
MĀORI SERVICES

TIMEFRAME SET FOR NEW MĀORI GOVERNANCE LAW

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Damian Stone
SENIOR ASSOCIATE

The Bill proposing significant changes to Māori governance is now officially on the Parliamentary table – and this time next year it could be law.

The Waka Umanga (Māori Incorporations) Bill provides for the establishment of new legal entities by tribal groups or Māori associations, looking for specific structures to manage communal assets.

The Bill was introduced to Parliament late last month, and takes into account submissions from interested parties who provided input during the consultation phase this year.

The Bill is expected to pass its first reading over coming months, and be referred to the Māori Affairs Select Committee early next year. Interested parties and stakeholders will have an opportunity to make final submissions during the select committee stage and it is anticipated the Bill will be enacted in the second half of 2008 and be in force from 1 December 2008.

The general response from Māori and other stakeholders during the initial consultation period was one of cautious support for the Bill. There were some reservations expressed about the possible unintended consequences of aspects of the proposed law, especially around formation and recognition issues.

The Bill's aim

The Bill provides a mechanism for the formation of legal entities to represent tribal groups and other Māori associations, based on the recognition of the special relationship between Māori and the Crown established by the Treaty of Waitangi.

The purposes of the Bill include:

- assisting the development of representative institutions for tribal groups or Māori associations;
- promoting stability and legal certainty for Māori groups and those dealing with them;
- providing a process for establishing the rights and responsibilities of the constituent groups of a waka umanga;
- facilitating the effective management of the communal assets of the Māori group;
- providing for internal disputes to be resolved as far as possible within Māori groups; and
- providing fair access to the Māori Land Court for formation and registration, or when the internal dispute resolution procedures have not been successful.

What the Bill provides for

The main provisions of the Bill deal with:

- establishment of waka umanga, including key concepts and formation and registration requirements;
- governance, management and other relevant matters;
- dispute resolution, both internally and in the Māori Land Court; and
- transitions for existing entities, the establishment of a Waka Umanga Secretariat, enforcement and penalties, and other miscellaneous matters.

Waka Umanga up close

The Bill provides for two types of waka umanga - waka pu are established by tribal groups and waka tumaha by Māori associations. If certain conditions are satisfied, waka pu may also be the legitimate representative of their tribal group.

The key governance document of a waka umanga is the charter. Agreement to form a waka umanga and adopt a particular charter requires consultation with the prospective members of the Māori group. Adopting the charter requires a high voting threshold, and copies of the charter must be provided to specified entities and people before it is adopted.

The Bill allows existing tribal entities that have recently obtained a mandate for fisheries allocations or Treaty of Waitangi settlement purposes to confirm that their charter substantially complies with the Bill's requirements.

As soon as practicable after adopting the charter, an application to register the waka umanga must be made. The Bill requires a Register of Waka Umanga to be kept and provides for notification requirements and the right to lodge objections to registration, among other things.

Governance

The governing body of a waka umanga will be the runanganui. Members of the runanganui will be known as governors, and will exercise the powers and perform the duties of the waka umanga.

A runanganui must appoint a chief executive for the waka umanga. Accountability is ensured through provisions as to how a waka umanga must communicate and consult with its registered members, requirements for meetings including an annual general meeting, and meeting procedures that must be followed.

The Bill also outlines a system of voluntary administration to provide for the operations and property of a waka umanga that is, or may become, insolvent. The system exists to maximise the chances of the waka umanga continuing to exist, or to give a better return for members and creditors if continued existence is not possible. A waka umanga may also be put into liquidation by its members or by the Māori Land Court.

Under certain conditions, a waka umanga may also establish or disestablish subsidiaries. Subsidiaries must be monitored and have a statement of intent.

Dispute resolution

The Bill defines "internal dispute" and provides for dispute resolution processes to be included in the charter, including, at the discretion of the waka umanga, certain processes.

Provision is made for applications to the Māori Land Court, with the Bill setting out the scope of the court's jurisdiction to hear and determine applications relating to disputes about the formation and registration of waka umanga. That jurisdiction covers a wide variety of matters such as applications relating to

internal disputes that are not able to be resolved by internal dispute resolution, applications relating to the governance or management of a waka umanga after its registration, and objections to the registration of a waka umanga, among others.

