

Parliamentary Commissioner for the Treaty of Waitangi Bill

Member's Bill

Explanatory Note

General policy statement

This Bill establishes the office of the Parliamentary Commissioner for the Treaty of Waitangi to advocate and promote respect for the Treaty of Waitangi as the nation's founding document and constitutional blueprint.

Despite the policy and legislative changes of the last 35 years to better recognise the Treaty of Waitangi, shortfalls remain which adversely affect the lives of whānau, hapū and iwi. These shortfalls also affect the quality of cross-cultural relationships and the operations of society more generally. Enhancing respect for and giving better effect to the Treaty of Waitangi will enhance the quality of life for all.

To achieve this, the Bill provides the Parliamentary Commissioner for the Treaty of Waitangi (the Commissioner) with functions and powers to enable him or her to:

- Review and investigate priority issues of concern;
- Provide advice to Parliament; and
- Contribute to public debate through the provision of information and analysis.

The Commissioner will be appointed for a five year term on the recommendation of Parliament, following consultation with hapū and iwi.

In recognition of the powers of the Commissioner to obtain information to assist in the performance of his or her functions and to encourage full and frank provision of information to the Commissioner, the Bill provides for the Official Information Act 1992 to apply to the extent that, in the Commissioner's opinion, the release of information would be consistent with the purposes of the Bill. This is consistent with the secrecy provision in clause 19 which is the same as that which applies to the Parliamentary Commissioner for the Environment. A similar qualification to the Official Information Act 1982 also applies, for example, to the release of official information by the Government Actuary under section 26 of the Superannuation Schemes Act 1989. This

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 sets out the purposes of the Bill.

Clause 4 establishes the office of the Parliamentary Commissioner for the Treaty of Waitangi as an Officer of Parliament.

Clause 5 provides that the Commissioner must not hold certain other offices.

Clause 6 provides the term of office of the Commissioner is five years.

Clause 7 provides for removal or suspension of the Commissioner in certain circumstances.

Clause 8 provides for the filling of vacancy where the Commissioner dies, resigns from office, or is removed from office.

Clause 9 provides for the salary and allowances of the Commissioner.

Clause 10 provides for the oath to be taken by the Commissioner.

Clauses 11-12 provide for the employment of employees and consultants, respectively.

Clause 13 provides that at the request of a select committee, the Speaker of the House may require the Commissioner's staff, or any consultant employed by the Commissioner, where in the latter case the person consents, to be available to advise the select committee.

Clause 14 provides that service as the Commissioner, or as an officer or employee of the Commissioner, is to be deemed to be Government service for the purpose of the Government Superannuation Fund Act 1956.

Clause 15 sets out the functions of the Commissioner.

Clause 16 sets out the matters to which regard is to be given by the Commissioner when performing his or her functions under the Act.

Clauses 17-18 set out the powers of the Commissioner.

Clause 19 provides that the Commissioner and Commissioner's staff are to maintain secrecy in the exercise or performance of their powers and functions under the Act.

Clause 20 provides the Commissioner with a right to be heard in proceedings.

Clause 21 provides the Commissioner with the power to delegate his or her functions and powers.

Clause 22 provides that proceedings of the Commissioner's office are privileged.

Clause 23 requires the Commissioner to make an annual report to the House of Representatives.

Clause 24 provides for four offences punishable on summary conviction to a fine not exceeding \$1,000, namely:

- Without lawful justification or excuse, to obstruct, hinder or resist the Commissioner or any other person in the exercise of his or her powers under the Act.
- Without lawful justification or excuse, to refuse or wilfully fail to comply with any lawful requirement by the Commissioner or any other person under the Act.
- To wilfully make any false statement or wilfully mislead or attempt to mislead the Commissioner or any other person in the exercise of his or her powers under the Act.
- To represent directly or indirectly that he or she holds any authority under the Act when he or she does not hold that authority.

Clauses 25 provides for appropriation of money by Parliament for the purposes of the Act.

Clause 26 provides for audit of the Commissioner's office.

Clause 27 provides for an amendment to the Official Information Act 1986 and for that Act to apply to the extent that, in the Commissioner's opinion, the release of any information is consistent with the purposes of the Act.

Parliamentary Commissioner for the Treaty of Waitangi Bill

Member's Bill

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Parliamentary Commissioner for the Treaty of Waitangi Act 2009.

