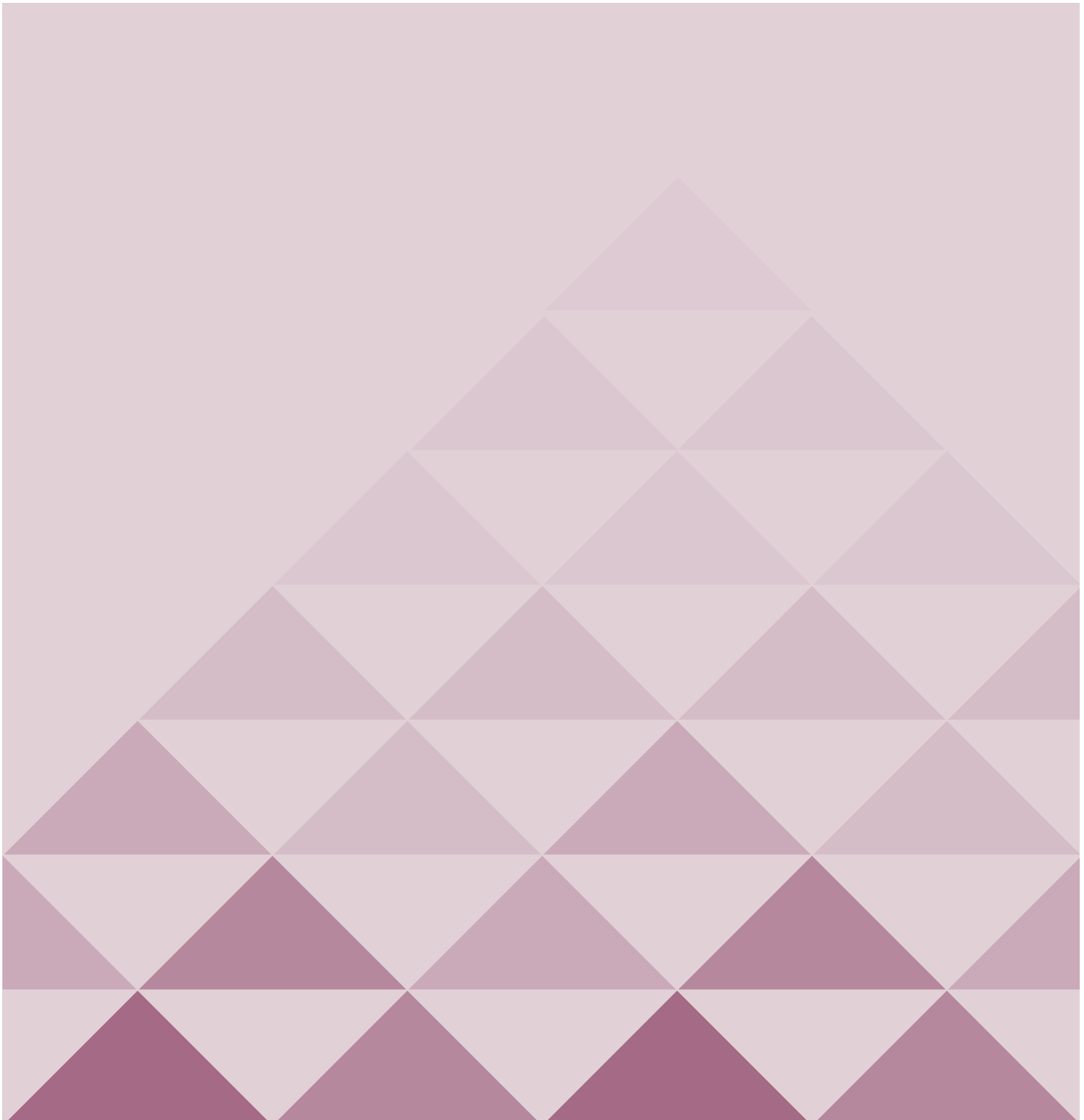




**Te Puni Kōkiri**  
REALISING MĀORI POTENTIAL

## **The Māori Trust Boards Act 1955**

A practical guide for members and beneficiaries of Māori Trust Boards



## Summary

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This guide focuses on the operation of the Māori Trust Boards Act 1955. It is intended to assist members of Māori Trust Boards with their responsibilities and roles, and inform beneficiaries about the workings of the Act and the role of their elected representatives.

## Whakatauki

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*He rawa hei painga mō te iwi.*

*Resources managed for the benefit of iwi.*

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# Section 1

## Introduction

The main function of each Māori Trust Board is to manage the Board's assets for the general benefit of beneficiaries. The [Māori Trust Boards Act 1955](#) (the Act) provides the legal framework within which Māori Trust Boards operate and gives the Minister for Māori Development (the Minister) specific powers to enable Ministerial oversight of the affairs of Māori Trust Boards.<sup>1</sup> The [Māori Trust Boards Regulations 1985](#) (the Regulations) set out the requirements for conducting elections of members to Māori Trust Boards.

With the advancement of beneficiaries in mind, Māori Trust Boards can spend money on the promotion of health, the promotion of social and economic welfare, the promotion of education and vocational training or additional purposes for the benefit of its beneficiaries that the Māori Trust Board decides upon.<sup>2</sup>

Te Puni Kōkiri administers the Act and is the government department that oversees the operation of the Act. Te Puni Kōkiri is also responsible for advising the Minister on any compliance issues that may arise, and any other significant matters affecting Māori Trust Boards.

