

**INDEX TO EXHIBITS****BRIEF OF EVIDENCE OF TE PUNI KOKIRI**

Relevant clauses of Te Whenua Maori (Succession, Dispute Resolution and Related Matters)  
Amendment Bill

**7 October 2019**

<b>Exhibit</b>	<b>Description</b>	<b>Pages</b>
A	Landlocked land provisions (clauses 54-56)	1-6
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**RECEIVED**

Waitangi Tribunal

**8 Oct 2019**Ministry of Justice  
WELLINGTON

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

Government Bill

**19 New Part 3A inserted**

After section 98G, insert:

<b>Part 3A</b>		
<b>Dispute resolution</b>		30
<b>98H Matters to which this Part applies</b>		
(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

<p>(b) a matter to which section 26P or 26Q applies (which relates to the Maori Commercial Aquaculture Claims Settlement Act 2004); or</p> <p>(c) a matter to which section 30(1) applies (which relates to the most appropriate representatives of a class or group of Maori).</p> <p>(2) In this Part, <b>parties</b> or <b>parties to a dispute</b> means the parties between which there is a disputed issue.</p> <p><b>98I Purpose of this Part</b></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> <p>(a) between themselves; and</p> <p>(b) in accordance with the law; and</p> <p>(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.</p> <p><b>98J Mediation is always voluntary</b></p> <p>(1) An issue may be referred to mediation only if all the parties agree to mediation.</p> <p>(2) An issue may be mediated only while all the parties still agree to mediation.</p> <p>(3) This section overrides the rest of this Part (for example, <b>sections 98L, 98Q(3)(a), and 98R(3)</b>).</p> <p><b>98K Powers of Judge or Registrar subject to rules of court</b></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> <p><b>98L Dispute may be referred to mediation</b></p> <p>(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—</p> <p>(a) at the Judge's initiative; or</p> <p>(b) on the request of any party to the disputed issue who is a party to the proceedings.</p> <p>(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.</p> <p>(3) The Registrar may refer the issues—</p> <p>(a) to a mediator, if the Registrar is satisfied that mediation is likely to be effective; or</p> <p>(b) to a Judge to decide whether to refer it to a mediator, in any other case.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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Part 1 cl 19	<b>Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Bill</b>	
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(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.	
<b>98M Appointment of mediator</b>		
(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, <b>chief executive</b> means the chief executive of the Ministry of Justice.	20
<b>98N Judge appointed as mediator</b>		
(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
<b>98O Conduct of mediation</b>		
(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.

**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)**

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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

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**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**”.

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(2) Repeal section 326D(3) and (4).

(3) In section 326D(5), replace “**sections 326B or 326C**” with “**section 326B or 326C**”.