2 Commencement

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

3 Purpose

The purposes of this Act are –

- (1) To provide for the establishment of the office of Parliamentary Commissioner for the Treaty of Waitangi to advocate and promote respect for the Treaty of Waitangi.
- (2) To provide for the Parliamentary Commissioner for the Treaty of Waitangi to investigate and inquire into and provide advice, information and analysis on any matter relating to the Treaty of Waitangi.
- (3) To provide the Commissioner with express powers to obtain information and documents in order to enhance the effectiveness of the Commissioner's investigative and inquiry functions.
- (4) To require the Commissioner to have regard for the United Nations Declaration on the Rights of Indigenous Peoples and the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention), including the General Recommendations developed by the United Nations Committee on the Elimination of Racial Discrimination which monitors the Convention.

Administrative provisions

4 Parliamentary Commissioner for the Treaty of Waitangi

- (1) There must be appointed, as an Officer of Parliament, a Parliamentary Commissioner for the Treaty of Waitangi.
- (2) Subject to section 8 of this Act, the Commissioner must be appointed by the Governor-General on the recommendation of the House of Representatives.
- (3) Before making a recommendation under subsection (2), the House of Representatives is required to consult with hapū and iwi and in making the appointment must demonstrate regard for the views expressed by hapū and iwi during that consultation.

5 Commissioner not to hold other offices

The Commissioner may not hold office as a Member of Parliament or of as a member of a local authority, and may not, without the approval of the Speaker of the House of Representatives in each particular case, hold any office of trust or profit or engage in any occupation for reward outside the duties of the Commissioner's office.

6 Term of office of Commissioner

- (1) Except as otherwise provided in this Act, the Commissioner is to be appointed for a term of 5 years, but may be reappointed from time to time.
- (2) Where the term for which the Commissioner has been appointed expires, the Commissioner, unless sooner resigning from office or removed from office, will continue to hold office, by virtue of the appointment for the term that has expired, until—
 - (a) The Commissioner is reappointed; or
 - (b) A successor to the Commissioner is appointed.
- (3) The Commissioner may at any time resign from office by writing addressed to the Speaker of the House of Representatives, or to the Prime Minister if there is no Speaker or if the Speaker is absent from New Zealand.

7 Removal or suspension from office

- (1) Subject to subsections (2) and (3) of this section, the Commissioner may be removed or suspended from office only by the Governor-General, upon an address from the House of Representatives, for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct.
- (2) Subject to subsection (3), at any time when Parliament is not in session, the Commissioner may be suspended from office by the Governor-General in Council for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General in Council; but any such suspension may not continue in force beyond the end of the 24th sitting day of the next ensuing session of Parliament, and the salary of the Commissioner must continue to be paid notwithstanding the suspension.
- (3) In removing or suspending the Commissioner from office, the Governor-General or where relevant the Governor-General in Council, is required to consult with and demonstrate regard for the views of hapū and iwi.

8 Filling of vacancy

- (1) If the Commissioner dies, or resigns from office, or is removed from office, the vacancy thereby created must be filled as soon as practicable in accordance with this section.
- (2) Subject to subsection (4) of this section, a vacancy in the office of Commissioner must be filled by the appointment of a Commissioner by the Governor-General on the recommendation of the House of Representatives.
- (3) Any recommendation made under subsection (2), must be preceded by consultation with and demonstrate regard for the views of hapū and iwi.
- (4) If—
 - (a) A vacancy occurs while Parliament is not in session or exists at the close of a session; and
 - (b) The House of Representatives has not recommended an appointment to fill the vacancy—

the vacancy, at any time before the commencement of the next ensuing session of Parliament, may be filled by the appointment of a successor by the Governor-General in Council.

- (5) In appointing a successor under subsection (4), the Governor-General must first consult with, and in making the appointment demonstrate regard for the views of, hapū and iwi.
- (6) Any appointment made under subsection (4) of this section will lapse and the office will again become vacant unless, before the end of the 24th sitting day of the House of Representatives following the date of the appointment, the House confirms the appointment.