This guide focuses on the operation of the Act and is intended to provide guidance that will assist members of Māori Trust Boards with their responsibilities and roles. It is also intended to inform beneficiaries of the workings of the Act and the role of their elected representatives.

**This document is intended to be a guide only.** While Te Puni Kōkiri is available to provide clarification on its contents at any time, Māori Trust Boards are advised to seek independent legal advice on any legal issues that they may face.

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1 The Act refers to the Minister of Māori Affairs. The powers are currently vested in the Minister for Māori Development.

2 Section 24(2) of the Act.



# What is a Māori Trust Board?

Between 1922 and 1953, ten Māori trusts were established by statute to receive and administer compensation awarded by the Crown in settlement of various long-held Māori grievances. In 1955, as part of a move to update all existing Māori legislation, the Act was enacted to standardise and improve the administration of these existing bodies and to provide a template for future boards.

For the purposes of this document, a Māori Trust Board is a trust board that is formed ('constituted') under the Act or under separate legislation that refers to the Act as the Board's governing legislation.

A list of Māori Trust Boards subject to the Act (as at 1 March 2018) is attached as **Appendix 1**.

Māori Trust Boards are **body corporates** with **perpetual succession** and a **common seal**.

## 1. Body corporates

A body corporate is a legal entity i.e. a legal person that exists separately from its members. It is capable of doing things a natural person can do – like owning land and other assets, suing people and being sued, entering into contracts and applying for funding. As Māori Trust Boards are body corporates, they can do anything a natural person can do, as long as it is not inconsistent with the provisions of the Act.

## 2. Perpetual succession

If a legal entity has "perpetual succession" this means that it continues to exist and function, regardless of changes or vacancies in its membership. As Māori Trust Boards have perpetual succession they continue to exist and function as an organisation, regardless of changes, vacancies or issues in membership, or delays in the election or appointment of its Board members.

Section 15(3) of the Act allows Board members to continue in office until their successors are appointed.

## 3. Common seal

A common seal is the 'official stamp' used by an organisation when it signs legal documents. A common seal confirms that the signing of a document is the act of the legal entity (as opposed to the individual members of the organisation). A common seal is usually a rubber stamp that includes the name of the organisation and the words "common seal".

Māori Trust Boards are required to have a common seal, approved by the Minister. The Seal must be kept in the care of the Chair or another officer of the Board.<sup>3</sup>

The common seal is only to be used pursuant to a resolution of the Board, and must be applied to a document in the presence of the Board Secretary and two Board members, who sign the document as witnesses that the seal was affixed while they were present.

<sup>3</sup> Section 34 of the Act.





## Section 2

# What is the Role of a Māori Trust Board?

The main function of each Māori Trust Board is to manage the Board's assets for the general benefit of beneficiaries.

Māori Trust Board members are not Māori Trust Board employees. Board members are elected by beneficiaries of the Board and paid in accordance with the Cabinet Fees Framework.

The Board has primary responsibility for administering the Board's assets in the interests of the beneficiaries. This governance role includes:

- Co-ordinating and controlling the Board's resources;
- Making decisions regarding the strategic direction and actions of the Board;
- Being accountable to its beneficiaries for its decisions and the performance of the Board;
- Making transparent decisions so that beneficiaries can see how and why decisions were made;
- Making decisions that are consistent with the Act and in the best interests of the beneficiaries;
- Serving the needs of the beneficiaries while balancing competing interests in a timely, appropriate and responsive manner;
- Ensuring that beneficiaries interests are represented and considered; and
- Implementing decisions and following processes that make the best use of the available people, resources and time to ensure the best possible results.



# Membership of Māori Trust Boards

## 1. Board membership

Māori Trust Board members are elected to their position by the beneficiaries and appointed by the Governor-General.<sup>4</sup> Members are appointed for three years (but are able to be reappointed).<sup>5</sup> The Act and Regulations envisage that all members will be elected at the same time and their appointment will expire at the same date. There is provision for extraordinary vacancies when members are removed, resign or die during their term. The Governor-General can fill such vacancies for the residue of the term, but if a vacancy remains a Board is not affected by any vacancy in membership.<sup>6</sup>

Māori Trust Boards have a fixed number of Board members and in some cases, specific areas they must be selected from. [Schedule 1 of the Māori Trust Board Regulations](#) sets out the number of members per Board, and if applicable, the number of members for each division.

If the term of current Board members have expired, the Act allows the outgoing members to continue in office until their successors are appointed. This ensures that the business of the Board can continue regardless of any delays in election or appointment processes.

A Board member may be removed at any time for specific reasons by the Governor-General, acting on the advice of the Minister. More information on this aspect is contained in Section 10 of this Guide.

## 2. Eligibility rules

The Act declares who the beneficiaries for each Māori Trust Board are. To be elected or appointed to be a member of the Board a person must be a beneficiary of that Board.<sup>7</sup>

If a person qualifies for more than one section or division of a Māori Trust Board, they must choose which section or division he or she wants to enrol in.<sup>8</sup> The beneficiary is then only entitled to represent the section or division which they elected to be enrolled in.<sup>9</sup>

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4 Section 14(2) of the Act.

