or partner is entitled to receive a life interest in the ownership of their interests in Māori land. This means they can receive income and grants from the deceased owner's interests in the land, can occupy a family home situated on the land, and can participate (eg, vote) in decision-making about the land. These interests only pass to the deceased owner's descendants once the spouse or partner has died, entered a new relationship, or surrendered the rights.

The Bill enables descendants to apply for succession straight away. This amendment will enable descendants to actively participate in decision-making over their land interests straight away, while protecting the surviving spouse's or partner's entitlement to receive income or grants from the deceased owner's interests in Māori land as well as the right to occupy the family home.

Dispute resolution

The Bill establishes a dispute resolution process based on tikanga Māori to assist owners of Māori land to resolve disagreements and conflicts about their land. The dispute resolution process recognises that disputes involving Māori land are often delicate and sensitive situations, involving people with close kinship ties to each other. Enabling the parties to come up with their own solutions to resolve the dispute outside of a court hearing process will help to maintain and restore the relationships between whānau.

The dispute resolution process will be limited to matters within the Māori Land Court's jurisdiction and administered by the Māori Land Court. The process will be

available for proceedings that are already before the Māori Land Court as well as disputes for which court proceedings have not been initiated. The process will be confidential and without prejudice.

Māori Land Court

The Bill makes some improvements to the way the Māori Land Court functions. These changes include—

- allowing a Māori Land Court Registrar to deal with simple and uncontested trust applications:
- enabling the Māori Land Court to appoint experts in tikanga Māori or whakapapa as additional members of the court to assist in cases involving Māori land:
- providing Judges of the Māori Land Court with the power to hold judicial settlement conferences, which will enable the Judge to assist parties to resolve an issue without the need for a formal court hearing.

The Bill also expands the range of remedies that a Judge of the Māori Land Court can employ to achieve an adequate outcome of a matter, including—

- extending the ability to issue injunctions to include the power to compel action:
- authorising the Māori Land Court to grant equitable relief if satisfied it is necessary to achieve a just outcome where other remedies would be insufficient to achieve that outcome:
- ensuring that the Māori Land Court can send orders for the recovery of Māori land to the High Court or District Court for enforcement.

The Māori Land Court does not have jurisdiction to hear certain matters relating to Māori land, even though it may be the more appropriate forum to do so. The Bill allows the Māori Land Court to hear applications relating to Māori land for a greater range of matters associated with the Family Protection Act 1955, the Government Rounding Powers Act 1989, the Law Reform (Testamentary Promises) Act 1949, the Local Government Act 1974, and the Property Law Act 2007.

Māori housing tenure

The Bill recognises the need for owners of Māori land to be provided with better opportunities to use their land to meet their housing aspirations by—

- enabling the Māori Land Court to grant occupation orders in favour of a beneficiary of a whānau trust as long as the trustees of the whānau trust agree:
- allowing the trustees of a Māori reservation to grant a lease or an occupation licence for the purpose of papakāinga housing for periods longer than 14 years.

Minor and other technical amendments

The Bill also makes a small number of minor and technical changes to improve the operation of the Act.

Departmental disclosure statement

Te Puni Kōkiri (the Ministry of Māori Development) and the Ministry of Justice are required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=179>

Regulatory impact assessment

Te Puni Kōkiri (the Ministry of Māori Development) and the Ministry of Justice produced a regulatory impact assessment on 29 November 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact assessment can be found at—

- <https://www.tpk.govt.nz/documents/download/5985/regulatory-impact-analysis-te-ture-whenua-maori-amendment-bill.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Part 1 of this Bill amends Te Ture Whenua Maori Act 1993 (the **principal Act**). *Part 2* amends other Acts.

Most of the amendments commence on 1 October 2020 or 6 months after Royal assent, whichever is later. *New section 98M(2) to (5)* (persons appointed as mediators) commences by Order in Council on or after the commencement of the rest of the amendments.

The more significant amendments in *Part 1* are summarised below by reference to sections of the principal Act and as if the amendments had been enacted and had commenced. The other amendments are generally minor or technical or clarify or update things.

The Māori Land Court may now issue an injunction to require a person to take certain positive actions in relation to any Māori land, Māori reservation, or General land owned by Māori. *See new section 19(1)(ba)*.

Part 3 of the Property Law Act 2007 is now applied to mortgages of Māori freehold land. The Māori Land Court deals with applications that relate only to Māori freehold land or that are referred by another court. *See new section 20A*.

For certain matters about easements or covenants (positive or restrictive) under the Property Law Act 2007, the Māori Land Court now deals with the matter if it relates only to Māori freehold land or it is referred by the District Court. *See new section 22B*.

The Māori Land Court may now make an order for equitable relief (relating to its jurisdiction under an Act) in some circumstances. *See new section 24C*.

The Māori Land Court may now appoint 1 or 2 additional members with knowledge and experience of tikanga Māori or whakapapa for certain proceedings that relate to Māori land. *See new section 32A.*

A Judge may now convene a judicial settlement conference. The parties to a proceeding can then settle a claim or an issue by negotiation. *See new section 40A.*

The Māori Land Court may now send an order for recovery of land to the High Court or District Court for enforcement. It may also send details about the order and the related proceedings, including about any person's breach of or compliance with the order. *See new section 81A.*

Parties can now use mediation to resolve most disputed issues that the Māori Land Court has jurisdiction over. Mediation is available whether or not there are already court proceedings about an issue. As far as possible, the tikanga of the parties' whānau and hapū is followed. *See new Part 3A (sections 98H to 98S).*

The owner of a beneficial interest in Māori freehold land may now leave the interest by will subject to rights gifted to their spouse, civil union partner, or de facto partner. The rights are 1 or both of—

- the right to occupy the principal family home on the land:
- the right to receive any income or discretionary grants from the interest.

Similarly, if the owner dies intestate, their spouse, civil union partner, or de facto partner (in a relationship that had not ended) gains both rights. The rights end in some circumstances and do not give an ownership interest in the land. *See new sections 108(4), 108A, 109(2), and 109AA.*

A Registrar may now deal with an application for simple and uncontested succession under section 113 (to beneficial freehold interests in Māori freehold land). The Registrar can also deal with some related applications about freehold interests in General land or beneficial interests in Māori freehold land. The Registrar must determine the applications without a hearing. There are limits on how the Registrar's decisions may be reviewed. *See new section 113A.*

Similarly, a Registrar may now deal with an application for a simple and uncontested trust matter under a provision of Part 12. The Registrar can also exercise some related powers. The Registrar must determine the application without a hearing. There are limits on how the Registrar's decisions may be reviewed. *See new section 235A.*

Some provisions of the principal Act depend on there being a relationship of descent between people for the purposes of succession under Part 4. The tikanga of the relevant iwi or hapū now determines (for the purposes of those provisions) whether there is a relationship of descent between a child who is a whāngai and 1 or both of—

- the child's birth parents:
- the child's parents after the child became a whāngai.

The Māori Land Court may determine whether the child has a relationship of descent with certain parents for those purposes. *See new sections 114A and 115.*

The court may also make an order providing for a person if they cannot succeed to a beneficial interest in Māori freehold land because, under the tikanga of the relevant iwi or hapū, a child has no relationship of descent with certain parents. Other requirements must also be satisfied. The rights provided to the person are 1 or both of—

- the right to occupy the principal family home on the land;
- the right to receive any income or discretionary grants from the interest.

The rights end in some circumstances and do not give an ownership interest in the land. *See new section 116.*

The Māori Land Court may now make an order to change Crown land to Māori customary land, on application by the Crown. The owners must be defined as a class of persons comprising the previous owners and all of their descendants. But the court must not change the land in that way without a sufficient degree of support from the proposed owners. *See new section 131A.*

In determining the ownership of Māori customary land under section 132, the Māori Land Court must now define the owners as a class of persons (that includes all descendants of its members). In changing the land to Māori freehold land, the court must vest the land in—

- the trustees of an ahu whenua trust to hold in trust for the class of persons as beneficial owners; or
- if the class of persons is an iwi or a hapū, the trustees of a whenua topu trust for the benefit of the class of persons as beneficiaries.

But the court must not change the land in that way without a sufficient degree of support from the members of the proposed class of persons. If the trust is terminated, the land must be vested in the trustees of another trust. The trustees cannot alienate the Māori freehold land by sale or gift. If a member of the class of persons dies, the member's descendants remain beneficial owners or beneficiaries and there is no succession to the interest under Part 4. *See section 132 and new sections 18(1)(ba), 107A, 150A(1A), and 241(1A).*

Only the Māori Trustee may now bring proceedings—

- to recover possession of Māori customary land from any person; or
- to prevent, or recover damages for, trespass or injury to the land by any person.