9 Salary and allowances of Commissioner

- (1) There must be paid to the Commissioner out of public money, without further appropriation than this section,—
 - (a) A salary at such rate as the Remuneration Authority from time to time determines; and
 - (b) Such allowances as are from time to time determined by the Remuneration Authority.
- (2) The salary of the Commissioner may not be diminished during the continuance of the Commissioner's appointment.
- (3) Notwithstanding anything in subsection (1) of this section, there must be paid to the Commissioner, in respect of time spent in travelling in the exercise of the Commissioner's functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act are to apply accordingly as if the Commissioner were a member of a statutory Board and the travelling were in the service of a statutory Board.
- (4) The Commissioner is entitled to such annual leave, sick leave, and other leave as may be determined by the Speaker of the House of Representatives.
- (5) The Commissioner is not to be regarded as being employed in the service of Her Majesty for the purposes of the State Sector Act 1988 by reason of appointment as the Commissioner.

10 Oath to be taken by Commissioner

- (1) Before entering upon the exercise of the duties of office the Commissioner must take an oath that he or she will faithfully and impartially perform the duties of the office, and will not, except for the purposes of this Act, divulge any information received by the Commissioner under this Act.
- (2) The oath is to be administered by the Speaker or the Clerk of the House of Representatives.

11 Employees

- (1) The Commissioner may from time to time appoint such employees as may be necessary for the efficient carrying out of the Commissioner's functions, powers, and duties under this Act.
- (2) The Commissioner is responsible for negotiating, under the Employment Relations Act 2000, every employment agreement applicable to employees appointed under this section.
- (3) The Commissioner must operate a personnel policy that complies with the principle of being a good employer.

- (4) No person so employed is to be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 by reason of that person's appointment under this section.

12 Employment of consultants

- (1) The Commissioner may from time to time appoint any person with expert knowledge, or who is otherwise able to assist the Commissioner, to make such inquiries, conduct such research, and make such reports as the Commissioner considers will better enable the Commissioner to exercise and perform the Commissioner's powers and functions under this Act.
- (2) The Commissioner must determine the terms and conditions under which any person is appointed under subsection (1) of this section.

13 Speaker may require staff to be made available to select committees

At the request of any select committee of the House of Representatives, the Speaker of the House of Representatives may require the Commissioner to make available any officer or employee holding office under section 11 of this Act or (with the person's consent) any person appointed under section 12 of this Act to advise the select committee.

14 Superannuation

For the purposes of the Government Superannuation Fund Act 1956, service as the Commissioner or as an officer or employee appointed or seconded under section 11 of this Act is to be deemed to be Government service.

Functions and powers

15 Functions of Commissioner

- (1) The functions of the Commissioner are—
- (a) Where the Commissioner considers it necessary, to review the effectiveness of any measures or actions that seek to give effect to the Treaty of Waitangi, and to report the results of any such review, including any advice on measures or remedial action considered desirable, to the House of Representatives and to such bodies or persons as the Commissioner considers appropriate:
- (b) With the objective of improving the quality of the Treaty settlements process, to review from time to time, the practices, procedures and policies of agencies or organisations established by the Government with functions relating to claims made under the Treaty of Waitangi Act 1975, and to report the results of any such review, including any advice on measures or remedial action considered desirable, to the House of Representatives and to such other bodies or persons as the Commissioner considers appropriate:
- (c) With the objective of improving outcomes for Māori as a party to the Treaty of Waitangi, to review from time to time, the effectiveness of policy implemented by the Government to achieve outcomes for Māori, and to report the results of any such review, including any advice on measures or remedial action considered desirable, to the House of Representatives and to such other bodies or persons as the Commissioner considers appropriate:

- (d) To review any decision made by the Government for consistency with the Treaty of Waitangi as the Commissioner considers appropriate, and to report the results of any such review, including any advice on measures or remedial action considered desirable, to the House of Representatives and to such other bodies or persons as the Commissioner considers appropriate:
 - (e) To investigate any matter relating to the Treaty of Waitangi which the Commissioner considers warranted, and to advise, where necessary, the appropriate agency, person or body the Commissioner thinks appropriate of the measures or actions which the Commissioner considers should be taken, and to report the results of the investigation to the House of Representatives:
 - (f) To review any Bill, petition, or other matter before the House of Representatives or any select committee of the House of Representatives for consistency with the Treaty of Waitangi as the Commissioner considers appropriate or as requested by the House of Representatives or any select committee of the House of Representatives, and to report the results of any such review to the House or committee concerned:
 - (g) On the direction of the House of Representatives, to inquire into any matter that has or may have relevance to the Treaty of Waitangi, and to report the results of the inquiry to the House and to such other bodies or persons as the Commissioner considers appropriate:
 - (h) To encourage and assist with public debate on constitutional matters.
- (2) In fulfilling subsection (1), the Commissioner must consult with and demonstrate regard for the views of hapū and iwi where appropriate.
 - (3) For the purposes of any inquiry held under subsection (1)(e) of this section, the Commissioner has the same powers as are conferred on Commissions of Inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908; and those sections will apply to all persons involved in any capacity in any such inquiry as if it were an inquiry conducted by a Commission under that Act.
 - (4) The Commissioner has, in relation to any such inquiry, and any report on the results of the inquiry, the same immunities and privileges as are possessed by a District Court Judge in the exercise of the Judge's civil jurisdiction.