5 Section 15(2) of the Act.

6 Section 16 of the Act.

7 Section 14(4) of the Act.

8 Section 42(6) of the Act.

9 Section 14(6) of the Act.



### 3. Ineligibility for Board membership

Besides having to be a beneficiary, no person can be a member of a Māori Trust Board if:

- they have had a personal order or property order made regarding them, under the [Protection of Personal Property Rights Act 1988](#);<sup>10</sup> or they have a trustee corporation acting as manager for them under section 32 or 33 of that Act.<sup>11</sup>

Other reasons for legal ineligibility are if a potential member:

- is an undischarged bankrupt; or whose order of discharge is suspended for a term not expired; or is subject to conditions not fulfilled;<sup>12</sup> or
- has been convicted of an offence that is punishable by a sentence of imprisonment of 6 months or more and has not received a free pardon or served his or her sentence.<sup>13</sup>

### 4. Appointment of the Chair and Deputy Chair

Boards are required to appoint the Board Chair from amongst its members at the beginning of the three-year term and if the Chair's role becomes vacant during the three-year term. The chair at any Board meeting has:

- a deliberative vote (i.e. can vote on any issue as a Board member); and
- if the votes are tied, then the Chair also has a casting vote (can cast a final vote so that a majority decision is made).

A Board can also choose to appoint a Deputy Chair.<sup>14</sup> This is not mandatory but is good practice, in case the Chair is unable to attend meetings.

The Chair presides at all meetings that he or she is present at. However, if a Chair is unable to fulfil their role, the Deputy Chair can act for the Chair and will hold the same powers as the Chair.<sup>15</sup>

<sup>10</sup> Under the protection of Personal Property Rights Act 1988 personal orders can be made to deal with the welfare and care of a person in question. Property orders appoint a 'property manager' to look after the person's property affairs.

<sup>11</sup> Section 14(3)(a) of the Act.

<sup>12</sup> Section 14(3)(b) of the Act.

<sup>13</sup> Section 14(1)(c) of the Act.

<sup>14</sup> Section 17(1) of the Act.

<sup>15</sup> Section 17(3) of the Act.





## Section 3

# Procedures of Māori Trust Boards

The Act and the Regulations prescribe some specific requirements for the conduct of Māori Trust Boards. Apart from these matters, a Board can manage its processes and meetings as it thinks fit, so long as it is not inconsistent with the Act and the Regulations.

### 1. Board meetings

The first meeting of a new Māori Trust Board must be held no more than two months after the triennial elections. Meetings of the Board can be held at times and places that the Board appoints.<sup>16</sup>

The Secretary of the Board sets the meeting time and place in consultation with a quorum of the Board members.

If both the Chair and Deputy Chair are absent from a meeting the members present can appoint a member to chair the meeting.

### 2. Quorum

A Board meeting cannot be held without the required quorum (being the number of members who must be present for a meeting and any decisions made to be lawful).

A quorum of the Board is half of the members of the Board. If the number of members is not a multiple of two, then the quorum is half the number of the next highest number which is a multiple of two. For example: if there are eleven members of the Board then the quorum will be six (being half of twelve).

Meetings should be adjourned to a time and place thought fit if a quorum is not present by the end of the first half hour of the appointed meeting time.

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<sup>16</sup> Section 18 of the Act.



### 3. Records

All proceedings and resolutions of the Board should be recorded in a minute book.

Boards must keep full and accurate accounts of all money received and paid by the Board.

### 4. Decisions of the Board

All questions/business before the Board must be decided by the majority of the Board members present at a meeting.

### 5. Special meetings

A special meeting can be called at any time by the Minister or the chair.

A special meeting must be requested in writing by three members of the Board to the Chair<sup>17</sup> and that special meeting must be held within one month of the Chair receiving the notice.

### 6. Board committees

There is also scope within the Act for a Board to appoint other groups to advise them, including Board committees; councils of elders; and councils of young people.

A Board committee can be formed with two or more people. There must be at least one Board member on each committee. The committee can be delegated any of the powers and duties of the Board except for the power of delegation, appointment and payment of officers, acquisition of land and borrowing money.

The chair of a committee is appointed by, and can be removed by, the Board. Each Board committee is subject to the control of the Board it was appointed by and must carry out all directions of that Board in relation to the committee or its affairs.<sup>18</sup>

The Board can appoint a council of elders whose principal function is to advise the Board on matters of tikanga, te reo and kawa. This council is comprised of the kaumātua of the beneficiaries.<sup>19</sup>

The Board can also appoint a council of young people to advise the Board on the needs and interests of the young people among the beneficiaries.<sup>20</sup>

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<sup>17</sup> Section 18(3) of the Act.

<sup>18</sup> Section 20-23 of the Act.

<sup>19</sup> Section 23A of the Act.

<sup>20</sup> Section 23B of the Act.



Employees are non-elected individuals hired by a Māori Trust Board to undertake administrative and management functions.

Employees are paid by the Board, at a rate of remuneration agreed to by the employee and the Board.

Apart from the appointment of the Māori Trust Board Secretary, the Minister does not get involved in the appointment of a Board's employees, or any employment matters relating to Māori Trust Boards. These are internal administrative matters that are the sole responsibility of the Board itself.

