

# BILLS DIGEST

**WAKA UMANGA (MAORI CORPORATIONS) BILL 2007**

**Date of Introduction: 21 November 2007**

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**WAKA UMANGA (MAORI CORPORATIONS) BILL 2007**

Date of introduction:	21 November 2007
Portfolio:	Maori Affairs
Select Committee:	As at 22 November, 1st reading not held

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**PURPOSE**

The aim of the Bill is to provide for the establishment of new legal entities by tribal groups or Maori associations. These entities may be structured to meet the organisational needs of tribal groups and other Maori associations that manage communal assets<sup>1</sup>.

**BACKGROUND****Historical background***Government reorganisation of Maori Affairs (1989)*

In 1989 following the Maori Loans affair<sup>2</sup>, and other upheavals, and in the context of a general reorganisation of governmental activities, the then Government decided to reorganise its administration of Maori Affairs. In the policy statement, Tu Urupare Rangapu<sup>3</sup>, the Government set out its proposals and, in particular, proposed:

- "measures to restore and strengthen the operational base of iwi"; and
- "ways of improving the responsiveness of government agencies"<sup>4</sup>.

"The success of the Government's proposals depends on strengthening the iwi and helping restore their independence. The Government is keen to see iwi develop their own structures - with their own administrative procedures, negotiating skills and measures of performance - so that they can make their own decisions about what is important to them. That is, it wants to see the iwi ultimately become independent and self-sustaining".

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<sup>1</sup> Waka Umanga (Maori Corporations) Bill, 2007 No 175-1, Explanatory note, General policy statement, p. 1.

<sup>2</sup> R. S. Deane, Chairman, State Services Commission, Maori Affairs Department: Overseas Borrowing Initiatives, State Services Commission, Wellington, 1986.

<sup>3</sup> Department of Maori Affairs, Te Urupare Rangapu: Te Rarangi Kaupapa (Partnership Response: Policy Statement), Hon. Koro Wetere, Minister of Maori Affairs, November, 1988.

<sup>4</sup> Ibid., p. 5.

"To enable this to happen, the Department of Maori Affairs will be restructured into an 'Iwi Transition Agency'. Its task will be to assist iwi to develop their operational base over a five year period<sup>5</sup>. A Ministry of Maori Affairs would also be set up. "The principal function of the ministry, however, will be to provide advice on all matters of government policy making that affect Maori affairs".<sup>6</sup>

Among the benefits of these proposals were to be:

- "Iwi will be able to work towards self-reliance on their own terms";
- "The future relationship between the iwi and government agencies will encourage iwi to determine their affairs in a way that accepts Maori perspectives and aspirations";
- "The moves towards greater efficiency and effectiveness are aimed at improving the way Maori people are served by government agencies";
- "[the proposals] provide an opportunity for Maori people to use their traditional institutions and structures for designing and delivering their own programmes and services"<sup>7</sup>.

These proposals were made in the context of other state sector reforms. "These proposals are in line with a number of other changes which the Government has taken in reforming the state sector. In the education area, for example, the development of policy will be the task of a new and compact ministry, and responsibility for administration will be largely transferred to the community"<sup>8</sup>.

### ***Resource Management Act 1991***

Another major area of reform undertaken by the then Government was the Resource Management Law Reform process. This reform was also a devolutionary one involving much activity previously undertaken by central Government being transferred to local and territorial authorities. The concept of iwi organisations was also important to the intentions of this policy. The Resource Management Act 1991 in fact made provision for iwi authorities and their involvement in environmental planning. The term "iwi" is referred to frequently in that Act and the term "iwi authority" is defined as " ... the authority which represents an iwi and which is recognised by that iwi as having authority to do so"<sup>9</sup>. As an example, the Resource Management Act 1991 provides generally that a local authority may transfer any one or more of its functions, powers, or duties under that Act to an iwi authority, which is

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid., pp. 5 and 6.

<sup>7</sup> Ibid., p. 6

<sup>8</sup> Ibid.