16 Matters to which regard to be given

In the performance of the Commissioner's functions the Commissioner must have regard, in particular but not exclusively, to –

- (a) Improving the relationship between the parties to the Treaty of Waitangi, Māori and the Crown, and particularly the way in which the Treaty of Waitangi relationship is implemented in local, regional and national policy and decision making:
- (b) Improving the constitutional status and recognition of the Treaty of Waitangi, and the tino rangatiratanga of hapū and iwi:
- (c) Improving the quality of Treaty settlements, including working to eliminate hapū and iwi conflicts arising from settlement processes:
- (d) Improving the material situation of Māori:
- (e) Whether any proposal, policy, legislation, or other matter, the consideration of which is consistent with the Commissioner's functions

under the Act, are likely to adversely or beneficially affect the Treaty relationship.

17 Powers of Commissioner

The Commissioner has such powers as may be necessary to enable the Commissioner to carry out the Commissioner's functions under this Act.

18 Power to obtain information

- (1) The Commissioner may from time to time require any person who in the Commissioner's opinion is able to give any information relating to any matter which is being investigated or inquired into by the Commissioner to furnish to the Commissioner any such information and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter and which may be in the possession or under the control of that person.
- (2) The Commissioner may summon before the Commissioner and examine on oath any person who in the Commissioner's opinion is able to give any such information, and for that purpose may administer an oath. Every such examination by the Commissioner is deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).
- (3) Any person who is bound by the provisions of any enactment (other than the State Sector Act 1988 and the Official Information Act 1982) to maintain secrecy in relation to any matter or not to disclose any matter cannot be required to—
 - (a) Supply any information to the Commissioner; or
 - (b) Answer any question put by the Commissioner; or
 - (c) Produce any document, paper, or thing to the Commissioner—if compliance with the requirement would be in breach of the obligation of secrecy or non-disclosure.
- (4) Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things in accordance with this section as witnesses have in any Court.
- (5) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner may be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner may be given against any person.
- (6) No person is liable to prosecution for an offence against any enactment, other than this Act, by reason of compliance with any requirement of the Commissioner under this section.
- (7) Where any person is required by the Commissioner to attend before the Commissioner for the purposes of this section, that officer, employee or member is entitled to the same fees, allowances, and expenses as if he or she were a witness in a Court, and the provision of any regulations in force under the Summary Proceedings Act 1957 apply accordingly. For the purposes of this subsection the Commissioner has the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

19 Commissioner and staff to maintain secrecy, etc

- (1) The Commissioner and every person holding any office or appointment under the Commissioner are to be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be officials.
- (2) Except for purposes connected with the administration of this Act or with the carrying out of the provisions of this Act, the Commissioner and every person holding any office or appointment under the Commissioner must maintain secrecy in respect of all matters that come to their knowledge in the exercise and performance of their powers and functions under this Act.
- (3) Every person holding any office or appointment under the Commissioner, before beginning to perform any official duty under this Act, must take an oath, to be administered by the Commissioner, that he or she will not divulge any information received under this Act except for purposes connected with the administration of this Act or with the carrying out of the provisions of this Act.

20 Commissioner's right to be heard in proceedings

- (1) In any proceedings in any way relating to the Treaty of Waitangi and its implementation, the Commissioner—
 - (a) Has the right to be present and be heard solely for the purpose of calling evidence on any matter (including evidence in rebuttal) that should be taken in account in determining the proceedings:
 - (b) May examine, cross-examine, and re-examine witnesses:
 - (c) May be represented by counsel or by any duly authorised representative—but has no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal, or in respect of the examination, cross-examination, and re-examination of witnesses.
- (2) Where the Commissioner appears in any proceedings pursuant to any of the provisions of subsection (1) of this section, the Court, Tribunal, or other body before which those proceedings are conducted, where it has power to award costs to or against parties to the proceedings, may make such order as it thinks just—
 - (a) As to the payment by any party to the proceedings of the costs incurred by the Commissioner in so doing; or
 - (b) As to the payment by the Commissioner of any costs incurred by any party to the proceedings by reason of the Commissioner's so doing.
- (3) Where any costs are so awarded to the Commissioner, the Commissioner may recover them in the same manner as parties to the proceedings may recover costs awarded to them.