See new section 144.

Māori customary land may no longer be vested or acquired under an Act. *See new section 145.*

Māori freehold land for sale or gift must be offered under a right of first refusal to the preferred classes of alienees, unless the proposed sale or gift is to a member of such a class. The principal Act now sets out details of the right of first refusal. *See section 147A.*

A person may no longer claim an interest in Māori land on the ground of adverse possession. *See new section 150E.*

The grounds for the Māori Land Court to remove a trustee, or a member of the committee of management of a Māori incorporation, have been updated. The grounds that disqualify a person from being a member of the committee of management of a Māori incorporation have also been updated. *See* sections 240, 269(4), and 272(2).

The Māori Land Court may form a Māori incorporation from the owners of Māori freehold land if it is in the owners' interests. This requires—

- that the assembled owners pass a resolution for incorporation; or
- (now) that the court is satisfied that there is sufficient support from the owners.

See new section 247(2)(b).

A Māori incorporation must now record the details of dividends paid to shareholders. A Māori incorporation must now also keep an interests register. *See new sections 259(5), 274B, and 274C.*

An esplanade reserve or esplanade strip is no longer created when land is partitioned. *See new section 301(4).*

The Māori Land Court may make an order to grant reasonable access to landlocked land. In deciding whether to make the order, the court must now also consider—

- the applicant's relationship with the landlocked land (and certain things associated with the land); and
- the applicant's culture and traditions with respect to the landlocked land.

See section 326B(4).

An occupation order may now be made for the beneficiary of a whānau trust that holds a beneficial interest in land. *See section 328(1).*

The Māori Land Court may no longer require a survey of Māori land or impose a charge on Māori land for the costs of survey. *See the repeal of sections 332, 333, and 336.*

The court may now make an order to create a Māori reservation (instead of the chief executive creating it by *Gazette* notice on the court's recommendation). On a similar basis, the court (instead of the chief executive) may now exclude land from or cancel a Māori reservation or redefine the purposes or beneficiaries of the reservation. Land can no longer become a Māori reservation if there is a mortgage or charge on it. A lease or occupation licence may now be granted for a longer term for papakāinga housing (not just for education or health). *See sections 338, 339, and 341.*

The following cannot be enforced against a person's interest in Māori customary land or beneficial freehold interest in Māori freehold land:

- a judgment for payment of debts or liabilities; or
- (now) a fine, penalty, sentence of reparation, or requirement to pay money by a judicial process.

See new section 342(1).

In *Part 2* of the Bill, the Māori Land Court's jurisdiction is extended to include certain matters about Māori land under the Family Protection Act 1955, the Government Roding Powers Act 1989, the Law Reform (Testamentary Promises) Act 1949, and the Local Government Act 1974.

Hon Nanaia Mahuta

Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act **2019**.
- 2 Commencement** 5
(1) This Act comes into force on the later of the following:
 - (a) **1 October 2020**;
 - (b) immediately after the 6-month period that starts on the date of Royal assent.
- (2) However, **section 19**, as it relates to **section 98M(2) to (5)** of the principal Act, comes into force on a single date set by Order in Council, which must be on or after the date on which the rest of this Act comes into force. 10

Part 1
Amendments to Te Ture Whenua Maori Act 1993

- 3 Principal Act** 15
This Part amends Te Ture Whenua Maori Act 1993 (the **principal Act**).

- 4 Section 4 amended (Interpretation)**
- In section 4, insert in its appropriate alphabetical order:
- Maori reservation** means a Maori reservation set apart under section 338 or the corresponding provisions of any former enactment
- 5 Section 18 amended (General jurisdiction of court)** 5
- After section 18(1)(b), insert:
- (ba) to determine whether a person is a member of a class of persons who are or will be beneficial owners of, or beneficiaries of a trust whose trustees are owners of, land that is or will become Maori freehold land:
- 6 Section 19 amended (Jurisdiction in respect of injunctions)** 10
- (1) In section 19(1)(a), replace “Maori freehold land, Maori reservation, or wahi tapu” with “Maori land, Maori reservation, or General land owned by Maori”.
- (2) After section 19(1)(b), insert:
- (ba) requiring any person to—
- (i) remove any structure or object from any Maori land, Maori reservation, or General land owned by Maori; or 15
- (ii) reinstate any structure or object that has been removed from any Maori land, Maori reservation, or General land owned by Maori; or
- (iii) restore any Maori land, Maori reservation, or General land owned by Maori to the condition it was in before it was modified by any infrastructure work, earthwork, or other means; or 20
- (iv) remedy any damage done to any Maori land, Maori reservation, or General land owned by Maori; or
- (3) In section 19(1)(c), replace “Maori freehold land” with “Maori land or General land owned by Maori”. 25
- (4) In section 19(1)(d), replace “alienation of land” with “alienation of Maori land, a Maori reservation, or General land owned by Maori”.
- 7 New section 20A inserted (Jurisdiction in relation to mortgages)**
- After section 20, insert: 30
- 20A Jurisdiction in relation to mortgages**
- (1) An application for a court order under Part 3 of the Property Law Act 2007 (mortgages) must be made to—
- (a) the Maori Land Court, if the application relates only to Maori freehold land; or 35
- (b) whichever of the High Court or District Court has jurisdiction, if the application relates to Maori freehold land and other land.

- (2) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to another court described in **subsection (1)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.
- (3) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings. 5
- (4) The Maori Land Court has jurisdiction under, and must apply, Part 3 of the Property Law Act 2007 in relation to any application made to it, or any proceedings or question referred to it, in accordance with this section.
- (5) For those purposes, Part 3 of the Property Law Act 2007 applies as if— 10
- (a) the Maori Land Court were the High Court under that Part; and
 - (b) a Registrar of the Maori Land Court were the Registrar under that Part.
- (6) Any appeal from an order of the Maori Land Court made under Part 3 of the Property Law Act 2007 must be made to the High Court.

8 New section 22B inserted (Power of court in relation to easements and covenants over Maori freehold land) 15

After section 22A, insert:

22B Power of court in relation to easements and covenants over Maori freehold land

- (1) This section applies to any application for a court order to be made, or a direction to be given, under section 313, 317, or 318(3) of the Property Law Act 2007 that relates to Maori freehold land. 20
- (2) The application must be made to—
- (a) the Maori Land Court, if the application relates only to Maori freehold land; or 25
 - (b) the District Court, if the application relates to Maori freehold land and other land.
- (3) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (2)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 30
- (4) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
- (5) The Maori Land Court has jurisdiction under sections 313, 314, 317, and 318(3) of the Property Law Act 2007 in relation to any application made to it, or any proceedings or question referred to it, in accordance with this section. 35
- (6) Any appeal from an order of the Maori Land Court made under section 313 or 317 of the Property Law Act 2007 must be made to the High Court.

9 New section 24C inserted (Equitable relief)

After section 24B, insert:

24C Equitable relief

- (1) The court may make an order under this section—
- (a) for the purposes of or as a result of exercising jurisdiction conferred on it by or under any Act; and 5
 - (b) to the extent that the order is not inconsistent with that Act.
- (2) The court may make an order for equitable relief if it is satisfied that, in the particular circumstances of the case,—
- (a) the order is necessary to achieve a just outcome; and 10
 - (b) any other available relief is insufficient to achieve a just outcome.
- (3) The court may make the order on the application of a party to a proceeding or of the court's own motion.

10 Section 32 amended (Additional members in relation to matter of tikanga Maori) 15

Replace the heading to section 32 with “**Additional members for purposes of inquiry in relation to matter of tikanga Maori**”.

