



A GUIDE  
TO THE MĀORI  
RESERVED  
LAND  
AMENDMENT  
ACT 1997



Te Puni Kōkiri  
Ministry of Māori  
Development



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### WARNING

This plain language guide to the Māori Reserved Land Amendment Act 1997 is intended to provide general assistance to owners, existing lessees and prospective buyers of leases on reserved land. It is a guide. It is not comprehensive nor is it a substitute for the Act itself or professional advice. The Act changes some of the terms of leases on reserved land and creates sanctions if those new terms are not complied with. If you are unclear about any aspect of the Act, please consult your professional advisers.



# A GUIDE TO THE MĀORI RESERVED LAND AMENDMENT ACT 1997

## BACKGROUND

*This Act places owners and lessees of reserved land in a normal commercial relationship. Māori reserved lands were created by legislation last century and the lease conditions, which included a fixed rate of return, a 21 year rent review period and the subsequent introduction of the right of perpetual renewal in favour of lessees, were imposed without the agreement of owners.*

The landowners have never accepted their position and during the last 100 years their concerns have been the subject of more than 10 commissions of inquiry and reviews. The modern public debate on reserved lands dates to the publication of the Sheehan Report in 1975. There have been four further investigations or inquiries since that date. Each involved extensive consultation with owners, lessees, legal and valuation professionals and the general public.

Both owners and lessees were agreed that lease conditions were unfair to the landowners and had to be changed. For the landowners the remedy centred on gaining some measure of control over their own land as well as normal commercial rents. The lessees requested certainty regarding the status of their leases and compensation should any of the conditions of their leases be altered by legislation.

Over the years some lessees and landowners had renegotiated leases to more commercial or market terms. Lessees had, in some cases, judged the best way of gaining commercial certainty as tenants was to negotiate some form of market rents with landowners. In other cases commercial dealings generated a change to negotiated rents. Accordingly, prior to the passage of the Act, there were more than 400 leases on which market rents were freely negotiated between lessees and landowners. However, more than 1700 leases covering most of the reserved land remained under the rents and rent review periods prescribed in legislation.

In 1996 a Crown Negotiator was appointed in an attempt to gain the agreement of both lessees and landowners to changes in the legislation governing reserved land. Although final agreement was not reached with both parties the negotiation process uncovered much common ground and provided a number of proposals which were adopted by the then Government.

These were incorporated in the Māori Reserved Land Amendment Bill, introduced to Parliament on 21 August 1996 and referred to the Justice and Law Reform Select Committee on 27 August 1996. The Committee conducted lengthy hearings and heard written and oral submissions from a wide cross section of owners, lessees and legal and valuation professionals.

The Select Committee presented its report on 24 November 1997 and the Bill was passed on 4 December 1997 as the Māori Reserved Land Amendment Act 1997 with a commencement date of 1 January 1998.



## WHERE ARE THE RESERVED LANDS AND WHO ARE THE OWNERS?

Reserved land is held in 2,110 leases located between Auckland and Southland. The total land area is approximately 26,000 hectares. The main concentrations are on the West Coast of the South Island, Nelson and Motueka, Wellington and Taranaki.

### Lease Types:

<b>Urban Commercial</b>	<b>552</b>
<b>Urban Residential</b>	<b>954</b>
<b>Urban Industrial</b>	<b>36</b>
<b>Rural Dairy</b>	<b>298</b>
<b>Rural Pastoral</b>	<b>183</b>
<b>Rural Horticulture</b>	<b>87</b>
<b>TOTAL</b>	<b>2110</b>

Lessees range from urban home owners in the Wellington suburbs of Berhampore and Newtown, to home owners in Greymouth and Motueka, from the Wellington Rugby Football Union (Athletic Park), to dairy farmers in Taranaki and horticulturalists in Nelson, bach owners in Kawhia, large tenants such as supermarket chains, local bodies and, in various forms, the Crown. In addition, much of the central business districts of Greymouth and Motueka are built on Māori reserved land. Many lessees, including the Crown, hold more than one lease.

Just under half the lessees are urban homeowners and a quarter are urban commercial property owners.

Approximately half the value of leases on reserved lands is accounted for by dairy farms. There is an active market in leases and turnover is around 8% of all leases a year.

The landowners are also numerous and widespread. The largest owners' groups are represented by incorporations and trusts: The Mawhera Incorporation on the West Coast of the South Island, the Wakatu Incorporation in Nelson and Motueka, the Parininihi ki Waitotara Incorporation of Taranaki, the Wellington Tenths Trust, the Palmerston North Reserves Trust, and the Pukeroa Oruawhata Trust in Rotorua. The Māori Trustee also administers a large number of leases.