21 Delegation of functions and powers

- (1) The Commissioner may from time to time, either generally or in respect of a specified matter or class of matters and subject to such conditions and restrictions as the Commissioner thinks fit, by writing, delegate any of the Commissioner's functions and powers to an officer or employee of the Commissioner.

- (2) The Commissioner must keep at the Commissioner's office a copy of every instrument by which a delegation under subsection (1) of this section is effected, and must permit any person to inspect that instrument.
- (3) Notwithstanding subsection (1) of this section, the Commissioner may not delegate the following powers or functions:
 - (a) The power of delegation conferred by that subsection; or
 - (b) The power to act as a Commission of Inquiry under section 15(3) of this Act; or
 - (c) The function of reporting to the House of Representatives.
- (4) Any delegation under this section may be made to—
 - (a) A specified person; or
 - (b) A person of a specified class; or
 - (c) The holder for the time being of a specified office or appointment; or
 - (d) The holders for the time being of offices or appointments of a specified class.
- (5) Subject to any general or special directions given or conditions or restrictions imposed by the Commissioner, the person to whom any functions and powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (6) Where the Commissioner or any delegate of the Commissioner uses a written document to inform any other person of action taken by a delegate of the Commissioner, that written document—
 - (a) Must state that the action was taken by a delegate of the Commissioner; and
 - (b) Must give the delegate's name and office; and
 - (c) Must inform that other person that a copy of the instrument of delegation may be inspected at the office of the Commissioner.
- (7) Every delegation under this section is revocable at will, but any such revocation does not take effect until it has been communicated to the delegate.
- (8) A delegation under this section does not prevent the performance or exercise of any function or power by the Commissioner.
- (9) Until any such delegation is revoked, it continues in force according to its tenor. If the Commissioner by whom it was made ceases to hold office, it continues to have effect as if made by the Commissioner's successor.

22 Proceedings privileged

- (1) This section applies to—
 - (a) The Commissioner; and
 - (b) Every person engaged or employed in connection with the work of the Commissioner.
- (2) Subject to subsection (3) of this section—
 - (a) No proceedings, civil or criminal, may lie against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith:
 - (b) No person to whom this section applies may be required to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.

- (3) Nothing in subsection (2) of this section applies in respect of proceedings for —
- (a) An offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
 - (b) The offence of conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
 - (c) The offence of attempting to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961.
- (4) Anything said or information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.
- (5) For the purposes of clause 3 of Part 2 of Schedule 1 to the Defamation Act 1992, any report made under this Act by the Commissioner is deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

23 Annual report

Without limiting the right of the Commissioner to report at any other time, the Commissioner must in each year make a report to the House of Representatives on the performance of the Commissioner's functions under this Act and on any other matter the Commissioner considers appropriate.

24 Offences

Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1,000 who—

- (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his or her powers under the Act;
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under the Act;
- (c) Wilfully makes any false statement to or wilfully misleads or attempts to mislead the Commissioner or any other person in the exercise of his or her powers under the Act;
- (d) Represents directly or indirectly that he or she holds any authority under the Act when he or she does not hold that authority.

25 Money to be appropriated by Parliament for purposes of the Act

Except as otherwise provided in the Act, all salaries and allowances and other expenditure payable or incurred under or in the administration of the Act may be paid out of money to be appropriated by Parliament for the purpose.

26 Audit

- (1) The House of Representatives must appoint an auditor to audit the accounts of the Office of the Parliamentary Commissioner for the Treaty of Waitangi.
- (2) In carrying out the functions conferred by this section, the auditor has the same functions, duties, and powers as the Audit Office.

27 Amendment to the Official Information Act 1982

- (1) Schedule 1 of the Official Information Act 1982 is amended by inserting in the appropriate alphabetical order:
“Parliamentary Commissioner for the Treaty of Waitangi”.
 - (2) The provisions of the Official Information Act 1982 apply to the extent that in the Commissioner’s opinion the release of any information is consistent with the purposes of this Act.
-