11 New section 32A inserted (Additional members who know tikanga Maori or whakapapa for proceedings about Maori land)

After section 32, insert: 20

32A Additional members who know tikanga Maori or whakapapa for proceedings about Maori land

- (1) In any proceedings before the Maori Land Court that relate to Maori land and are specified by the rules of court, 1 or 2 additional members with knowledge and experience of tikanga Maori or whakapapa may be appointed to the court by— 25
- (a) the Judge hearing the proceedings; or
 - (b) the Chief Judge, if a Judge has not yet been assigned to the proceedings.
- (2) The additional members must not be Judges of the court.
- (3) The Judge or Chief Judge may make the appointment of their own motion or at the request of any party to the proceedings. 30
- (4) The proceedings and processes of the court cannot be challenged on appeal, or in any other proceedings, on the grounds that an additional member appointed under this section had a tribal affiliation or other relationship with any of the parties unless it is shown that the additional member acted in bad faith. 35

- 12 Section 34 amended (Oath to be taken by additional member)**
In section 34, replace “section 26E(4) or section 26F(4) or section 26G(5) or section 26S(4) or section 26T(4) or section 26U(5) or section 28(1) or section 31(1) or section 33(1)” with “section 26E(4), 26F(4), 26G(5), 26S(4), 26T(4), 26U(5), 28(1), 31(1), **32A(1)**, or 33(1)”. 5
- 13 Section 35 amended (Fees and allowances)**
In section 35, replace “section 26E(4) or section 26F(4) or section 26G(5) or section 26S(4) or section 26T(4) or section 26U(5) or section 28(1) or section 31(1) or section 33(1)” with “section 26E(4), 26F(4), 26G(5), 26S(4), 26T(4), 26U(5), 28(1), 31(1), **32A(1)**, or 33(1)”. 10
- 14 Section 36 amended (Quorum and decisions)**
- (1) In section 36(1), replace “section 26E(4) or section 26F(4) or section 26G(5) or section 26S(4) or section 26T(4) or section 26U(5) or section 28(1) or section 31(1) or section 33(1)” with “section 26E(4), 26F(4), 26G(5), 26S(4), 26T(4), 26U(5), 28(1), 31(1), **32A(1)**, or 33(1)”. 15
- (2) In section 36(2), replace “tikanga Maori” with “tikanga Maori or whakapapa”.
- 15 New section 40A inserted (Judge may convene judicial settlement conference)**
After section 40, insert:
- 40A Judge may convene judicial settlement conference** 20
- (1) A Judge may convene a judicial settlement conference.
- (2) The purpose of a judicial settlement conference is to give the parties to a proceeding before the court an opportunity to negotiate the settlement of a claim or an issue.
- (3) A Judge who convenes a judicial settlement conference may assist the parties in their negotiations, but the Judge must not preside at the hearing of the proceeding (if any) unless— 25
- (a) all parties taking part in the conference consent; or
- (b) the only matter for resolution at the hearing is a question of law.
- 16 New section 81A inserted (Enforcement of orders for recovery of land)** 30
After section 81, insert:
- 81A Enforcement of orders for recovery of land**
- (1) If the court makes an order for the recovery of land, it may, on the application of any party or of its own motion, transmit a sealed copy of the order to whichever of the High Court or District Court may enforce the order (the **enforcing court**). 35

- (2) The Registrar of the enforcing court must file the copy as a record of the enforcing court, and the order then—
- (a) is treated as having been made by the enforcing court; and
 - (b) may be enforced by the enforcing court.
- (3) The court may also transmit a certificate to the enforcing court that sets out any matter relating to the order and the related proceedings, including any person’s breach of or compliance with the order. 5
- (4) The certificate is sufficient evidence of the matters it contains, unless the contrary is proved.
- (5) The filing of the copy of the order does not limit or affect any right or power of rehearing, appeal, amendment, or cancellation in respect of the order. 10

17 Section 95 amended (Rules of court)

- (1) After section 95(3)(f), insert:
- (fa) prescribing the class or classes of proceedings that relate to Maori land for which 1 or 2 additional members with knowledge and experience of tikanga Maori or whakapapa may be appointed to the court under **section 32A**: 15
- (2) After section 95(3)(i), insert:
- (ia) prescribing any matters relating to the resolution of disputes under **Part 3A**, such as criteria for the court, Judge, or Registrar to consider in deciding whether to refer a matter to a mediator under that Part: 20
- (3) After section 95(3)(k), insert:
- (ka) providing for any matter of practice or procedure for the purposes of **section 113A(5) or 235A(6)**: 25

18 Section 98 amended (Maori Land Court Special Aid Fund) 25

In section 98(4), delete “by post”.

19 New Part 3A inserted

After section 98G, insert:

Part 3A Dispute resolution

30

98H Matters to which this Part applies

- (1) This Part applies to any matter over which the Maori Land Court has jurisdiction other than—
- (a) a matter to which section 26B or 26C applies (which relates to the Maori Fisheries Act 2004); or 35

<ul style="list-style-type: none"> <li style="margin-left: 20px;">(b) a matter to which section 26P or 26Q applies (which relates to the Maori Commercial Aquaculture Claims Settlement Act 2004); or <li style="margin-left: 20px;">(c) a matter to which section 30(1) applies (which relates to the most appropriate representatives of a class or group of Maori). 	5
<p>(2) In this Part, parties or parties to a dispute means the parties between which there is a disputed issue.</p>	5
<p>98I Purpose of this Part</p> <p>The purpose of this Part is to assist the parties to a dispute (including owners of Maori land) to quickly and effectively resolve any disputed issues—</p>	10
<ul style="list-style-type: none"> <li style="margin-left: 20px;">(a) between themselves; and <li style="margin-left: 20px;">(b) in accordance with the law; and <li style="margin-left: 20px;">(c) as far as possible, in accordance with the relevant tikanga of the whanau or hapu with whom they are affiliated, for both the process and the substance of the resolution. 	10
<p>98J Mediation is always voluntary</p>	15
<ul style="list-style-type: none"> (1) An issue may be referred to mediation only if all the parties agree to mediation. (2) An issue may be mediated only while all the parties still agree to mediation. (3) This section overrides the rest of this Part (for example, sections 98L, 98Q(3)(a), and 98R(3)). 	15
<p>98K Powers of Judge or Registrar subject to rules of court</p> <p>If there are any relevant rules of court, a Judge or Registrar may exercise a power under this Part only in accordance with those rules.</p>	20
<p>98L Dispute may be referred to mediation</p>	25
<ul style="list-style-type: none"> (1) If there are court proceedings about a matter, the Judge hearing the proceedings may refer any issue arising from the matter to a mediator— <ul style="list-style-type: none"> (a) at the Judge’s initiative; or (b) on the request of any party to the disputed issue who is a party to the proceedings. (2) If there are not court proceedings about a matter, any party to a disputed issue arising from the matter may apply to a Registrar to have the issue referred to a mediator. (3) The Registrar may refer the issues— <ul style="list-style-type: none"> (a) to a mediator, if the Registrar is satisfied that mediation is likely to be effective; or (b) to a Judge to decide whether to refer it to a mediator, in any other case. 	25
<ul style="list-style-type: none"> <li style="margin-left: 20px;">(a) to a mediator, if the Registrar is satisfied that mediation is likely to be effective; or <li style="margin-left: 20px;">(b) to a Judge to decide whether to refer it to a mediator, in any other case. 	35

- (4) In deciding whether to refer an issue to a mediator, the Judge or Registrar may hold a conference of the parties to the dispute.

98M Appointment of mediator

- (1) Either 1 or 2 persons must be appointed as the mediator, each with the skills and experience to mediate the issues referred to them. 5
- (2) The chief executive must record a list of persons whom the chief executive has approved as mediators under this Part.
- (3) The parties to a dispute may appoint the mediator by agreement—
- (a) from the list of approved persons; or
 - (b) from beyond that list if— 10
 - (i) the parties consider that it is justified in the circumstances; and
 - (ii) the appointment is approved by the chief executive and the Judge or Registrar who referred the issues to a mediator.
- (4) If the parties do not agree on the mediator, the Judge or Registrar who referred the issues to a mediator must, after consulting the parties, appoint the mediator— 15
- (a) from the list of approved persons; or
 - (b) from beyond that list if the appointment is approved by the chief executive.
- (5) In this section, **chief executive** means the chief executive of the Ministry of Justice. 20

98N Judge appointed as mediator

- (1) A Judge may act as a mediator, but must not sit as a Judge on court proceedings about a matter relating to the issues referred to mediation.
- (2) However, a Judge acting as a mediator is to be treated as acting judicially and retains the same immunities as when acting as a Judge. 25

98O Conduct of mediation

- (1) The Judge or Registrar who referred issues to a mediator may advise the mediator of the issues that need to be addressed at mediation.
- (2) The following persons are entitled to attend and participate in a mediation: 30
- (a) the parties and their representatives; and
 - (b) any other person who is approved by—
 - (i) the Judge or Registrar who referred the issues to a mediator; or
 - (ii) the mediator.
- (3) A mediator may— 35