<sup>9</sup> Resource Management Act 1991, Section 2, definition of "Iwi Authority".

a "public authority" for the purpose of the provision (along with other bodies including any local authority, board of a foreshore and seabed reserve, Government department, or statutory authority"<sup>10</sup>. When the Resource Management Bill was introduced it even made provision for "iwi management plans" (see "Runanga Iwi Act 1990" below) to be considered by local and territorial authorities in their planning functions.

### ***Runanga Iwi Act 1990***

To meet the demands of governmental reform in the areas of Maori Affairs, environmental regulation, and other areas, the Runanga Iwi Act 1990 was passed. The aim of this Act can be clearly understood from its preamble. Its aim was:

- to acknowledge the enduring, traditional significance and importance of the iwi;
- to identify the characteristics by which iwi are to be recognised for the purposes of that Act;
- to provide a process for the resolution of conflicts that may arise within an iwi or between incorporated runanga; and
- to provide for the registration by any iwi of a body corporate as the authorised voice of the iwi<sup>11</sup>.

The process of setting up, registering, de-registering and liquidation of Runanga Iwi under the Act was the province of the Maori Land Court. The status of Runanga Iwi was clearly stated; "All incorporated runanga shall be recognised by the Crown and all local and public authorities as the authorised voice of the iwi". "Where any enactment requires consultation with any iwi or with any iwi authority, and an incorporated runanga is ... the authorised voice of that iwi, that consultation shall be held with that incorporated runanga"<sup>12</sup>. The Act also allowed an iwi to register any other corporate body such as a Maori Trust Board (established under the Maori Trust Boards Act 1955) as its "authorised voice" with the same status as pertained to a Runanga Iwi under Section 26 of the Act. Section 77(1) of the Act provided that any incorporated runanga or authorised voice could at any time prepare, in relation to the iwi for which it was the authorised voice, an iwi management plan. "An iwi management plan shall be a document that provides a resource management planning overview of those matters that are of significance for the organisation and development of the iwi"<sup>13</sup>. The Runanga Iwi Act 1990 was repealed by the new National Government in 1991.

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<sup>10</sup> Resource Management Act 1991, Section 33(1) (*Section 33 is headed "Transfer of powers"*).

<sup>11</sup> Runanga Iwi Act 1990, Preamble.

<sup>12</sup> Runanga Iwi Act 1990, Section 26(1) and (2).

<sup>13</sup> Runanga Iwi Act 1990, Section 77(2)

### ***Runanga Iwi Act Repeal Act 1991***

The Runanga Iwi Act Repeal Act 1991 was passed by the National Government which was elected in November, 1990. In introducing the Runanga Iwi Repeal Bill on 19 December 1990, the Hon. Winston Peters, the Minister of Maori Affairs listed the reasons for the repeal:

- " ... it is not the business of the Government to dictate to Maori how the territory of the tribes is to be determined";
- " ... the Runanga Iwi Act did not result from consultation with Maori people, and it was opposed universally by tribal representatives";
- "... 70 percent of Maoridom lives outside its tribal boundaries ... [and] ... more than 70 percent of Maoridom resides in the urban centres in which there are no recognised tribal authorities to cover all the people living there"<sup>14</sup>;
- "Maoridom, statutory organisations, trust boards, community development committees, Maori incorporations, and the Maori Congress do not need to be inundated with a further 50 incorporated runanga, or, possibly, 72 quasi-governmental authorities disbursing funds from the taxpayer"<sup>15</sup>.

The Minister also said; "The major flaw of the Runanga Iwi Act has been its failure to deal with the economic and social woes that beset the Maori people - problems that were not alleviated, let alone cured, by the Act's continued existence on the statute book. That new breed of statutory structure failed to deal with the grievous wrong that beset Maoridom in history and at the moment - namely, the disproportionate share of New Zealand's educational failures, unemployed, welfare beneficiaries, prison inmates, youth suicides, and sick people. If Maori people are to enjoy any degree of progress in the future, educational achievement and economic development must become the Government's priorities"<sup>16</sup>.