### 1. Secretary of the Board

The Minister's approval is required for:

- The appointment of the Secretary of the Board;
- Removal of the Secretary;
- Setting the rate of pay for the Secretary.<sup>21</sup>

This means that a Māori Trust Board should not make any binding commitments, or act in relation to any of these matters, until the Minister's approval has been formally granted. Board resolutions regarding these matters should only be made with the words "subject to the approval of the Minister".

The Secretary of the Board must be a fit and proper person, and may also be a Board member.

### 2. Other Board employees

The Board can appoint (and dismiss) other officers and employees and pay them salaries, wages, or allowances the Board decides.

The relationship between the Māori Trust Board and its employees is governed by the terms of their respective employment agreements.

Boards must take their own independent legal advice in relation to employment issues.

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<sup>21</sup> Section 19 of the Act.







## Section 5

# Māori Trust Board Accountability Requirements

Prior to 2011, the Minister had a stronger role in terms of Trust Board's accountability requirements. The Māori Trust Board Amendment Act 2011 introduced a number of changes to the financial accountability requirements for Māori Trust Boards, making Māori Trust Boards directly accountable to their beneficiaries.

These changes included the requirement to:

- Prepare Annual Reports (including audited accounts and budgets);
- Hold annual hui;
- Present the Annual Reports to beneficiaries at an Annual Hui; and
- Provide Annual Reports to the Minister for information purposes only.

In addition, Māori Trust Boards are able to choose their own independent auditors for accounting periods following 2011.

This next section outlines the rules for holding annual hui, the preparation and presentation of a Board's key accountability documents (the Board's audited accounts and yearly budgets) and the Minister's role in these matters.

A table setting out the general timeframes for meeting these accountability requirements is attached as **Appendix 2**.

### 1. Annual hui

**Timing of the annual hui is important. It needs to be held no later than six months after the end of the Board's previous financial year.**

Under the Act each Māori Trust Board needs to hold an annual hui to report to its beneficiaries. Boards must hold an annual hui for beneficiaries no later than six months after the balance date of the prior accounting period.<sup>22</sup>

<sup>22</sup> Section 23C of the Act.



'Accounting Period' is defined in the Act as either;

- A term of one year ending on the Board's balance date; or
- In the case of a change to a balance date – the term starts on the day after the most recent balance date and ends on the new balance date.

'Balance Date' is defined in Section 2 of the Act as either the end of 31 March or the end of another date a Board adopts as long as that date is never more than 15 months after the last balance date.

At the annual hui, each Māori Trust Board should:

1. report back to the beneficiaries on the Board's activities since the last hui;
2. outline the Board's plans for the future;
3. present the Board's audited annual accounts; and
4. present the Board's budgets for the next accounting period that starts after the annual hui.<sup>23</sup>

## 2. Advertising annual hui

Māori Trust Boards must publicly advertise the annual hui.<sup>24</sup> Boards need to notify beneficiaries of the upcoming annual hui at least three months before it is held.

The notice for the annual hui should state:

1. the time and venue for the annual hui; and
2. when and how a beneficiary can receive a copy (printed or electronic) of the annual report to be presented at the annual hui.

## 3. Annual report

The Board's annual report should be prepared at least one month prior to the annual hui. The annual report should include:

1. a statement of the Board's financial position at balance date; and
2. the auditor's report on the financial statements.<sup>25</sup>

The financial statements must comply with generally accepted accounting practice.

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<sup>23</sup> Section 23C of the Act.

<sup>24</sup> Section 23D of the Act.

<sup>25</sup> Section 31 of the Act.



'Generally accepted accounting practice' has the meaning given by [section 8 of the Financial Reporting Act 2013](#).

'Financial statements' has the meaning given by [section 6 of the Financial Reporting Act 2013](#).

The Annual Report and financial statements must be dated and signed on behalf of the Board by two members and the Secretary of the Board.

Boards need to provide a copy of their annual report to the Minister for his or her information at least one month after it has been prepared.<sup>26</sup>

#### 4. Annual audited accounts

**Presenting the Board's audited accounts at the annual hui is a key accountability measure. Audited accounts are required no less than five months after the end of the financial year.**

The Act requires each Māori Trust Board to have its financial accounts audited no less than five months after the end of the financial year by an appropriately qualified auditor.

#### 5. Annual budget

The annual budget must include the Board's expected income and expenditure for the next accounting period. Boards need to provide a copy of the budget to the Minister for his or her information at least one month after it has been prepared.<sup>27</sup> The budget is provided to the Minister for information purposes only.

The budgets need to be prepared at the same time as the audited accounts are completed so that both the audited accounts and the budgets can be presented at the annual hui and to the Minister, within the required timeframes.

<sup>26</sup> Section 32 of the Act.

<sup>27</sup> Section 32 of the Act.





## Section 6

# Functions and powers of Māori Trust Boards

### 1. Functions of Māori Trust Boards

A Māori Trust Board's main function is to manage the Board's assets for the general benefit of its beneficiaries.