- (a) follow the procedures (structured or unstructured), and do the things, that the mediator considers appropriate to promptly and effectively resolve the issues referred to the mediator; and
- (b) receive any information, statement, admission, document, or other material in any way or form that the mediator thinks fit, whether or not it would be admissible in judicial proceedings. 5
- (4) However, a mediator must try to give effect to the purpose of this Part in mediating the issues.
- (5) Written and oral material presented at or for the mediation must be kept confidential by the mediator and participants in the mediation, unless the person who produces the material consents to its disclosure. 10
- (6) No person may be sued for defamation for statements made in mediation.
- (7) Statements made and material presented at a mediation are admissible in a subsequent mediation of the same issues but are not admissible in other proceedings before a person acting judicially, unless the persons participating in the mediation consent to the admission of the statement or material. 15
- (8) The mediator must provide written reports to keep the Registrar informed of progress in the mediation, unless the mediator is a Judge.
- 98P Successful mediation**
- (1) If some or all of the issues referred to mediation are resolved at mediation, the mediator must— 20
- (a) record the terms of the resolution; and
- (b) report them to the Judge or Registrar who referred the issues to a mediator.
- (2) If a Judge referred the issues to a mediator, the Judge may make an order that includes the terms of the resolution. 25
- (3) If a Registrar referred the issues to a mediator,—
- (a) the Registrar must include the terms of the resolution in a proposed order and provide the proposed order to a Judge; and
- (b) the Judge may make that order, or a different order, that includes the terms of the resolution. 30
- (4) However, the Registrar or Judge must not propose or make an order under this section unless they are satisfied that the issues were resolved in compliance with **section 98I(b) and (c)**.
- (5) If the Judge is not satisfied of that compliance, the Judge may refer the terms of the resolution back to the mediator with directions about what is required for an order to be made under this section. 35

98Q Unsuccessful mediation of issues from court proceedings

- (1) This section applies to issues referred to mediation that arose from a matter for which there were court proceedings (*see* **section 98L(1)**).
- (2) If some or all of the issues are not resolved by mediation and the mediator believes that those issues are unlikely to be resolved, the mediator must— 5
 - (a) report that lack of resolution to the Judge; and
 - (b) state the issues that are unresolved.
- (3) On receiving the report, the Judge may refer some or all of the unresolved issues to— 10
 - (a) a mediator (whether or not the earlier mediator), but only if satisfied that mediation is the most appropriate way to resolve the issues; or
 - (b) the court to hear and determine or to advise on.
- (4) The Judge who refers unresolved issues to the court may be the Judge who hears the matter or gives the advice.

98R Unsuccessful mediation of other issues 15

- (1) This section applies to issues referred to mediation that arose from a matter for which there were not court proceedings (*see* **section 98L(2)**).
- (2) If some or all of the issues are not resolved by mediation, any party may apply to the court— 20
 - (a) to refer some or all of the unresolved issues to a mediator; or
 - (b) to hear and determine some or all of the unresolved issues.
- (3) The court, on application under **subsection (2)(a)**, may decide to refer an issue to a mediator (whether or not the earlier mediator) only if satisfied that mediation is the most appropriate way to resolve the issue.
- (4) In deciding whether to refer an issue to a mediator, the court may hold a conference of the parties. 25

98S Orders

In making an order under this Part, the Judge or the court may do 1 or more of the following:

- (a) incorporate or restate the terms of an agreement reached by the parties to a dispute: 30
- (b) incorporate the terms that express the outcome of mediation:
- (c) specify that the order applies for general or specific purposes:
- (d) specify the purpose or purposes for which the order is made:
- (e) specify a date after which the order ceases to have effect: 35
- (f) make other orders not inconsistent with this Part, as the Judge or court considers appropriate.

20 New section 107A inserted

Before section 108, insert:

107A Succession when class of persons are beneficial owners or beneficiaries

- (1) This section applies to Māori freehold land that is vested in trustees by an order made under section 132(6) (for which a class of persons, including all descendants, are the beneficial owners or beneficiaries). 5
- (2) If a member of the class of persons dies, the member’s descendants remain beneficial owners or beneficiaries and there is no succession to the interest under this Part.

21 Section 108 amended (Disposition by will) 10

- (1) In section 108(1), replace “subsections (2) and (3)” with “this section”.
- (2) Repeal section 108(2)(e).
- (3) In section 108(2)(f), replace “(e)” with “(d)”.
- (4) After section 108(2), insert:

(2AA) *See section 114A* for whether a child who is a whangai or another person has a relationship of descent for the purposes of subsection (2). 15

- (5) Repeal section 108(3).
- (6) Replace section 108(4) with:

(4) A beneficial interest may be left by will under subsection (2) subject to a gift to the owner’s spouse, civil union partner, or de facto partner that is granted in accordance with **section 108A**. 20

- (7) In section 108(5),—
 - (a) replace “subsection (2) or subsection (4)” with “this section”; and
 - (b) replace “either of those subsections” with “this section”.

22 New section 108A inserted (Disposition by will of spouse’s or partner’s rights to occupy and receive income) 25

After section 108, insert:

108A Disposition by will of spouse’s or partner’s rights to occupy and receive income

- (1) An owner of a beneficial interest in Māori freehold land may leave that interest by will under section 108 subject to the gift to the owner’s spouse, civil union partner, or de facto partner of 1 or both of the rights specified in **subsection (2)**. 30
- (2) The rights are—
 - (a) the right to occupy the principal family home if it is on the land: 35
 - (b) the right to receive any income or discretionary grants from the interest.

- (3) A right may be gifted for—
- (a) a specified period; or
 - (b) the life of the spouse or partner.
- (4) A right ends if—
- (a) the specified period (if any) ends; or 5
 - (b) the spouse or partner dies; or
 - (c) the spouse or partner gives it up in writing.
- (5) A right—
- (a) cannot be transferred or disposed of by the spouse or partner; and
 - (b) does not give the spouse or partner an ownership interest in the land. 10
- (6) The person or persons who receive the beneficial interest in Maori freehold land—
- (a) are the owners of the interest (who may be assembled owners under Part 9); and
 - (b) if the right to receive any income or discretionary grants was gifted, are entitled to receive the income or discretionary grants when the right ends. 15

23 Section 109 amended (Succession to Maori freehold land on intestacy)

Replace section 109(2) to (4) with:

- (2) A beneficial interest to which subsection (1) applies is subject to any rights of the owner's spouse, civil union partner, or de facto partner under **section 109AA**. 20

24 New section 109AA inserted (Succession on intestacy subject to spouse's or partner's rights to occupy and receive income)

After section 109, insert: 25

109AA Succession on intestacy subject to spouse's or partner's rights to occupy and receive income

- (1) This section applies if—
- (a) the owner of a beneficial interest in Maori freehold land dies intestate; and 30
 - (b) the owner is survived by a spouse, civil union partner, or de facto partner; and
 - (c) at the date on which the owner dies, the marriage, civil union, or de facto relationship has not ended (within the meaning of section 2A(2), 2AB(2), or 2D(4) of the Property (Relationships) Act 1976, as applicable). 35
- (2) The spouse or partner has—

- (a) the right to occupy the principal family home if it is on the land; and
- (b) the right to receive any income or discretionary grants from the interest.
- (3) The rights end if the spouse or partner—
 - (a) marries or enters a new civil union or de facto relationship; or
 - (b) dies; or 5
 - (c) gives them up in writing.
- (4) The rights—
 - (a) cannot be transferred or disposed of by the spouse or partner; and
 - (b) do not give the spouse or partner an ownership interest in the land.
- (5) The person or persons who receive the beneficial interest in Maori freehold land— 10
 - (a) are the owners of the interest (who may be assembled owners under Part 9); and
 - (b) are entitled to receive the income or discretionary grants when the spouse's or partner's rights end. 15

25 Section 113 amended (Maori Land Court to determine beneficial entitlements to Maori land)

Replace the heading to section 113 with “**Maori Land Court to determine succession to beneficial entitlements to Maori freehold land**”.

26 New section 113A inserted (Registrar may determine succession to interests in Maori freehold land and make related orders) 20

After section 113, insert:

113A Registrar may determine succession to interests in Maori freehold land and make related orders

- (1) A Registrar may receive and determine the following at the applicant's request: 25
 - (a) an application for simple and uncontested succession under section 113 (to beneficial freehold interests in Maori freehold land); and
 - (b) any related application for an order vesting a freehold interest in General land under section 111, or a beneficial interest in Maori freehold land under section 112, 117, or 118, including any order that may be made under section 242 (because of section 117(8) or 118(5)). 30
- (2) For that purpose,—
 - (a) those provisions apply as if the Registrar were the court, except as modified by this section; and
 - (b) section 119 applies with any necessary modifications; but 35
 - (c) the Registrar does not have the powers described in section 117(3)(a) (including as applied by section 118(5)).