## **Law Commission proposals**

In a speech in 2006<sup>17</sup>, Justice Eddie Durie, a member of the Law Commission, explained the need for legislation in this area and the Law Commissions proposals:

### **The need for the Bill**

Justice Durie highlighted the following current problems in relation to Maori authorities:

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<sup>14</sup> Hon. Winston Peters, Runanga Iwi Act Repeal Bill, introduction, New Zealand Parliamentary Debates, Volume 511, p. 602.

<sup>15</sup> Ibid., p. 603.

<sup>16</sup> Ibid.

<sup>17</sup> [Summary of presentation by Justice Eddie Durie to consultation hui on the Law Commission's Waka Umanga report, October-November 2006.](#)

- "massive and debilitating disputes about how tribes should be shaped in forming tribal authorities, in which those with outside funding or Government support are most likely to win; and no process for dispute resolution";
- "Government, through the Treaty claims process, is overly determining how tribes are formed, and not the people themselves";
- "the Courts will not intervene. The process by which Government settles claims and by which tribal authorities are formed is seen as political";
- "the interests of small hapu groups are frequently washed out in large settlements";
- "tribal authorities and "corporate warriors" could determine community futures and not the communities themselves";
- "tribal authorities are not always sufficiently accountable to the people";
- "there were no clear policies on voting or membership rights";
- "there is no certainty as to who represents a tribe in legal proceedings, commercial transactions or consultations".

### **Formation**

"We propose that tribal groups should develop their own structures and should do so now if they have not already done so, independently of Government, independently of the Treaty claims process, and before claims are presented to the Tribunal or negotiated with Government. To ensure that this is done transparently, and to avoid opportunism, the Commission suggests that tribal leaders should first develop at general meetings, and eventually publish, a scheme plan by which the formation will proceed. To resolve disputes, the Commission proposes that scheme plans should contain their own dispute resolution process, but with final recourse to the Maori Land Court. To avoid the problem of Court control of tribal policy issues, the Commission proposes that the Court may merely settle a process by which the dispute may be determined by the people, by vote if need be, and record the outcome of the decision, so that the project can move forward from there. The Commission considers that large groupings give economic efficiency, but by Maori law hapu autonomy must be respected, and as part of that small claims must be protected. To that end it is proposed that hapu should:

- have their own structure; and
- negotiate the terms on which they will enter into a tribal (or iwi) confederation.

"For example, a hapu may agree to join a confederation on such terms as the following:

- that their specific claims will be brought into account in any negotiations and for the direct benefit of the hapu; or
- that a specified proportion of the distributable income from capital investments will pass direct to the hapu; or
- that third parties must consult with the hapu on matters specific to that hapu".

### **Recognition**

"It is proposed that tribal bodies, once established, should have the right to apply to the Maori Land Court to be recognised as the lawful representative of the tribal groups for such purposes as may be specified. This is to settle the uncertainties that arise for officials, courts and commercial interests when groups spring up claiming that they are the authorised voice of the tribe.

"Recognition does not oblige the Government to settle a claim with the recognised body, but means that the Government must settle with the recognised body if it wishes to settle at all with the associated tribe – and that it cannot settle with some other group that it thinks is easier to deal with.

"Recognition may be given for some purposes but not others. For example:

- it would not be right to recognise a body as representing the tribe on health issues if a tribal health organisation already exists;
- nor would it be appropriate to oblige Government to deliver services through a tribal organisation when it should be able to choose the most efficient body for that purpose from competitive bids".

### **Charters**

"To maintain tribal control, and to constrain the tribal authority from taking over the tribe, the Commission proposes that the legislation will set out models of the charters by which the authorities will operate. Under these models, the powers of the tribal authority may be constrained. For example charters may provide for:

- policies to be settled in policy documents, say every three years, at iwi or hapu meetings, setting out the direction that the authority must take, and any matters that must be referred for general tribal approval; and
- any constraints that hapu consider should be placed on hapu representatives.

"There are also various requirements to ensure that the authorities are transparent in their operations and made accountable to the tribe.