The land achieved its current status as Māori reserved land in the 19th century in two main ways. Some was returned to Māori from land originally confiscated by the Crown. Other portions were reserved for Māori following Crown or New Zealand Company purchases.

The ownership and leasing arrangements were originally established by more than 40 different pieces of legislation some dating back to the 1850s. The terms and conditions of these arrangements were consolidated in a single piece of legislation, the Māori Reserved Land Act 1955, which provided for leases with the following key features:

- perpetually renewable 21 year terms.
- rent prescribed at 5% of the unimproved value for rural land and 4% for urban land.
- rent fixed for the whole of each 21-year lease period.

## THE MĀORI RESERVED LAND AMENDMENT ACT 1997

### This Act

- Continues the right of lessees to renew their leases in perpetuity.
- Provides for a three year delay (1998,1999, 2000) during which lessees will pay rent under the present terms of their leases in existence at 1 January 1998.
- Provides for a move to market rents phased in over 4 years beginning in 2001 (see table page 14).
- Provides for subsequent rent reviews every seven years unless the parties to the lease have negotiated more frequent rent reviews.
- Allows parties to a lease to freely negotiate their rent with provision for mediation and arbitration failing agreement.
- Gives landowners a right of first refusal (at the market price) should a lessee wish to sell a lease.
- Provides that the owners' right of first refusal does not apply if an existing lessee (a lessee at 1 January 1998) sells or transfers to a member of their immediate family (spouse, child or children). There is no limit on the number of transfers allowed to persons within this group, so a son to whom the lease has been transferred by a parent or parents after 1 January 1998 can also transfer the lease to brothers or sisters without being required to give the landowners a right of first refusal.
- Provides that the owners' right of first refusal does not apply if a lessee sells a lease at a public auction and has given the owners 20 working days notice of the auction.
- Gives lessees the right of first refusal should owners wish to sell their land and, where the land is Māori freehold land, no other member of the land owners' whanau (extended family) group wishes to buy.
- Compensates lessees for the move to market rent, the more frequent rent review periods and the right of first refusal provisions.
- Compensates owners for the delay (three years with no change followed by a four year phase in period) in the move to market rents and the right of first refusal provisions.
- Provides an alternative compensation option through the Land Valuation Tribunal. Both lessees and owners must choose whether to accept compensation calculated under the formula in the Act, or apply to have their compensation determined by the Land Valuation Tribunal (see page 13 for full details).
- Provides for mediation and arbitration of disputes; for example, in the setting of rents.
- Continues to allow parties to a lease to negotiate mutually agreed changes to the lease conditions.
- Declares the Government's intention to address the issue of owners' historical grievances in relation to the leases.



## TO OWNERS OF MĀORI RESERVED LAND

### This Act

- Continues a lessee's right to renew a lease in perpetuity.
- Provides for rent reviews every seven years phased in over four years beginning in 2001.
- Allows owners to negotiate with the lessees the rent to be paid for a lease with provision for mediation and arbitration if necessary.
- Gives owners the right of first refusal to buy a lease at market price when an existing lessee (a lessee on 1 January 1998) wants to sell a lease outside their immediate family (to other than a spouse, child or children).
- Provides that the owners right of first refusal does not apply if a lessee sells a lease at public auction and has given the owners 20 working days notice.
- Gives lessees the right of first refusal to buy the land on which their lease is located should the owners wish to sell and, where the land is Māori freehold land, no one in the owners' whanau group wishes to buy.
- Requires contiguous leases forming an economic unit to be dealt with together.
- Provides compensation to owners of approximately \$21 million for the delay in the move to market rents and the right of first refusal provisions, \$2 million to cover increased transaction costs such as legal fees and valuation costs, and a \$6 million lease purchase fund.
- Provides an alternative compensation option through the Land Valuation Tribunal. Both lessees and owners must choose whether to accept compensation calculated under the formula in the Act, or apply to have their compensation determined by the Land Valuation Tribunal (see page 13 for full details).
- Continues to allow parties to a lease to negotiate mutually agreed changes to the lease conditions.
- Declares the Government's intention to address the issue of owners' historical grievances in relation to the leases.

### QUESTIONS AND ANSWERS FOR THE OWNERS OF MĀORI RESERVED LAND

#### What is a market rent?

The rent continues to be based on the unimproved value of the land but there is no prescribed percentage rate as in the past. The rent is negotiated between owners and lessees. If they cannot reach agreement through negotiation, the rent will be fixed by mediation or arbitration.