- (3) The Registrar must determine the applications without a hearing.
- (4) The Registrar may at any time refer the applications to the court for determination if the Registrar decides that an application is not for a simple and uncontested succession.
- (5) Any determination or order made by the Registrar in accordance with this section must be treated as an order of the court for the purposes of this Act, including section 42 (commencement of orders), but excluding—
- (a) sections 41 (orders pronounced in open court) and 43 (rehearings); and
 - (b) any matter of practice or procedure that is instead provided for by the rules of court.
- (6) The determination or order may be reviewed as follows:
- (a) any person affected by the determination or order may apply to the court for a review—
 - (i) within 28 days after the determination or order is made; or
 - (ii) within any longer period allowed by a Judge if the Judge is satisfied that the person could not reasonably have applied sooner:
 - (b) a Judge must conduct the review on the papers unless the Judge considers that a hearing is necessary:
 - (c) the Judge may affirm, vary, or annul the determination or order, and may exercise any jurisdiction the court has in relation to an application for succession under this Part (the **Judge’s review decision**).
- (7) A person must obtain the leave of the court to apply under section 43 for a rehearing of the Judge’s review decision, which is treated as if it were an order of the court.
- (8) In this section, **simple and uncontested succession** means succession that the Registrar is satisfied is simple, such as the following examples, and uncontested:
- (a) succession by will, whether or not probate has been granted, where all successors belong to a preferred class of alienee:
 - (b) further succession based on evidence heard in court for a previous succession.

27 New section 114A inserted (Descent relationships for whangai determined by tikanga Maori)

After section 114, insert:

114A Descent relationships for whangai determined by tikanga Maori

- (1) This section applies to a provision of this Act or the Family Protection Act 1955 that depends on there being a relationship of descent between people for the purposes of—

<p>(a) succession under this Part; or</p> <p>(b) a claim under the Family Protection Act 1955 that relates to Maori freehold land (as defined by section 3A(6) of that Act).</p> <p>(2) This section applies, for example, to a provision of that type that refers to—</p> <p style="padding-left: 20px;">(a) a child, whangai, grandchild, issue, brother, sister, or parent; or</p> <p style="padding-left: 20px;">(b) being descended or related by blood; or</p> <p style="padding-left: 20px;">(c) members of the hapu associated with land.</p> <p>(3) For any child who is a whangai, the tikanga of the relevant iwi or hapu determines whether there is a relationship of descent between the child and one or both of the following types of parent for the purposes of that provision:</p> <p style="padding-left: 20px;">(a) the child’s birth parents (as defined by section 2 of the Adult Adoption Information Act 1985):</p> <p style="padding-left: 20px;">(b) the child’s new parents after the child became a whangai.</p> <p>(4) This section prevails over section 19 of the Adoption Act 1955.</p>	<p>5</p> <p>10</p>
<p>28 Sections 115 and 116 replaced</p> <p>Replace sections 115 and 116 with:</p>	<p>15</p>
<p>115 Court may determine whangai and descent relationships of whangai</p> <p>(1) The court may determine whether, for the purposes of succession under this Part or a claim under the Family Protection Act 1955 that relates to Maori freehold land (as defined by section 3A(6) of that Act),—</p> <p style="padding-left: 20px;">(a) a child is a whangai of certain parents:</p> <p style="padding-left: 20px;">(b) a child who is a whangai has a relationship of descent with certain parents (<i>see</i> section 114A(3)).</p> <p>(2) The court’s jurisdiction under this section may be exercised on the application of any person with an interest in the matter.</p> <p>(3) An order made by the court on a matter under this section is proof of the matter for the purposes of section 114A.</p> <p>(4) This section prevails over section 19 of the Adoption Act 1955.</p>	<p>20</p> <p>25</p>
<p>116 Court may provide for person to have rights to occupy and receive income despite no descent relationship of whangai</p> <p>(1) The court may make an order giving a person 1 or both of the following rights in relation to a beneficial interest in Maori freehold land:</p> <p style="padding-left: 20px;">(a) the right to occupy the principal family home if it is on the land:</p> <p style="padding-left: 20px;">(b) the right to receive any income or discretionary grants from the interest.</p> <p>(2) The court may make the order only in respect of a person who is not entitled to succeed to the beneficial interest under this Part solely because, under section</p>	<p>30</p> <p>35</p>

- 114A**, the tikanga of the relevant iwi or hapu determines that there is no relationship of descent between a child who is a whangai and certain parents.
- (3) The court may make the order only if it considers that—
- (a) the order is required to prevent an injustice to the person; and
 - (b) the person’s claim is not within the jurisdiction of the High Court under the Law Reform (Testamentary Promises) Act 1949 or the Family Protection Act 1955. 5
- (4) A right may be given for—
- (a) a specified period; or
 - (b) the life of the recipient. 10
- (5) A right ends if—
- (a) the specified period (if any) ends; or
 - (b) the recipient dies; or
 - (c) the recipient gives it up in writing.
- (6) A right— 15
- (a) cannot be transferred or disposed of by the recipient; and
 - (b) does not give the recipient an ownership interest in the land.
- (7) The person or persons who receive the beneficial interest in Maori freehold land—
- (a) are the owners of the interest (who may be assembled owners under Part 9); and 20
 - (b) if the right to receive any income or discretionary grants was given, are entitled to receive the income or discretionary grants when the right ends.
- 29 Section 127 amended (Registrar of court to record ownership) 25**
- (1) Replace section 127(2) with:
- (2) If the Registrar is satisfied that any interest for life or another limited period has ended in respect of any beneficial interest in Maori freehold land, the Registrar must note the ending of the interest in the ownership list.
- (2) Replace section 127(5) with: 30
- (5) Nothing in subsection (1) requires the Registrar—
- (a) to record the ownership of beneficial interests in land that, by virtue of this Act, remain vested in the several owners of the land despite the vesting of the legal estate in fee simple in a Maori incorporation; or
 - (b) to record the individual members of a class of persons who are the beneficial owners of land. 35

30 Section 128 amended (Court may issue declaratory consolidated order)

After section 128(1), insert:

- (1A) However, this section does not apply to Maori freehold land that is vested in trustees by an order made under section 132(6) (for which a class of persons are the beneficial owners or beneficiaries).

5

31 New section 131A inserted (Change from Crown land to Maori customary land by order)

After section 131, insert:

131A Change from Crown land to Maori customary land by order

- (1) This section applies to Crown land that was Maori customary land immediately before it became Crown land.

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- (2) The following Minister of the Crown may apply to the Maori Land Court for an order for any of the land to become Maori customary land:

(a) for Crown land reserved for Maori, the Minister for Maori Development:

(b) for other Crown land, any Minister.

15

- (3) The court must, on application,—

(a) determine the owners who, in accordance with tikanga Maori, held the land immediately before it became Crown land (the **previous owners**); and

(b) define the proposed owners of the land as the class of persons comprising the previous owners and all of their descendants (the **new owners**).

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- (4) The court may then make an order—

(a) declaring the land to be Maori customary land; and

(b) defining the new owners as the class of persons who own the land.

- (5) The court must not make an order under this section unless it is satisfied that—

25

(a) the new owners have had sufficient notice of the proposal, including the change of status to Maori customary land, and sufficient opportunity to discuss and consider it; and

(b) there is a sufficient degree of support for the proposal among the members.

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- (6) The effect of the order is that—

(a) the land is freed from any trusts, restrictions, or conditions to which it was subject; and

(b) the land becomes Maori customary land; and

(c) the new owners are treated as the owners who hold the land in accordance with tikanga Maori.

35

- 32 Section 132 amended (Change from Maori customary land to Maori freehold land by vesting order)**
- (1) In section 132(1), delete “the relative interests of”.
- (2) Replace section 132(3)(a) with:
- (a) the class of persons who it is claimed are the owners of the land when the application is made; and 5
- (3) Replace section 132(4) with:
- (4) On investigating the title and determining the current owners under this section, the court must define the owners as a class of persons.
- (5) The class of persons must include all descendants of the members of the class, and may or may not be an iwi or a hapu. 10
- (6) The court may then make an order defining the area dealt with and vesting the land in—
- (a) the trustees of an ahu whenua trust constituted under section 215 to hold in trust for the class of persons (who are the beneficial owners of the land); or 15
- (b) if the class of persons is an iwi or a hapu, the trustees of a whenua topu trust constituted under section 216, to be used or applied for the general benefit of the class of persons (who are the beneficiaries of the trust).
- (7) The vesting order may include any terms of trust that the court thinks fit. 20
- (8) The court must not make a vesting order under this section unless it is satisfied that—
- (a) the members of the proposed class of persons have had sufficient notice of the proposal, including the change of status to Maori freehold land, and sufficient opportunity to discuss and consider it; and 25
- (b) there is a sufficient degree of support for the proposal among the members.
- 33 Section 141 amended (Effect of vesting orders upon registration)**
- Replace section 141(1)(b) with:
- (b) vesting the land in the persons named in the order for a legal estate in fee simple, in the same manner as if the land had been granted to those persons by the Crown, and (where more than 1 person is named)— 30
- (i) as tenants in common in the shares specified in the order; or
- (ii) for land vested in the trustees of a trust, as joint tenants; and
- 34 Section 144 replaced (Maori customary land deemed Crown land for certain purposes)** 35
- Replace section 144 with:

144 Recovery of, or trespass or injury to, Maori customary land

- (1) This section applies to proceedings in the Maori Land Court or any other court—
- (a) to recover possession of Maori customary land from any person; or
 - (b) to prevent, or recover damages for, trespass or injury to the land by any person.
- (2) The proceedings may be brought only by the Māori Trustee on behalf of the owners of the land.