The Boards can use funds for the promotion of health, the promotion of social and economic welfare, the promotion of education and vocational training or additional purposes the Board determines provided it is for the general benefit of its beneficiaries.<sup>28</sup>

### 2. Powers of Māori Trust Boards

Under the Act the Board can:

- make grants to the Māori Education Foundation and make payments not exceeding \$400 in any accounting year for any purpose not specifically authorised;<sup>29</sup>
- form a Trust for charitable purposes;<sup>30</sup>
- accept and hold a trust for a group of beneficiaries or a group that includes beneficiaries;<sup>31</sup>
- take part in government schemes relating to improving the social and economic status of Māori;<sup>32</sup>
- be appointed by the Māori Land Court to exercise all the powers of a committee of management or a Māori incorporation if the shareholders in the corporation (or majority of them) are beneficiaries;<sup>33</sup>
- contract to provide administrative, secretarial, accounting or other services to any Māori incorporation, trust or other body if the shareholders, beneficiaries or members or members of the incorporation, trust or other body or majority of them are beneficiaries of the Board;<sup>34</sup>
- take security and fix repayments for any loan granted by the Board;

28 Section 24(2) of the Act sets out the range of activities the Board can apply its funds to.

29 Section 24A of the Act.

30 Section 24B of the Act.

31 Section 24C of the Act.

32 Section 24D of the Act.

33 Section 24E of the Act.

34 Section 24F of the Act.



- invest in securities if in accordance with obligations as a trustee;
- acquire and dispose of land and undertake farming activities;
- can borrow money from a bank, person or body corporate using the security of a mortgage or charge against the land vested in the Board or money owed to it.<sup>35</sup>

### 3. Bank accounts

All money belonging to the Board must be paid into the Board's bank account within 14 days of receiving it. Any money withdrawn from the Board's bank account needs to be authorised by two members or the Board or by one member of the Board and the Board Secretary.<sup>36</sup>

### 4. Books of account

The Board should keep full and accurate bank accounts that clearly state all money received or paid by it.<sup>37</sup>

**Any member or officer of the Board, a beneficiary of the Board, or person authorised on behalf of the Minister, may at any reasonable time inspect the 'books of the Board' and take copies or extracts of the books free of charge.**

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<sup>35</sup> Section 27 of the Act.

<sup>36</sup> Section 28 of the Act.

<sup>37</sup> Section 30 of the Act.



## Section 7

# Ministerial investigation of a Māori Trust Board

The Minister has the power to direct an investigation into the affairs of a Board. This power is generally exercised where serious concerns have been raised regarding the operations of a Māori Trust Board. Examples are where there is evidence to support allegations of inappropriate or unlawful action by the Board, or where there has been a serious breach by the Board of its statutory obligations.

An investigation may be over the affairs of the Board or may be confined to a particular matter or transaction. The Minister appoints the investigator and sets the terms of reference for the investigation.<sup>38</sup>

While under investigation, the Minister may suspend payments of public money to the Board.

There is no time frame in which the investigation should be completed.

Once the investigation is completed the Minister will consider the results of the investigation and may:

- recommend the removal of any member or members of the Board;
- require the Board to terminate the employment of officers or servants of the Board;
- require the Board to exercise any power that it may lawfully do.

If a Board fails to comply with the directions of the Minister within one month then the Minister can appoint a public servant to take action on the Board's behalf to fulfil the Minister's directions.

### 1. Contracts of the Board

Depending on the nature of the contract, a Board is required to sign by affixing its seal to a deed or by signing a written contract by two members and the Secretary. Oral contracts for less than \$20 can be entered into by individual members of the Board.

Even if a contract made by or on behalf of the Board does not follow the above procedures it is still a valid contract so long as it was made pursuant to a Board resolution.<sup>39</sup>

<sup>38</sup> Section 33 of the Act.

<sup>39</sup> Section 36 of the Act.







## Section 8

# Remuneration of Māori Trust Board members

### 1. Fees and travel allowances

When undertaking their governance role, members of a Māori Trust Board are paid fees and travelling allowances in accordance with the [Fees and Travelling Allowances Act 1951](#).<sup>40</sup> Māori Trust Boards should familiarise themselves with this document.

As at the date of this guide, Māori Trust Boards are classified at Group 3(a) Level 5 of the Fees Framework which applies to “Crown Bodies”. This enables per annum payments of up to \$25,200 for a Chair and up to \$13,080 for Board members.

These annual fees are set on the assumption that the work involved will be undertaken by the Chair and members on a part-time basis (i.e. that members work around 30 days a year and that a Chair works around 50 days per year).

Where it is anticipated that a Chair or members will have a higher workload than the above, and the Board wishes to pay a higher fee, then the approval of the Minister of State Services must be obtained **before** committing to any higher payments:

- fee increases of up to five per cent may be agreed between the Minister of State Services and the responsible Minister, if the proposed fees are within the applicable fee range;
- if the proposed fee increase is above the applicable fee range, then the Minister of State Services may:
  - approve the increase (with or without referring the matter to the Cabinet Appointment and Honours Committee); or
  - decline the increase. If this is the case the responsible Minister may still take the matter to Cabinet Appointment and Honours Committee.

If Board members are to take on additional work, not related to the **governance role of the Board**, then payment for this work is for the personal benefit of the Board member, and the process is set out below.

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<sup>40</sup> Section 41 of the Act, also see [Cabinet Office Circular CO\(12\)6 - Fees framework for members appointed to bodies in which the Crown has an interest](#).



## 2. Payments for the benefit of Board members

A Board member cannot receive Board funds without the Minister's **prior written approval**. In addition, Board members cannot take part in any discussion or vote on any resolution of the Board in relation to any money he or she might receive for their exclusive benefit.<sup>41</sup> This is to ensure that conflicts of interest are managed, and that fair and transparent processes are applied. **Appendix 3** sets out a checklist for obtaining Ministerial approval for payments to Board members.