Among the factors taken into account when setting rents are how much revenue the land can generate and rents for similar leases on similar land. Rents for some leases are already fixed in this way.

**Does the Act mean lessees have to pay market rents immediately?**

No. There is a three-year delay before any change occurs. Beginning in 2001, leases will move in batches over four years to the market rent system provided in the new Act (see table on page 14). The process will be complete in 2004. Owners receive compensation for the delay in the move to market rents.

**What if a lessee wants to sell? Will owners get a chance to buy?**

Yes. A lessee who wishes to sell must

**Either**

Give owners notice they want to sell the lease and owners then have 20 working days to agree to the lessee's price. If owners do not accept that price lessees are free to sell to a third party at that price or higher without further reference to the owners.

**Or**

Give owners notice they have entered an agreement to sell the lease and owners have 20 working days to meet that price or the lease will be sold under the agreement.

**Note:** Existing lessees (lessees on 1 January 1998) do not have to give owners a right of first refusal if they are transferring a lease within their immediate family (spouse, child or children).

**What about an auction?**

The owners' right of first refusal does not apply if a lessee wishes to sell at public auction and has given landowners 20 working days notice of the auction. If landowners wish to buy the lease they will have to attend the auction and be prepared to pay the highest price.

**What about a proposed sale negotiated by a lessee shortly after the auction?**

If a lessee enters negotiations with a possible buyer following an auction, the lessee has two working days following the auction in which to complete negotiations and notify the owners of the agreed purchase price. The owners have one further working day to match that price.

**Where will landowners get the money to buy leases?**

The Act provides \$6 million towards a lease purchase fund. In addition, landowners receive \$21 million in compensation for the delayed move to market rents and the right of first refusal and, beginning in 2001, landowners will start to receive market rents for their land.

**What if landowners want to sell land?**

Landowners must give lessees a right of first refusal if they wish to sell their land. However, if the land is Māori freehold land, this right of first refusal is subject to other members of the owners' whanau group, as provided in Te Ture Whenua Maori Act 1993, not wishing to buy.

**Does the lease remain perpetually renewable?**

Yes. Renewal of the lease is entirely at the discretion of the lessee.



## TO EXISTING LESSEES (LESSEES ON 1 JANUARY 1998)

### This Act

- Continues the right of lessees to renew their leases in perpetuity.
- Provides for a three year delay (1998,1999, 2000) during which lessees will pay rent under the present terms of their leases in existence at 1 January 1998.
- Provides for a move to market rents phased in over 4 years beginning in 2001 (see page 14).
- Provides for the subsequent review of rents every seven years unless the parties to the lease have negotiated more frequent rent reviews.
- Gives landowners a right of first refusal to buy your lease if you wish to sell outside your immediate family (spouse, child or children). If you already have a buyer, after entering into an agreement to sell you must inform the owners of your intention and they have 20 working days to meet the price for which you have agreed to sell the lease. If they do not, you are free to sell. If you do not have a buyer you must tell the landowners the price at which you will sell. If they cannot meet that price, you are free to sell at that price or higher (but not at a lower price) to a third party.
- Allows an existing lessee (a lessee at 1 January 1998) to transfer a lease to a spouse, child or children without having to give a right of first refusal to owners. Further transfers to persons within that group are allowed on the same basis.
- Provides the landowners' right of first refusal does not apply if you sell your lease at public auction and have given the landowners 20 working days notice of the auction.
- Requires contiguous leases forming an economic unit to be dealt with together.
- Requires landowners to give you a right of first refusal at market price if they decide to sell the land subject to your lease (or leases). However, where the land is Māori freehold land, this right is subject to no one in the owners' whanau group wishing to buy.
- Provides lessees with compensation of approximately \$35 million for having to move to market rents, more frequent rent reviews, and the right of first refusal provisions and \$2 million for extra transaction costs associated with the new lease conditions.
- Provides an alternative compensation option through the Land Valuation Tribunal. Both lessees and owners must choose whether to accept compensation calculated under the formula in the Act, or apply to have their compensation determined by the Land Valuation Tribunal (see page 13 for full details).
- Continues to allow parties to a lease to negotiate mutually agreed changes to the lease conditions.

## QUESTIONS AND ANSWERS FOR EXISTING LESSEES

### **Is my lease still perpetually renewable?**

Yes. It is entirely up to you whether or not the lease is renewed at the end of each 21-year lease term. There is no cancellation or termination date in the leases.

### **Do I have to sell my lease to the landowners?**

No. If you are an existing lessee on 1 January 1998 you can transfer your lease to your spouse or child or children without having to give the landowners a right of first refusal.