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35 Section 145 replaced (Maori customary land inalienable)

Replace section 145 with:

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145 Maori customary land cannot be alienated

- (1) Maori customary land or an interest in that land cannot be—
- (a) alienated; or
 - (b) disposed of by will; or
 - (c) vested or acquired under an Act.
- (2) However, this section does not prevent—
- (a) any change in the owners who, in accordance with tikanga Maori, hold a parcel of Maori customary land, as long as the change is made in accordance with tikanga Maori;
 - (b) the reservation of Maori customary land as a Maori reservation, the exclusion of land from the reservation, the cancellation of the reservation, any vesting related to the reservation, exclusion, or cancellation, or the grant or assignment of any lease or occupation licence over the reservation;
 - (c) the change in status of Maori customary land to Maori freehold land;
 - (d) the creation, cancellation, or variation of an easement, or laying out of a roadway, over Maori customary land.

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36 Section 147A amended (Right of first refusal for sale or gift)

In section 147A, insert as subsections (2) to (6):

- (2) A right of first refusal must be given in accordance with the rest of this section, unless the proposed sale or gift is to a member of a preferred class of alienees.
- (3) The seller or donor must give a written notice that—
- (a) describes the land to be alienated, including—
 - (i) the name and area of the block; and
 - (ii) the street address, if applicable; and
 - (iii) the Maori Land Court district that the land is within; and

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- (b) requests tenders to buy the land (for a sale), or expressions of interest in being gifted the land (for a gift), only from members of the preferred classes of alienees.
- (4) The notice must be—
- (a) sent to every member of the preferred classes of alienees whose physical or electronic address for notices is known to the seller or donor; and 5
- (b) published in whichever of the following ways ensures that members of the preferred classes of alienees are reasonably likely to learn of the proposed alienation:
- (i) in a newspaper that circulates in the Maori Land Court district that the land is within, and in any other newspaper or newspapers: 10
- (ii) electronically.
- (5) The notice must specify a deadline for receiving tenders or expressions of interest that is—
- (a) reasonable; and 15
- (b) no less than 15 working days after the day on which the notice is first published.
- (6) For a sale,—
- (a) the notice must specify the terms of sale but need not disclose the minimum sale price set for the land; but 20
- (b) any of the terms of sale may instead be specified in a document located at a place or on an Internet site described in the notice.

37 Section 150A amended (Alienation by trustees)

- (1) After section 150A(1), insert:
- (1A) However, for land vested in trustees by an order made under section 132(6) (for which a class of persons are the beneficial owners or beneficiaries), the trustees cannot alienate that Maori freehold land by sale or gift. 25
- (2) In section 150A(2), replace “Subsection (1)” with “Subsections (1) and (1A)”.

38 New section 150E inserted (Exclusion of interests in Maori land founded on adverse possession) 30

After section 150D, insert:

150E Exclusion of interests in Maori land founded on adverse possession

- (1) Despite any other enactment or rule of law, no person may claim an interest in Maori land on the ground of adverse possession.
- (2) No relief may be claimed by any person for any loss or damage arising from this section. 35

39 Section 152 amended (Court to grant confirmation if satisfied of certain matters)

In section 152(1)(f), replace “obligation” with “obligations”.

40 Section 215 amended (Ahu whenua trusts)

In section 215(5), after “the persons beneficially entitled to the land”, insert “and, except for land vested in trustees by an order made under section 132(6),”.

41 New section 235A inserted (Registrar may determine simple and uncontested trust matters)

Before section 236, insert:

235A Registrar may determine simple and uncontested trust matters

- (1) A Registrar may, at the applicant’s request,—
 - (a) receive and determine an application for a simple and uncontested trust matter under a provision of this Part; and
 - (b) exercise powers under section 241 in relation to that application.
- (2) A Registrar may at any time exercise powers under section 239(2) and (3) (but only as it relates to section 239(2)).
- (3) For the purposes of **subsections (1) and (2)**, the provisions that they refer to apply as if the Registrar were the court, except as modified by this section.
- (4) The Registrar must determine the application without a hearing.
- (5) The Registrar may at any time refer an application to the court for determination if the Registrar decides that the application is not for a simple and uncontested matter.
- (6) Any determination or order made by the Registrar in accordance with this section must be treated as an order of the court for the purposes of this Act, including section 42 (commencement of orders), but excluding—
 - (a) sections 41 (orders pronounced in open court) and 43 (rehearings); and
 - (b) any matter of practice or procedure that is instead provided for by the rules of court.
- (7) The determination or order may be reviewed as follows:
 - (a) any person affected by the determination or order may apply to the court for a review—
 - (i) within 28 days after the determination or order is made; or
 - (ii) within any longer period allowed by a Judge if the Judge is satisfied that the person could not reasonably have applied sooner:
 - (b) a Judge must conduct the review on the papers unless the Judge considers that a hearing is necessary:

- (c) the Judge may affirm, vary, or annul the determination or order, and may exercise any jurisdiction the court has in relation to an application for a trust matter under a provision of this Part (the **Judge’s review decision**).
- (8) A person must obtain the leave of the court to apply under section 43 for a rehearing of the Judge’s review decision, which is treated as if it were an order of the court. 5
- (9) In this section, **simple and uncontested trust matter** means a trust matter that the Registrar is satisfied is simple and uncontested, such as the following:
- (a) having a whanau trust constituted under section 214 to hold only the applicant’s beneficial interests or shares: 10
- (b) for a kai tiaki trust that was constituted for a minor, a determination or an order that the powers of the trustees ended under section 217(7)(b) when the minor became 20 years old:
- (c) the appointment of a trustee to a whanau trust under section 239(1) if no objections are received within 28 days after notice is given of the proposed appointment. 15

42 Section 240 amended (Removal of trustee)

- (1) In section 240, after “satisfied”, insert “that”.
- (2) Replace section 240(a) and (b) with:
- (a) the trustee has lost the capacity to perform the functions of a trustee; or 20
- (b) the removal is desirable for the proper execution of the trust, and 1 or more of the following grounds for removal are met:
- (i) the trustee repeatedly refuses or fails to act as trustee:
- (ii) the trustee becomes an undischarged bankrupt:
- (iii) the trustee is a corporate trustee that is subject to an insolvency event: 25
- (iv) the trustee is no longer suitable to hold office as trustee because of the trustee’s conduct or circumstances.
- (3) In section 240, insert as subsections (2) and (3):
- (2) A trustee has lost the capacity to perform the functions of a trustee, for example, if the trustee— 30
- (a) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or
- (b) has a trustee corporation managing the trustee’s property under section 32 or 33 of that Act. 35
- (3) A person may no longer be suitable to hold office as trustee, for example, because of the following conduct or circumstances:
- (a) the trustee is convicted of an offence involving dishonesty:

- (b) it is not known where the trustee is and the trustee cannot be contacted:
- (c) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
- (i) a company under the Companies Act 1993; or
- (ii) an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993. 5
- 43 Section 241 amended (Termination of trust)**
- After section 241(1), insert:
- (1A) However, for land vested in trustees by an order made under **section 132(6)** (for which a class of persons are the beneficial owners or beneficiaries), the order must vest that Maori freehold land in the trustees of another trust under **section 132(6)**, and section 132 applies for that purpose, excluding **section 132(8)** and with any other necessary modifications. 10
- 44 Section 247 amended (Owners may be incorporated)**
- (1) Replace section 247(2)(b) with: 15
- (b) the court is satisfied that—
- (i) the owners of the land (or their trustees in the case of disability) have had sufficient notice of the proposal to incorporate and sufficient opportunity to discuss and consider it; and
- (ii) there is a sufficient degree of support for the proposal. 20
- (2) In section 247(4), replace “the court is satisfied that the owners of that other land have consented to their inclusion in the manner prescribed by paragraph (a) or paragraph (b) of subsection (2)” with “subsection (2)(a) or **(b)** is satisfied for those other owners”.
- 45 Section 259 amended (Application of revenues)** 25
- After section 259(4), insert:
- (5) If a Maori incorporation pays any dividend to the shareholders (under subsection (1)(c)), the incorporation must keep a record of—
- (a) the name of each shareholder to whom a dividend is paid; and
- (b) the amount paid to each shareholder; and 30
- (c) the date of each payment.
- 46 Section 269 amended (Committee of management)**
- After section 269(4)(b), insert:
- (ba) the member is prohibited from being a director or promoter of, or being concerned or taking part in the management of,— 35
- (i) a company under the Companies Act 1993; or

