

# **Maori Commercial Aquaculture Claims Settlement Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The objective of this Bill is to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004 (the **Settlement Act**) to better enable the allocation and transfer of aquaculture settlement assets to iwi.

Currently iwi in some regions are facing indefinite delays in receiving their aquaculture settlement assets from the trustee, Te Ohu Kai Moana Trustee Limited (**Te Ohu Kaimoana**). This is due to the inability of iwi in those regions to reach agreement, in accordance with the provisions of the Settlement Act, about how regional aquaculture settlement assets should be allocated among them. The dispute resolution process provided in the Settlement Act has been unable to address these issues and there is a risk that similar situations will arise in future regional settlement processes. If no changes are made, settlement assets for iwi in those regions will remain held in trust by Te Ohu Kaimoana indefinitely, causing further frustration for those iwi who will be unable to realise their aquaculture aspirations and contribute to the broader aquaculture industry.

The Bill provides Te Ohu Kaimoana with a limited discretionary power to allocate and transfer aquaculture settlement assets to iwi when Te Ohu Kaimoana is satisfied that the dispute resolution process provided in the Settlement Act (which includes reference to the Māori Land Court) has been unable to resolve the issue or could not be used in the situation, and either—

- it is clear that all iwi in a region (through their iwi aquaculture organisations and any recognised iwi organisation of a relevant iwi that does not have an iwi aquaculture organisation) are unable to reach agreement, in accordance with

the provisions of the Settlement Act, about how regional aquaculture settlement assets should be allocated among them; or

- Te Ohu Kaimoana is satisfied that it is unable to make a determination on aquaculture settlement allocation entitlements because it has not been able to recognise iwi aquaculture organisations for 1 or more iwi.

The Bill will—

- ensure that iwi can access their aquaculture settlement assets within an appropriate time frame; and
- improve the delivery of the Crown’s aquaculture settlement obligations; and
- protect the interests of iwi who do not wish to claim their aquaculture settlement assets; and
- support iwi aquaculture aspirations as well as further support the growth of the aquaculture industry.

The Bill amends the sections of the Settlement Act that relate to the allocation of settlement assets.

### **Departmental disclosure statement**

The Ministry for Primary Industries is 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=2020&no=322>

### **Regulatory impact statement**

The Ministry for Primary Industries produced a regulatory impact statement on 17 March 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Bill amends the Maori Commercial Aquaculture Claims Settlement Act 2004.

*Clause 4* amends section 4, which concerns interpretation. A definition of relevant iwi is inserted.

*Clause 5* amends section 45, which relates to the allocation of assets to the iwi of a region, by inserting a reference to the trustee discretion provided by *new section 49B*.

*Clause 6* amends section 48, which relates to the allocation of settlement assets, by including references to the trustee discretion provided by *new section 49B*.

*Clause 7* replaces section 49, which relates to the partial allocation of settlement assets, with *new sections 49 to 49E*. These add a new discretion, in *new section 49B*, to the existing partial-allocation provisions for the trustee to allocate and transfer certain settlement assets in circumstances set out in *new section 49A*. *New sections 49C to 49E* provide for limitations and processes for notifying and implementing the trustee's determination.

*Clause 8* amends section 52, which relates to the application of the dispute resolution provisions in sections 53 to 55, by extending the application of those provisions to disputes over an exercise of the trustee's discretion under *new section 49B*.



*Hon Stuart Nash*

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## **Contents**

		Page
1	Title	1
2	Commencement	2
3	Principal Act	2
4	Section 4 amended (Interpretation)	2
5	Section 45 amended (Allocation of assets to iwi of region)	2
6	Section 48 amended (Allocation of settlement assets)	2
7	Section 49 replaced (Partial allocation of settlement assets)	2
	49 Partial allocation of settlement assets	2
	49A Circumstances in which trustee has discretion to allocate and transfer assets	3
	49B Discretion to allocate and transfer assets	4
	49C Limitations applying if iwi aquaculture organisation receives settlement assets under section 49B	4
	49D Notification of determination to allocate and transfer assets under section 49B	4
	49E Implementation of determination	4
8	Section 52 amended (Application)	5

**The Parliament of New Zealand enacts as follows:**

### **1 Title**

This Act is the Maori Commercial Aquaculture Claims Settlement Amendment Act **2020**.