## 3. Payments to retiring Board members

The Board must also seek the **prior approval** of the Minister before making a payment to a retiring Board member. The retiring member must have been a member of the Board for at least 10 years. The payment ('gratuity') can be for up to six months' pay at the rate of pay they were receiving at the time of their retirement.<sup>42</sup>

If the member dies prior to receiving the payment the Board may pay the gratuity to that member's dependents, only with prior approval of the Minister.

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41 Section 37 of the Act.

42 Section 19A of the Act.



## Section 9

# Māori Trust Board elections

Māori Trust Board members are appointed by the Governor-General. This process can take up to three weeks from when Te Puni Kōkiri receives the Returning Officer Certificate confirming the election results.

An election is only required if the number of candidates nominated exceeds the number of seats for the section or division or, if there are no divisions, for the Board.<sup>43</sup> If the number of candidates is equal to or less than the number of seats for a section or division or Board then no postal ballot is required, and the candidates can be appointed as members. It is, therefore, possible that a Board may have to hold postal ballots for some sections or divisions but not others due to the number of candidates.

### 1. Election rules

It is the Board's responsibility to ensure that a roll containing the names and addresses of all adult beneficiaries is kept up to date. An “*Adult Beneficiary*” is defined in the Act as a beneficiary who is 18 years and over.

**It is the responsibility of each adult beneficiary to ensure their name is included in the roll and to supply the Board with a full postal address.**

**There are clear rules in the Act about beneficiaries voting in sections or divisions in their respective Trust Boards.**

A person cannot belong to more than one section or division for the purposes of elections (unless allowed by Regulations).<sup>44</sup>

If the beneficiaries are divided into different sections or divisions for election purposes those rolls need to show that.

The Board decides whether a person is qualified to be enrolled and determines (if necessary) which section or division he or she should be included in.<sup>45</sup>

43 Section 48 of the Act.

44 Section 42(5) of the Act.

45 Section 45 of the Act.



Boards can use the Parliamentary roll of elections (with the Minister's approval) to identify the section or division that a beneficiary belongs to. Boards then need to state that they used the Parliamentary roll in this way in all election advertisements and notices.

## 2. Public notice

At least **four months before the expiry** of the term of office of existing members the Secretary must give public notice to beneficiaries calling for nominations to be lodged with the Secretary.<sup>46</sup>

The public notice must:

- Be published at least two consecutive days in a daily newspaper/ newspapers circulated in the district or districts where the majority of beneficiaries live (or in newspapers specified by regulations); and
- Be sent to all Māori Committees, Māori Executive Committees, and District Māori Councils constituted under the Māori Community Development Act 1962 in the district or district where the majority of the beneficiaries reside or prescribed by regulations.<sup>47</sup>
- A notice can also be sent by any other means as the Board determines, e.g. online forum communication such as Board websites. It is important that the public notice advertising the Board election is in the form set out in [Schedule 4 of the Māori Trust Board Regulations 1985](#).

The public notice must also:

- invite applications from qualified persons for inclusion of their names in the roll of beneficiaries; and
- specify the date which the roll closes, being the same date as the latest date for lodging of nominations.<sup>48</sup>

## 3. Nominations process

Nominations need to be lodged with the Secretary **three months prior to the expiry** of term of existing members.

The nominations should be in writing, signed by at least five beneficiaries entitled to vote for that candidate and endorsed by the candidate.

If the elections are for a specific division, the nomination needs to be in form set out in [Schedule 6 of the Māori Trust Board Regulations](#).

If the Board elections are for a Board without specific divisions it should be in the form set out in [Schedule 5 of the Māori Trust Board Regulations](#).

<sup>46</sup> Section 46(1) of the Act.

<sup>47</sup> Section 46(2) of the Act.

<sup>48</sup> Section 46(3) of the Act.



## 4. Voting by postal ballot

If the number of nominations exceeds the number of seats in the division or on the Board, a postal ballot election must be conducted. The Secretary must post ballot papers to each beneficiary on the roll who is entitled to vote at the election.<sup>49</sup> Ballot papers must be posted to beneficiaries no later than one month after nominations close.

The ballot paper should include the:

- full names of each candidate for election;
- method of marking the ballot paper to indicate preferences;
- address to return the ballot paper to; and
- time for the ballot paper's return.

The ballot paper should have the beneficiary's roll number on it. The ballot paper must be posted to the beneficiary with a business reply envelope with the beneficiary roll number on the left hand top corner as specified by Reg 9(3) of the Regulations.

Every voter is required to sign the declaration set out in the [Schedule 9 of the Māori Trust Board Regulations](#).

Ballot forms should comply with the following schedules of the Māori Trust Boards Regulations 1985:

- [Schedule 7 of the Regulations](#) if there are no specific divisions in the Board; or
- [Schedule 8 of the Regulations](#) where there are specific divisions in the Board.

## 5. Voting period

The election voting period must close at least **one month prior to the expiry** of the current Board members' terms. All ballot papers should be posted to or lodged with the Returning Officer by that time.

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<sup>49</sup> Section 51 of the Act.



## 6. Returning Officer

The Board must ensure that it has a Returning Officer for each election. Returning Officers for elections must be appointed by the Minister. The Returning Officer can be the Secretary of the Board or a public servant.