	(ii) an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993; or	
47	Section 272 amended (Qualification, disqualification, and removal of members)	
	Replace section 272(2)(a) and (b) with:	5
	(a) a person who—	
	(i) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or	
	(ii) has a trustee corporation managing the person’s property under section 32 or 33 of that Act; or	10
	(b) an undischarged bankrupt; or	
48	New sections 274B and 274C inserted	
	After section 274A, insert:	
	274B Maori incorporation must maintain interests register	
(1)	A Maori incorporation must establish and maintain an interests register for the holdings of, and dealings by, the members of its committee of management in beneficial interests in the Maori freehold land held by the incorporation.	15
(2)	The register must contain—	
	(a) details of the beneficial interests held by each member; and	
	(b) details of dealings in the beneficial interests by each member; and	20
	(c) declarations made under section 274C .	
(3)	The Maori incorporation must keep the register at its registered office or principal place of business.	
(4)	The interests register must be available for inspection, during normal business hours and at the place at which the register is kept, by—	25
	(a) any shareholder of the Maori incorporation;	
	(b) any person authorised in writing by a shareholder.	
	274C Members must make annual declaration for purpose of interests register	
	Promptly after the end of each financial year of a Maori incorporation, each member of its committee of management must make a declaration of their holdings as at the end of the financial year, and of their dealings during the financial year, in any beneficial interests in the Maori freehold land held by the incorporation.	30
49	Section 290 amended (Modes of partition)	
	After section 290(1)(d), insert:	35

- (e) into parcels for which a class of persons are the beneficial owners or beneficiaries (for land vested in trustees by an order made under section 132(6)).

50 Section 297 amended (Partition orders may be made in respect of land held in trust) 5

After section 297(1), insert:

- (1A) However, for land vested in trustees by an order made under section 132(6), the beneficial owners or beneficiaries of the new parcels must be the same class of persons as for the land that was partitioned, despite any other provision relating to partition. 10

51 Section 301 amended (Compliance with provisions of Resource Management Act 1991 relating to subdivisions)

After section 301(3), insert:

- (4) However, section 230(3) to (5) of the Resource Management Act 1991 does not apply to the subdivision (so that an esplanade reserve is not set aside and an esplanade strip is not created). 15

52 Section 307 amended (Amalgamation orders)

After section 307(7), insert:

- (7A) However, if the land is vested in trustees by an order made under section 132(6), then, despite the rest of this section and section 309,— 20
- (a) an amalgamation order may be made only if the same type of trust holds all the land (either an ahu whenua trust or a whenua topu trust); and
 - (b) the court must vest the new parcel in the trustees of a trust of that type for beneficial owners or beneficiaries that combine the classes of persons from the land being amalgamated, as if vesting it under section 132(6). 25

53 Section 308 amended (Aggregation orders)

After section 308(2), insert:

- (2A) However, if the land is vested in trustees by an order made under section 132(6), then, despite the rest of this section and section 309,— 30
- (a) an aggregation order may be made only if the same type of trust holds all the land (either an ahu whenua trust or a whenua topu trust); and
 - (b) the court must vest the areas of land in the trustees of a trust of that type for beneficial owners or beneficiaries that combine the classes of persons from the land whose ownership is being aggregated, as if vesting it under section 132(6). 35

54 Section 326A amended (Meaning of certain terms)

In section 326A, replace the definition of **reasonable access** with:

- reasonable access** means physical access to land for persons or services that is of a nature and quality that are reasonably necessary to enable the owner or occupier to use and enjoy the land.
- 55 Section 326B amended (Reasonable access may be granted in cases of landlocked Maori land)** 5
- After section 326B(4)(d), insert:
- (da) the relationship that the applicant has with the landlocked land and with any water, site, place of cultural or traditional significance, or other taonga associated with the land; and
- (db) the culture and traditions of the applicant with respect to the landlocked land; and 10
- 56 Section 326D amended (Additional provisions relating to orders under sections 326B or 326C)**
- (1) In the heading to section 326D, replace “sections 326B or 326C” with “section 326B or 326C”. 15
- (2) Repeal section 326D(3) and (4).
- (3) In section 326D(5), replace “sections 326B or 326C” with “section 326B or 326C”.
- 57 Section 328 amended (Occupation orders)**
- Replace section 328(1)(b) with: 20
- (b) any person who is entitled to succeed to the beneficial interests of any deceased person in that land; or
- (c) any beneficiary of a whanau trust that holds a beneficial interest in that land,—
- 58 Sections 332, 333, and 336 repealed** 25
- Repeal sections 332, 333, and 336.
- 59 Section 334 amended (Interest on survey charges)**
- In section 334(1), replace “Except as provided in section 336, the” with “The”.
- 60 Section 338 amended (Maori reservations for communal purposes)**
- (1) In section 338(1) and (2), replace “The chief executive may, by notice in the *Gazette* issued on the recommendation of the court,” with “The court may make an order to”. 30
- (2) In section 338(3), replace “notice” with “order”.
- (3) In section 338(5), replace “On the recommendation of the court, the chief executive, by notice in the *Gazette*, may, in respect of any Maori reservation 35

made under this section,” with “The court may make an order in respect of any Maori reservation to”.

- (4) Replace section 338(6) with:
- (6) Land must not be set apart as a Maori reservation while it is subject to any mortgage or charge, and an order made under subsection (1), (2), or (5) does not affect any lease or licence. 5
- (5) Replace section 338(11) with:
- (11) While land is set apart as a Maori reservation, the land or an interest in the land cannot be— 10
- (a) alienated; or
 - (b) disposed of by will; or
 - (c) vested or acquired under an Act.
- (6) In section 338(12), replace “The trustees” with “However, the trustees”.
- (7) Replace section 338(14) with:
- (14) A lease or occupation licence may be granted under subsection (12) for a term exceeding 14 years (including any term or terms of renewal) if granted for the purposes of— 15
- (a) education; or
 - (b) health; or
 - (c) papakāinga housing. 20
- 61 Section 339 amended (Court may consider proposal for Maori reservation on application of Minister)**
- (1) In section 339(1), delete “, and make a recommendation to the chief executive or, in the case of land or an interest in land to which section 8A or section 8HB of the Treaty of Waitangi Act 1975 applies, the Minister”. 25
- (2) Replace section 339(2) with:
- (2) The court may then— 30
- (a) make an order under section 338 to set aside the land as a Maori reservation; or
 - (b) recommend to the Minister that something else is done.
- (3) However, for land or an interest in land to which section 8A or section 8HB of the Treaty of Waitangi Act 1975 applies, the court may— 35
- (a) recommend to the Minister that the Crown acquire the land so that it can be set aside as a Maori reservation and, if the Crown acquires the land, make an order under section 338 with that effect; or
 - (b) recommend to the Minister that something else is done.

- (4) For the purposes of this section, section 338 applies to land other than Maori freehold land or General land with any necessary modifications.
- 62 Section 340 amended (Maori reservation may be held for common use and benefit of people of New Zealand)**
Replace section 340(1) and (2) with: 5
- (1) An order constituting a Maori reservation under section 338 may, at the court’s discretion, reserve the land for the common use and benefit of the people of New Zealand, as long as the land is not a wahi tapu (being a place of special significance according to tikanga Maori).
- (2) However, the court must be satisfied that reserving the land in that way— 10
- (a) is in accordance with the views of the owners; and
- (b) is consented to by the local authority.
- 63 Section 341 amended (Further provisions relating to Maori reservation for marae or meeting place)**
In section 341(3), replace “the chief executive shall, in the manner provided by section 338,” with “the court may make an order under section 338(5) to”. 15
- 64 New section 341A inserted (Orders about Maori reservations to be registered)**
After section 341, insert:
- 341A Orders about Maori reservations to be registered** 20
- (1) An order made under section 338(1), (2), or (5) must be registered—
- (a) on the record of title for the land under the Land Transfer Act 2017; or
- (b) if applicable, in accordance with the Deeds Registration Act 1908.
- (2) The Registrar must lodge an order for registration as soon as practicable after it is made. 25
- (3) No fee is payable for registration.
- 65 Section 342 amended (Protection of Maori land against execution for debt)**
Replace section 342(1) with:
- (1) The following cannot be enforced against a person’s interest in Maori customary land or, subject to section 343, a person’s beneficial freehold interest in Maori freehold land: 30
- (a) a judgment for payment of the person’s debts or liabilities:
- (b) a fine, penalty, or sentence of reparation that is imposed on the person:
- (c) a requirement to pay money that is imposed on the person by an order or any other judicial process. 35

66 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert the **Part 2** set out in the **Schedule** of this Act.