"To constrain judicial interference in an authority's operations the Commission's report contains proposals for tribal ombudsmen and internal dispute resolution. It is hoped that this will enable the tribes to develop their own legal system for resolving problems. The Act would require that the courts step back from intervening unless issues of fair process are involved or the parties agree that a court decision is needed".

**Existing legal entities**

"Another particular problem was that existing legal entities do not provide adequately for tribes. For example:

- incorporated societies law prohibits the pursuit of pecuniary gain as an objective;
- companies are designed for individual investors not communal investment;
- trusts manage assets for beneficiaries and not at the direction of beneficiaries;
- charitable trusts are ultimately responsible to the Attorney-General, not to the people;
- Maori Trust Boards are responsible to the Minister;
- Maori Incorporations serve individual shareholders; and
- statutory bodies depend on Government for their powers and for any amendment to those powers.

"Maori have made creative use of existing legal structures but the Commission considers they should not have to work around structures but through structures designed for them.

"To overcome that problem the report proposes another option for Maori, the use of a new form of entity called a waka umanga, which would have corporate identity and perpetual succession, hold assets for a general class, and operate according to charters designed by the people to accommodate their circumstances.

"However, use of the Act would be optional. Tribal authorities are forming and will continue to form for the purposes of settlements. The Act would provide another way of doing things if people choose to use it.

"In addition, a Secretariat is proposed to provide ongoing support for members and managers. The Secretariat should be independent of Government, and directly accountable to its members".

**Law Commission Report 92**

The Law Commission set out the benefits of the proposals contained in its report<sup>18</sup>:

***Benefit to Maori***

"Registration under the proposed Act provides tribes and general-Maori groups with a stamp of approval; a certificate that they have been formed by fair and proper processes after engaging widely with those likely to be affected. It acknowledges that they have a representative structure and charter that meets democratic and commercial

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<sup>18</sup> New Zealand Law Commission, Waka Umanga : a proposed law for Moari governance entities, [Report 92](#), New Zealand Law Commission, Wellington, 2006.

objectives. In addition, tribal bodies can be recognised as the lawful representative of the associated tribal groups.

"More particularly, the proposed Act would enable Maori to develop institutions that fit with their culture, traditions and vision and provide for a corporate entity honed to their particular needs. The proposals ensure fair process in entity formation and provide systems for managing the debilitating formation disputes likely to arise. There are also proposals for internal dispute resolution after entities have been formed."<sup>19</sup>

### ***Public benefit***

"While the proposals are aimed at Maori groups, they also have a public benefit in providing an effective legal structure for tribal and other groups to fully participate in the commercial and social life of the community. In addition, for reasons given in the report, the proposals are expected to speed the Treaty claims process, reduce the cost to government in determining appropriate tribal representatives and make the settlement of Treaty claims more durable in being developed independently by Maori themselves. They also encourage the proper management of substantial assets administered by tribes and general-Maori groups"<sup>20</sup>.

### ***Cost benefit***

"The proposals for resolving formation disputes are expected to result in substantial cost savings to government as well as significant savings to Maori. The resolution of representation structures has been the major expense and block to finalising outstanding Treaty of Waitangi matters. The proposed processes and ability of parties to access the Maori Land Court would be much more cost effective than the current dispute resolution mechanisms involving the High Court, the Waitangi Tribunal and often very considerable funding from agencies such as the Legal Services Agency, Crown Forest Rental Trust and Office of Treaty Settlements, as well as the parties themselves.

"Government funding would be needed initially to assist entity formation through the Secretariat and Maori Land Court, estimated to be less than \$4 million in total. These costs will reduce when waka umanga are established and paying their own way. They will be offset by the saving in services currently delivered through different agencies, including Te Puni Kokiri, Ministry of Economic Development, Office of Treaty Settlements and other departments"<sup>21</sup>.

## **MAIN PROVISIONS**

### **Preamble**

The Preamble of the Bill states: "The Treaty of Waitangi established the special relationship between the Maori people and the Crown". "It is therefore appropriate to provide a mechanism for the formation and recognition of legal entities to represent

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<sup>19</sup> Law Commission, Report 92, p. 13.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., pp. 13 and 14.

tribal groups and other associations of Maori, as a means of expressing the legal identity of those tribal groups and Maori associations within New Zealand society, for present and future generations" (*Preamble*).