## **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

## **3 Principal Act**

This Act amends the Maori Commercial Aquaculture Claims Settlement Act 2004 (the **principal Act**). 5

## **4 Section 4 amended (Interpretation)**

In section 4, insert in its appropriate alphabetical order:

**relevant iwi**, in relation to an allocation of assets, means those iwi in a region who, in the trustee’s opinion, are directly affected by the allocation 10

## **5 Section 45 amended (Allocation of assets to iwi of region)**

In section 45(3), after “by the trustee”, insert “, except in circumstances where the trustee exercises the discretion under **section 49B**”.

## **6 Section 48 amended (Allocation of settlement assets)**

(1) Replace section 48(2)(b) with: 15

(b) failing that agreement,—

(i) a determination under sections 52 to 55; or

(ii) an exercise of the trustee’s discretion under **section 49B**.

(2) In section 48(3), replace “agreement or determination” with “agreement, determination, or exercise of discretion”. 20

## **7 Section 49 replaced (Partial allocation of settlement assets)**

Replace section 49 with:

### **49 Partial allocation of settlement assets**

(1) An iwi aquaculture organisation may request the trustee to make a partial allocation of settlement assets if— 25

(a) the iwi’s allocation entitlement for the settlement assets has been determined, but the entitlement of 1 or more other iwi to the settlement assets is yet to be determined; or

(b) the iwi’s allocation entitlement to a portion, but not all, of the settlement assets has been determined; or 30

(c) the trustee has earlier made an allocation and transfer under **section 49B(1)** and subsequently the relevant iwi aquaculture organisations have reached agreement on allocation of the residual assets.

(2) The trustee may make a partial allocation of settlement assets only in accordance with— 35

- (a) an agreement of the iwi aquaculture organisations of all the relevant iwi;  
or
  - (b) failing that agreement,—
    - (i) a determination under sections 52 to 55; or
    - (ii) an exercise of the trustee’s discretion under **section 49B**. 5
  - (3) If the trustee makes a partial allocation of settlement assets under this section, the trustee—
    - (a) must transfer settlement assets to any iwi aquaculture organisation—
      - (i) whose entitlement to the assets has been determined; or
      - (ii) in respect of which the trustee’s discretion has been exercised in accordance with **section 49B** and who has requested in writing that the trustee do so; but 10
    - (b) must not transfer settlement assets in respect of which the conditions set out in **paragraph (a)(i) or (ii)** have not been met.
  - (4) However, **subsection (3)** does not prevent the trustee from transferring a settlement asset in accordance with section 50. 15
  - (5) A partial allocation under **subsection (2)** must specify the relevant iwi aquaculture organisations with respect to the residual assets.
- 49A Circumstances in which trustee has discretion to allocate and transfer assets** 20
- The discretion provided to the trustee in **section 49B** may be exercised—
- (a) when the period specified in section 45(4A)—
    - (i) has expired at least 12 months earlier; or
    - (ii) has not commenced because—
      - (A) the trustee has not recognised an iwi aquaculture organisation for 1 or more iwi of the region; and 25
      - (B) 24 months have passed since the first of the settlement assets for the region was allocated to the trustee; and
  - (b) if any iwi aquaculture organisation does not hold the registered settlement assets allocation entitlements— 30
    - (i) that are determined and registered under section 31, as referred to in section 45(2)(b); or
    - (ii) that are determined in accordance with **section 49B**, as referred to in **section 48(2)(b)(ii)**; or
    - (iii) that are determined in accordance with sections 52 to 55, as referred to in **section 49(2)(b)(i)**; or 35
    - (iv) by the agreement of the iwi aquaculture organisations of all the relevant iwi in respect of the allocation of the settlement assets.