Part 2
Amendments to other Acts

5

Amendments to Family Protection Act 1955

67 Amendments to Family Protection Act 1955

Section 68 amends the Family Protection Act 1955.

68 Section 3A amended (Courts to have concurrent jurisdiction)

(1) In section 3A(1), replace “the High Court and the Family Court” with “the High Court, the Maori Land Court, and the Family Court”. 10

(2) After section 3A(2), insert:

(2A) An application under this Act must be made to—

(a) the Family Court or the High Court, unless **paragraph (b)** applies:

(b) the Maori Land Court, if the application relates only to Maori freehold land. 15

(3) Replace section 3A(3) with:

(3) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to any other court referred to in subsection (2A) if it considers that the proceedings or question would be more appropriately dealt with by the other court. 20

(3A) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.

(4) In section 3A(4), after “Act in the Family Court”, insert “or the Maori Land Court”. 25

(5) In section 3A(4), after “with in the Family Court”, insert “or the Maori Land Court (as the case may be)”.

(6) After section 3A(4), insert:

(5) Any appeal from a decision of the Family Court or the Maori Land Court under this Act must be made to the High Court. 30

(6) In this section, **Maori freehold land**—

(a) has the meaning given by section 4 of Te Ture Whenua Maori Act 1993; and

(b) includes shares in a Maori incorporation under that Act; and

- (c) includes the proceeds of alienation of anything referred to in **paragraph (a) or (b)**.

Amendments to Government Roothing Powers Act 1989

- 69 Amendments to Government Roothing Powers Act 1989**
Sections 70 to 75 amend the Government Roothing Powers Act 1989. 5
- 70 Section 48 amended (Powers of Minister over roads under Minister’s control)**
- (1) In section 48(6), replace “the office of the District Court nearest to the land concerned” with “the court”.
- (2) After section 48(6), insert: 10
- (6A) The application must be made to—
- (a) the District Court, unless **paragraph (b)** applies:
- (b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).
- (3) After section 48(7), insert: 15
- (7A) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (6A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.
- (7B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings. 20
- (7C) Any appeal from an order or a direction made under subsection (7) must be made to the High Court (even for an order or a direction of the Maori Land Court).
- 71 Section 50 amended (Owner or occupier of land not to cause damage to bridge by removal of stone, etc)** 25
- (1) In section 50(3), replace “District Court” with “court”.
- (2) After section 50(3), insert:
- (3A) The appeal must be made to—
- (a) the District Court, unless **paragraph (b)** applies: 30
- (b) the Maori Land Court, if the appeal relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).
- (3) After section 50(5), insert:
- (5A) The court to which an appeal is made may refer any proceedings resulting from the appeal, or any question in those proceedings, to the other court referred to in **subsection (3A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 35

- (5B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
- (5C) Any further appeal from the court’s decision must be made to the High Court (even for a decision of the Maori Land Court).
- 72 Section 55 amended (Removal of trees, hedges, etc, that obscure visibility or interfere with public work) 5**
- (1) In section 55(3), replace “the office of the District Court nearest to the land” with “the court”.
- (2) After section 55(3), insert:
- (3A) The application must be made to— **10**
- (a) the District Court, unless **paragraph (b)** applies:
- (b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).
- (3) After section 55(6), insert:
- (6A) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (3A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. **15**
- (6B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings. **20**
- 73 Section 61 amended (Powers and duties of Agency in relation to State highways)**
- (1) In section 61(8), replace “the office of the District Court nearest to the land concerned” with “the court”.
- (2) After section 61(8), insert: **25**
- (8A) The application must be made to—
- (a) the District Court, unless **paragraph (b)** applies:
- (b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).
- (3) After section 61(9), insert: **30**
- (9A) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (8A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.
- (9B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings. **35**

(9C) Any appeal from an order or a direction made under subsection (9) must be made to the High Court (even for an order or a direction of the Maori Land Court).

74 Section 74 amended (Land may be temporarily occupied)

(1) In section 74(3), replace “the office of the District Court nearest to the land concerned” with “the court”. 5

(2) After section 74(3), insert:

(3A) The application must be made to—

(a) the District Court, unless **paragraph (b)** applies:

(b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993). 10

(3) After section 74(4), insert:

(5) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (3A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 15

(6) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.

(7) Any appeal from an order or a direction made under subsection (4) must be made to the High Court (even for an order or a direction of the Maori Land Court). 20

75 Section 76 amended (Access to land cut off from road or separated by motorway)

(1) In section 76(4), replace “the nearest office of the District Court” with “the court”. 25

(2) After section 76(4), insert:

(5) The matter must be referred to—

(a) the District Court, unless **paragraph (b)** applies:

(b) the Maori Land Court, if the matter relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993). 30

(6) The court to which a matter is referred may refer any proceedings resulting from the matter, or any question in those proceedings, to the other court referred to in **subsection (5)** if it considers that the proceedings or question would be more appropriately dealt with by the other court.

(7) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings. 35

Amendments to Law Reform (Testamentary Promises) Act 1949

76 Amendments to Law Reform (Testamentary Promises) Act 1949

Section 77 amends the Law Reform (Testamentary Promises) Act 1949.

77 Section 5 amended (Courts to have concurrent jurisdiction)

- (1) In section 5(1), replace “the High Court and the Family Court” with “the High Court, the Maori Land Court, and the Family Court”. 5
- (2) After section 5(2), insert:
- (2A) An application under this Act must be made to—
- (a) the Family Court or the High Court, unless **paragraph (b)** applies:
 - (b) the Maori Land Court, if the application relates only to Maori freehold land. 10
- (3) Replace section 5(3) with:
- (3) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to any other court referred to in **subsection (2A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 15
- (3A) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.
- (4) In section 5(4), after “Act in the Family Court”, insert “or the Maori Land Court”. 20
- (5) In section 5(4), after “with in the Family Court”, insert “or the Maori Land Court (as the case may be)”.
- (6) After section 5(4), insert:
- (5) Any appeal from a decision of the Family Court or the Maori Land Court under this Act must be made to the High Court. 25
- (6) In this section, **Maori freehold land**—
- (a) has the meaning given by section 4 of Te Ture Whenua Maori Act 1993; and
 - (b) includes shares in a Maori incorporation under that Act; and
 - (c) includes the proceeds of alienation of anything referred to in **paragraph (a) or (b)**. 30

Amendments to Local Government Act 1974

78 Amendments to Local Government Act 1974

Section 79 amends the Local Government Act 1974.

79 Section 446 amended (Council may cover in watercourse so as to make it a public drain)

- (1) In section 446(7), replace “District Court” with “court”.
- (2) After section 446(7), insert:
- (7A) The application must be made to— 5
- (a) the District Court, unless **paragraph (b)** applies:
- (b) the Maori Land Court, if the application relates only to Maori land (as defined by section 4 of Te Ture Whenua Maori Act 1993).
- (3) After section 446(8), insert:
- (8A) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to the other court referred to in **subsection (7A)** if it considers that the proceedings or question would be more appropriately dealt with by the other court. 10
- (8B) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings. 15
- (8C) Any appeal from an order made under subsection (8) must be made to the High Court (even for an order of the Maori Land Court).
- (4) In section 446(9), replace “subsections (5) to (8)” with “subsections (5) to **(8C)**”.

Schedule
New Part 2 inserted into Schedule 1AA

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Part 2		
	Provisions relating to Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2019	5
3	Meaning of commencement date	
	In a provision of this Part, commencement date means the date on which the provision comes into force.	
4	Judges are mediators until other mediators provided for	10
(1)	This clause applies until the commencement of section 98M(2) to (5) .	
(2)	For the purposes of section 98M , the Judge or Registrar who referred the issues to a mediator must appoint either 1 or 2 Judges as the mediator.	
5	Existing Maori reservations	15
	A Maori reservation that, at the start of the commencement date, is set apart under section 338 must be treated as if it were set apart by an order of the court.	