The Secretary of the Board must send the Returning Officer a copy of the roll of beneficiaries no later than three clear days before the last day that votes can be posted or lodged.<sup>50</sup>

All completed ballot papers are to be sent to the Returning Officer not less than one month before the current Board's term expires. The Returning Officer receives the marked ballot papers, counts the votes validly cast for each candidate, signs a certificate confirming the results of the elections, and communicates the results to the Secretary of the Board.

## 7. Results of ballots

The Returning Officer, after the expiry time for the return of the marked ballot papers, counts the votes validly cast for each candidate and communicated the results to the Secretary of the Board.<sup>51</sup>

## 8. Appointment process

The person or persons that have received the highest number of valid votes are the person or persons elected.<sup>52</sup>

The Secretary of each Board must forward to the Chief Executive of Te Puni Kōkiri, no later than 20 days before the date of the expiry of the term of the current Board members, the names of the persons elected. Te Puni Kōkiri will then process the appointment papers for the Governor-General's signature.

## 9. Failure to meet timeframes

If the above timeframes are not complied with, then the Act requires an Order in Council to validate the elections, and the appointments made.<sup>53</sup> This is a lengthy process and can take up to two months to be processed. The new Board will not be able to take office until the Order in Council has been promulgated. However, the existing Board members can stay in office until the new members are appointed.

An *Election Checklist: Timing Requirements* to assist Boards is attached to this guide as **Appendix 4**.

<sup>50</sup> Regulation 8 of the Māori Trust Boards Regulations 1985.

<sup>51</sup> Section 53 of the Act.

<sup>52</sup> Section 49 of the Act.

<sup>53</sup> An Order in Council is a type of legislative instrument made by the Executive Council - a formal committee consisting of all Ministers of the Crown that is chaired by the Governor-General.



## 10. Investigations of conduct and results of elections

**The Act allows for investigations into the conduct of Board elections or the results of Board elections.**

Following the election of members, the Chief Executive of Te Puni Kōkiri must make a report to the Minister immediately if the Chief Executive has good reason to believe that:

- the name of any person has been included incorrectly as an elected member, because that person was not qualified to be, or was not properly elected; or
- the name of any person has been excluded incorrectly from the list of elected members, because that person was qualified to be, and was properly elected.

The Minister may apply to a Māori Land Court Judge to investigate the conduct or result of the election (if based on the above report from the Chief Executive or otherwise) it appears that irregularities may have occurred.

## 11. Minor irregularities

Elections may not be invalid if the election irregularities are minor enough to have not affected the election results.<sup>54</sup>

There is also scope within the Act for the Governor-General (by Order in Council) to validate any irregular actions, or extend the time within which a thing is required to complete the election process.

## 12. Invalid elections

The Governor-General can also by Order in Council, declare any election invalid and make provisions for the holding of a fresh one.<sup>55</sup>

Te Puni Kōkiri is available to provide guidance on these matters. However, if a Board is concerned about the impact of any irregularities, it should seek independent legal advice, before it approaches Te Puni Kōkiri with its queries.

## 13. Extraordinary vacancies

An extraordinary vacancy is a vacancy that arises during the elected term of a Board. This can occur if a member has died, resigned, or been removed from their position.<sup>56</sup>

If an 'extraordinary vacancy' arises the Governor-General appoints members for the remainder of the vacating member's term of office.

<sup>54</sup> For more detail see section 54 of the Act.

<sup>55</sup> Section 55A of the Act.

<sup>56</sup> Section 16(2) of the Act.



## 14. Appointing to an extraordinary vacancy

The Board is not able to hold a postal ballot election in accordance with the Act's process to fill an extraordinary vacancy.

The Act does not prescribe specific processes for appointing a replacement member to an extraordinary vacancy. As noted above, there is no requirement to fill a vacancy, although the impact of a vacancy on the work and decision making of the Trust Board will need to be considered. Trust Boards have previously identified an appropriate beneficiary and recommended them to the Minister. The Minister will consider eligibility criteria before requesting the Governor-General to make the appointment.

The same eligibility criteria applies to candidates for extraordinary vacancies as they do for elected members – so they must be a beneficiary, not be subject to a personal or property order, be bankrupt or be convicted of an offence punishable by a term of more than five months. The powers of the Board are not affected by any extraordinary vacancy in the Board.





## Section 10

# Removal of Board members

### 1. Grounds for removal

The Governor-General may remove a Māori Trust Board member if the following are proved to the satisfaction of the Governor-General:

- for inefficiency;
- inability to perform the functions of the office;
- bankruptcy;
- neglect of duty;
- misconduct.

A member can also be removed if they have been convicted of an offence punishable by imprisonment.<sup>57</sup>

Constitutional conventions require the Governor-General to act on the advice of the Minister. Removal is a serious matter so Trust Boards must ensure that there is strong evidence to support their request for a member to be removed.

If a Trust Board wants a member removed, it must provide the Minister with a formal written request for removal and:

- reasons for the removal;
- evidence supporting the grounds for removal;
- show the process prior to the Trust Board's resolution to have the member removed complied with **natural justice**; and
- a copy of the Board's resolution to have the Board member removed.

The Minister will consider the request and decide what, if any, further action should be taken. Sometimes the Minister may direct an investigation before the Minister decides to act.<sup>58</sup>

If the Minister decides the removal is the appropriate course of action, the Minister will inform the Board and advise the Governor-General to take the necessary action.