**49B Discretion to allocate and transfer assets**

- (1) In the circumstances specified in **section 49A**, the trustee may, in accordance with section 48(3), allocate and transfer any settlement assets to any iwi aquaculture organisation.
- (2) However, a transfer of settlement assets under **subsection (1)** must be made in proportion to the length of coastline of the relevant iwi who agree on a partial allocation and that the trustee is satisfied is unlikely to be disputed. 5
- (3) This section overrides anything to the contrary in **sections 44 to 49**.

**49C Limitations applying if iwi aquaculture organisation receives settlement assets under section 49B** 10

- (1) An iwi aquaculture organisation, or a new organisation recognised in place of that organisation under section 33(2), to which settlement assets in the form of authorisations or coastal permits are transferred under **section 49B**—
- (a) must not sell, exchange, or otherwise transfer the assets until it holds registered settlement assets allocation entitlements for the assets; and 15
- (b) must transfer the relevant portion of those assets to another iwi aquaculture organisation that becomes entitled to any portion of the assets, as a result of holding a registered settlement assets allocation entitlement,—
- (i) without consideration or compensation; and
- (ii) within 12 months after being notified of the entitlement. 20
- (2) This section applies in addition to, and does not limit, section 50.

**49D Notification of determination to allocate and transfer assets under section 49B**

When the trustee has determined to allocate and transfer assets in accordance with **section 49B**, the trustee must notify, in writing, the iwi aquaculture organisations of the relevant iwi and, if a relevant iwi does not have an iwi aquaculture organisation, any recognised iwi organisation of the iwi, of— 25

- (a) the nature of the determination that has been made; and
- (b) the principal reasons for the determination; and
- (c) the right to dispute the determination under **section 49E**. 30

**49E Implementation of determination**

- (1) The trustee must not implement a determination made under **section 49B** unless—
- (a) 30 working days have passed since notice of the determination was given under **section 49D**; and 35
- (b) within that time, no iwi aquaculture organisation of a relevant iwi or recognised iwi organisation (for a relevant iwi that does not have an iwi



- aquaculture organisation) has initiated the dispute resolution process under sections 53 to 55.
- (2) A dispute under **section 52(ca)** must be notified within the period referred to in **subsection (1)(a)** to—
- (a) the trustee; and 5
  - (b) the iwi aquaculture organisations of all relevant iwi; and
  - (c) the recognised iwi organisation of a relevant iwi that does not have an iwi aquaculture organisation.
- (3) Despite **subsection (1)**, the trustee may implement a determination under **section 49B** at any time— 10
- (a) to the extent that it can be implemented without depriving an iwi aquaculture organisation of a relevant iwi or recognised iwi organisation (for a relevant iwi that does not have an iwi aquaculture organisation) that disputes the determination of the benefit of the dispute resolution process under sections 53 to 55 or any remedy available under the process; or 15
  - (b) if the iwi aquaculture organisation of each relevant iwi or each recognised iwi organisation (for relevant iwi that do not have an iwi aquaculture organisation) notifies the trustee in writing within the period referred to in **subsection (1)(a)** that the organisation does not intend to invoke the dispute resolution process. 20
- (4) A waiver notified in accordance with **subsection (3)(b)** is binding on the iwi aquaculture organisation or recognised iwi organisation that issues it.

## 8 Section 52 amended (Application)

After section 52(c), insert: 25

- (ca) between the trustee and 1 or more iwi aquaculture organisations or a recognised iwi organisation (for a relevant iwi that does not have an iwi aquaculture organisation) over an exercise of the trustee's discretion under **section 49B** (including, with respect to a partial allocation under **section 49**, the trustee's specification of which iwi aquaculture organisations are relevant iwi aquaculture organisations under **section 49(5)**): 30