### **Purposes of Bill**

The Bill provides that its purposes are to:

- assist the development of representative institutions for tribal groups or Maori associations through independent, principled, and democratic processes;
- promote stability and legal certainty for tribal groups and Maori associations and for third parties who transact with them;
- provide a process for establishing the rights and responsibilities of the constituent groups of a waka umanga;
- facilitate the effective management of the communal assets of the tribal group or Maori association;
- provide for internal disputes to be resolved as far as possible within tribal groups and Maori associations;
- provide fair access to the courts in relation to formation and registration issues and when the dispute resolution processes for internal disputes have not succeeded.

In order to achieve those purposes, the Bill provides for:

- the formation and registration of waka umanga for tribal groups and Maori associations;
- the registration of existing entities as waka umanga;
- a waka pu to be the legitimate representative of its tribal group for any matters defined for that purpose in the charter of the waka pu;
- governance requirements to be included in the charter of every waka umanga; and
- procedures for the resolution of internal disputes that arise in the course of forming or administering a waka umanga, as well as access to the courts (*Part 1, Clause 3*).

### **Establishment of waka umanga**

The Bill provides for the establishment of waka umanga of which there are two types, waka pu (a tribal group) and waka tumaha (a Maori association) (*Part 2, Subpart 1, Clause 7*).

**Waka pu**

A tribal group may form and register a waka pu if:

- the tribal group descends from 1 or more common named ancestors;
- the waka pu will hold communal assets on behalf of the tribal group or any constituent groups;
- there is a mandate to form a waka pu from the tribal group and any constituent groups; and
- the relevant requirements of this Bill are met (*Part 2, Subpart 1, Clause 8*).

**Qualification to be legitimate representative**

The Bill provides that a waka pu may be the legitimate representative of a tribal group and any constituent groups if, but only if:

- it comprises 1 or more iwi or several hapu; and
- it holds communal assets on behalf of the tribal group or any constituent groups, or is likely to do so following a Treaty of Waitangi settlement; and
- the matters on which it is to be the legitimate representative of the tribal group are defined in its charter, but which must not include matters relating to the delivery of social services (i.e. including services such as health, education, housing, and similar services) to the registered members of the waka pu; and
- it has a mandate from the tribal group and any constituent groups to be their legitimate representative in relation to the matters defined in the charter.

However, the charter of a waka pu may provide that a constituent group or other group is the legitimate representative of that constituent group or of the tribal group for matters defined for that purpose in the charter. To avoid doubt, a waka pu may undertake the delivery of social services to the registered members of the waka pu, but must not claim to be the legitimate representative of the tribal group in relation to those services. In general terms, entities and persons having a mandate recognised by the Crown (before the commencement of the Bill) to enter into or continue negotiations with the Crown to settle the Treaty of Waitangi claims of a tribal group may apply to register a waka pu with a charter that provides that it is the legitimate representative of the relevant tribal group for the purpose of negotiating to settle the Treaty of Waitangi claims of that tribal group (*Part 2, Subpart 1, Clauses 9 - 12; Schedule 1 ("Tribal groups with mandate recognised before commencement of this Act")*).

**Waka tumaha**

The Bill provides that a waka tumaha may, if the relevant requirements of this Bill are met, be formed and registered for a Maori association whose members do not descend from a common tribal ancestor and whose membership is predominantly Maori, that supports Maori culture and tikanga Maori, has communal assets, and whose purpose is to provide a range of services or benefits for its community. The requirements for

formation, preparation of a charter, and registration (by the Registrar of Waka Umanga who is the same person as the Registrar of Companies) of waka umanga are set out in some detail (*Part 2, Subpart 1, Clause 14; Subpart 2, Clauses 15 - 36*).