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<sup>57</sup> Section 16 of the Act.

<sup>58</sup> Section 33 of the Act.



## 2. What is natural justice?

The principles of natural justice concern procedural fairness and ensuring that a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

Natural justice requires that:

- a person must be advised of the allegations against them in as much detail as possible;
- be given sufficient time to reply to all the allegations;
- The decision-maker must be unbiased and must make a decision based on a balanced and considered assessment of the information and evidence before them; and
- the decision must be based upon logical proof or evidence material.

Failure to comply with the natural justice principles can lead to legal challenges so Trust Boards should seek legal advice on these matters and develop internal processes to mitigate these risks.

## 3. Liability of Māori Trust Board members

The Act protects Māori Trust Board members from personal liability for any actions undertaken or any default made by the Trust Board or by any Board member so long as the actions or omissions were done in good faith.

Generally “good faith” means actions taken honestly and with a sincere intention to act fairly and lawfully. This means that Trust Board members are only personally liable for acts or omissions done in bad faith (such as fraud or dishonesty), or for deliberate breaches of their statutory obligations.



# Appendix 1

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## **Māori Trust Boards (as at 1 July 2017)**

1. Aorangi Māori Trust Board
2. Hauraki Māori Trust Board
3. Maniapoto Māori Trust Board
4. Taitokerau Māori Trust Board
5. Taranaki Māori Trust Board
6. Tauranga Moana Māori Trust Board
7. Te Rūnanga o Ngāti Whātua
8. Tūwharetoa Māori Trust Board
9. Wairoa-Waikaremoana Māori Trust Board
10. Whakatōhea Māori Trust Board



## Appendix 2

# Accountability requirements

Financial Year Ending	Notice of Annual Hui Required to be given by:	Annual Hui to be held by:	Annual Report to be completed by:	Copy of Annual Report to the Minister by:
<b>30 June</b>	1 October the same year	1 January the following year	1 December the same year	1 January the following year
<b>31 March</b>	1 July the same year	1 October the same year	1 September the same year	1 October the same year
<b>30 September</b>	1 January the following year	1 April the following year	1 March the following year	1 April the following year



## Appendix 3

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# Process for Ministerial Approval for payments to Board members under section 37(2)

When applying for Ministerial approval under section 37(2) of the Māori Trust Boards Act 1955 a Board must:

1. Provide evidence that the Board can afford the proposed payments.
2. Confirm that the Board has taken all reasonable steps to ensure that all potentially interested parties had an opportunity to tender for the contract.
  - a. If no tender process has been undertaken, the Board must confirm that:
    - i. after due enquiry the Board has found no alternative satisfactory source of supply or product; or
    - ii. the desired source of supply is the most efficient and/or the most competitive on the basis of cost, past performance, specialist knowledge or quality of service.
  - b. If a tender process has been undertaken, the Board must confirm that the Board considered and evaluated each of the tenders or quotes, and can justify the preferred choice on the basis of cost, specialist knowledge, past performance or quality of service.
3. Provide a copy of the Board resolution approving the payments **subject to Ministerial approval**.
4. Provide a copy of Board minutes confirming that the member having the interest did not vote or speak on the matter when under consideration at a meeting of the Board or left the room while discussion took place.



# Elections checklist: Timing requirements

Under the [Māori Trust Boards Regulations 1985](#) (the Regulations) the following timing requirements are required for elections:

- The Secretary must give public notice calling of nominations **for elections at least four months prior to the expiry date of existing members' term**. The Fourth Schedule of the Regulations sets out the form required for nominations.
- **Nominations must be lodged with the Secretary at least three months before the term of existing members expires**. Each nomination must be in writing, signed by five beneficiaries and endorsed by the candidate. The Fifth Schedule of the Regulations sets out the nomination form for specific divisions while the Sixth Schedule sets out the form required for other elections.
- If the number of candidates exceeds the number of seats then an election must be held. **The Secretary must post ballot papers to beneficiaries not later than one month after nominations close**. The Seventh Schedule of the Regulations sets out the form of ballot papers where there are no specific divisions and the Eighth Schedule sets out the form for others. Every voter must sign the declaration in the form specified in the Ninth Schedule.
- The Minister must appoint a Returning Officer who may be the Secretary of the Board or a public servant. **This appointment is done on the request of the Board**.
- **Ballot papers must be returned to the Returning Officer not later than one month before the term of existing members expires**. The Returning Officer must keep all ballot papers locked in a ballot paper box until they are counted.
- The Returning Officer must count the votes in the presence of scrutineers and a checking officer. Each candidate may appoint a scrutineer to be present at the counting of votes.
- **The Secretary must then forward the results, not later than twenty days before the term of the existing members expires, to the Chief Executive of Te Puni Kōkiri**. Results are recorded in triplicate in the form set out in the Tenth Schedule of the Regulations. Should there be a difference of one vote the Returning Officer has a casting vote.
- **Note that if the number of candidates does not exceed the number of seats the nominees shall be deemed to have been duly elected**. The Secretary of the Board must forward the names of the new members to the Chief Executive of Te Puni Kōkiri **at least twenty days before the expiry of the term of office of the existing Board**.



## Disclaimer

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REALISING MĀORI POTENTIAL

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