Also set out in the Bill are the orders that the Māori Land Court may make in each category of application and the limits to its jurisdiction in certain circumstances.

The Bill includes a power to transfer proceedings commenced in the Māori Land Court to the High Court, and for appeals from decisions of the Māori Land Court to proceed directly to the High Court, to the Court of Appeal and Supreme Court.

The dispute resolution provisions do not apply to mandated iwi organisations and iwi aquaculture organisations, to the extent that the disputes relate predominantly to Māori commercial fisheries or aquaculture activities. Also, the Māori Land Court cannot make orders as to the merits of a proposal to form and register a waka umanga (unless the parties agree) or over the most appropriate representatives of a Māori group.

For existing entities

The types of existing entities that may register as waka umanga are Māori Trust Boards, incorporated societies, and trusts, including charitable trusts. The Bill sets out processes by which each type of existing entity may obtain authorisation to register as a waka umanga.

A Māori Trust Board seeking to register as a waka umanga must satisfy special requirements and an Order in Council is required to formalise the cancellation of the Board's status as a Māori Trust Board.

For incorporated societies, the Bill sets out how changes to the constitutional

documents must be ratified, and requires final accounts and notice of registration to be provided in writing to the Registrar of Incorporated Societies.

Trustees of trusts, other than charitable trusts, may apply for registration as a waka umanga if specified procedures are complied with. The general registration requirements must be met and disclosure of the final accounts is also required.

Trustees of charitable trusts may apply for registration as a waka umanga where the appropriate resolution has been made and the Māori Land Court has approved the resolution. The general registration requirements must be followed and final accounts and notice of registration must be given to the Attorney-General and the Registrar of Incorporated Societies.

The effect of registration of an existing entity as a waka umanga is that its previous status comes to an end and the property, rights and obligations of the existing entity transfer to the waka umanga. Proceedings by or against the existing entity are unaffected. Provision is made over taxation and duties.

The new secretariat

The Bill provides for the establishment of a Waka Umanga Secretariat by the Minister of Māori Affairs, after consultation with the Minister responsible at the time for the administration of the Companies Act 1993.

The Secretariat will cease to exist after five years. The function is principally an advisory one and its purpose will be to promote compliance with the Act once it is in force. The inclusion of the Secretariat is an addition to the draft Bill that was initially circulated in June this year.

The Bill also provides for certain penalties and offences that arise under the Companies Act 1993, due to the

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For further information, please contact your usual Bell Gully adviser or:

Damian Stone
Senior Associate
64 4 915 6823
damian.stone@bellgully.com

Tama Potaka
Solicitor
64 9 916 8638
tama.potaka@bellgully.com

incorporation of specified provisions of that Act in the Waka Umanaga Bill. As well, administrative penalties could be imposed on a waka umanga by the Registrar of Waka Umanga for specified offences under the new Bill.

It also provides for the making of regulations.

Review the impacts

The Waka Umanga Bill contains some important new law for Māori and will have significant impacts on the way in which Māori groups may choose to structure their legal affairs. The Bill will also affect all existing Māori organisations in a number of ways, including because it allows other organisations to become the legitimate representative of a Māori group. It is important that all existing Māori entities review and consider the Bill and its potential impacts.

* Bell Gully has advised a number of clients on the Waka Umanga Bill, and has also been involved directly in the consideration of public submissions on the Bill and the amendments to the Bill as a result.

If your organisation would like further information on the Bill, or would like to make a submission on it, please contact Damian Stone or your usual Bell Gully adviser.

MORE KEY DEVELOPMENTS

In other recent developments, the Māori Purposes Bill and the Māori Trustee and Māori Development Amendment Bill have been introduced to Parliament.

The Māori Purposes Bill is an omnibus Bill to amend the Maniapoto Māori Trust Board Act 1988, the Māori Trust Boards Act 1955, the Treaty of Waitangi Act 1975, and Te Ture Whenua Māori Act 1993. The amendments are largely minor in nature and appear to remedy errors or inconsistencies in the existing legislation.

The Māori Trustee and Māori Development Amendment Bill has two primary purposes. It makes the Māori Trustee and Māori Trust Office an independent, statutory body in its own right and brings together functions supporting Māori business currently being undertaken by Te Puni Kokiri, the Māori Trustee and potentially other organisations.

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