### **Governance of registered waka umanga**

The Bill provides that every waka umanga must have a runanganui to exercise the powers and perform the duties of the waka umanga under this Bill and the charter of the waka umanga. The runanganui is accountable to the tribal group or Maori association on whose behalf the waka umanga is formed and registered and it must have the number of governors specified in the charter. A governor holds office for the term specified in the charter. Detailed provision is made for the qualification, election (or appointment) and powers of the governors. A runanganui must appoint a chief executive to be the executive head of the waka umanga. Provision is made for the accountability of waka umanga including the obligation to hold annual general meetings. The Bill also provides for a system of voluntary administration where a waka umanga becomes insolvent and also for the liquidation of a waka umanga if that is required by a general meeting of members or by the Court. Detailed provision is made for the establishment and operation of subsidiaries (*Part 3, Subpart 1 ("Governance of waka umanga"), Clauses 37 - 50; Subpart 2 ("Management of waka umanga"), Clauses 51 and 52; Subpart 3 ("Accountability of waka umanga"), Clauses 53 - 59; Subpart 4 ("Voluntary administration"), Clauses 60 - 63; Subpart 5 ("Liquidation"), Clauses 64 - 70; Subpart 6 ("Subsidiaries"), Clauses 71 and 72*).

### **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, processes set out in Schedule 5. Provision is made for applications to the Maori Land Court. The Bill sets out the scope of the Maori Land Court's jurisdiction to hear and determine applications relating to disputes about the formation and registration of waka umanga, covering a great variety of matters such as declarations on the application of a tribal group in relation to the formation of a waka pu, applications relating to internal disputes that are not able to be resolved by the internal dispute resolution processes; and applications relating to the governance or management of a waka umanga after its registration. The Bill sets out the orders that the Court may make in respect of each category of application and the limits to the jurisdiction of the Court in specified circumstances; in particular, that the Court cannot make orders as to the merits of a proposal to form and register a waka umanga (unless the parties agree) or the most appropriate representatives of a tribal group or Maori association. A power is provided to transfer to the High Court proceedings commenced in the Maori Land Court. Appeals from decisions of the Maori Land Court proceed to the High Court, and may be sent to the Court of Appeal and the Supreme Court (*Part 4, Subpart 1 ("Resolution of internal disputes"), Clauses 73 - 75; Subpart 2 ("Applications to Maori Land Court"), Clauses 76 - 87; Subpart 3 ("Transfer of proceedings and rights to appeal"), Clauses 88 - 94*).

### **Registration of existing entities as waka umanga**

The Bill provides for the registration of the following types of existing entity as waka umanga: Maori Trust Boards; incorporated societies; trusts other than charitable trusts; and charitable trusts. A Maori Trust Board seeking to register as a waka umanga must satisfy the special requirements and an Order in Council is required to

formalise the cancellation of the Board's status as a Maori Trust Board under the Maori Trust Boards Act 1955. The previous legal status of all the entities comes to an end and is cancelled on their registration.

However, registration does not affect proceedings by or against the existing entity and the property, rights, and obligations of the existing entity transfer to the waka umanga. Provision is made in respect of taxation and duties. Broadly, a waka umanga and the organisation it was immediately before registration are to be treated as the same person in relation to the property, rights, and obligations that become the property, rights, and obligations on registration of the waka umanga (*Part 5, Subpart 1 ("Registration of existing entities as waka umanga"), Clauses 95 - 117; Subpart 2 ("Taxation and Duties"), Clauses 118 - 121*).

### **Secretariat, Offences and regulations**

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

The Secretariat will cease to exist after five years. The function of the Secretariat is principally an advisory one. Its purpose will be to promote compliance with the Act by Maori groups or existing entities wishing to form and register a waka umanga or that have already done so and seek assistance with ongoing governance arrangements. The Bill sets out the offences and penalties arising under this Bill. There is provision for the making of regulations (*Part 5, Subpart 3 ("Waka Umanga Secretariat"), Clauses 122 and 123; Subpart 4 ("Enforcement provisions"), Clauses 124 - 128; Subpart 5 ("Regulations and miscellaneous matters"), Clauses 129 - 132*).