And, if your spouse subsequently wishes to transfer the lease to a son or daughter he or she is free to do so without having to give a right of first refusal to the landowners. If the son or daughter to whom the lease is transferred wishes to transfer or sell the lease to a brother or sister, he or she is also free to do so without having to give a right of first refusal to the landowners.

### **If I will my lease to one of my children can he or she transfer the lease, at a later date, to one of their brothers or sisters?**

Yes. There is no limit to the number of transfers that can be made to the immediate family of an existing lessee at 1 January 1998 (spouse, child or children) without the owners' right of first refusal applying.

### **What if I have a possible buyer who is offering more than the landowners are prepared to pay?**

You are free to accept that offer if it is not matched by the owners within 20 working days of your notification of the offer.

### **What about a public auction?**

As long as you give landowners 20 working days notice you are free to sell your lease to the highest bidder at the auction. The owners' right of first refusal does not apply in this situation.

### **What about a sale negotiated shortly after the auction?**

If a lessee enters negotiations with a possible buyer following an auction, the lessee has two working days following the auction in which to complete negotiations and notify the owners of the agreed purchase price. The owners have one further working day to match that price.

### **I've had a prescribed rent since I owned the lease - what is a market rent?**

It is a rent that is negotiated between you, as lessee, and the landowners. If you cannot agree it is fixed by mediation or arbitration.



**Will I get a chance to buy the land if the owners want to sell?**

Yes. If the landowners want to sell the land on which your lease is located they must first offer it to you as lessee. However, where the land is Māori freehold land this right is subject to no one in the owners' whanau group wishing to buy. The question of price is between you and the landowners.

**Do the provisions of the Act apply if the lessee is a trust or company?**

In the main, yes. However, where the lessee is a trust or company exemptions from the owner's right of first refusal, as given to existing lessees, differ. For example, in the case of a trust or company the *existing lessee* status is reserved to a company or trust existing on 21 August 1996 (the date the Māori Reserved Land Amendment Bill was introduced into Parliament) rather than 1 January 1998.

## TO PROSPECTIVE BUYERS OF MĀORI RESERVED LAND LEASES

### This Act

- Allows parties to a lease to negotiate mutually agreed changes to the lease conditions.
- Continues the lessees' right to renew a lease in perpetuity.
- Provides for a three year delay (1998,1999, 2000) during which lessees will pay rent under the present terms of their leases in existence at 1 January 1998. For other than negotiated leases the rent during this period will continue to be that prescribed under the old legislation - 5% of the unimproved value for rural land and 4% of the unimproved value for urban land.
- Allows for a phased move to market rents over a four year period beginning in 2001- check when the lease you are thinking of buying moves from its existing rent to a market rent (see table on page 14).
- Allows market rents to be freely negotiated between lessees and the land-owning groups and provides for mediation and arbitration if agreement is not reached.
- Provides that once the move to market rents takes place rents are reviewed every seven years or more frequently if the lease already provides for this.
- Requires that lessees give landowners the right of first refusal to buy at the market price should lessees wish to sell the lease.
- Makes provision for lessees to sell at public auction. Providing they have given landowners 20 working days notice of the auction the owners' right of first refusal does not apply.
- Gives lessees the right of first refusal to buy the land at market price if the landowners wish to sell. However, where the land is Māori freehold land, this right is subject to no one in the owners' whanau group wishing to buy.

### QUESTIONS AND ANSWERS FOR PROSPECTIVE BUYERS OF LEASES

#### What do you mean by leases that are perpetually renewable?

Leases of reserved land are for 21 years and are renewable in perpetuity at the option of the lessee. This right is contained in each renewed lease.

#### What about the rents? What level of rent will I have to pay?

There is a three year delay (1998,1999, 2000) during which lessees will pay rent under the present terms of their leases in existence at 1 January 1998. For other than negotiated leases the rent during this period will continue to be that prescribed under the old legislation - 5% of the unimproved value for rural land and 4% of the unimproved value for urban land.



In 2001 some leases will move to a negotiated market rent and each year until 2004 further leases will move to a market rent. You should check the lease you are considering buying to see what year it moves from a prescribed to a market rent (see table on page 14).

**Can I sell the lease on the open market to whoever wants to pay the highest price?**

Yes. Under the Māori Reserved Land Amendment Act 1997 a lessee who wishes to sell a lease must

**Either**

Give owners notice they want to sell the lease and owners then have 20 working days to meet the lessees' price. If owners do not wish to purchase or cannot meet that price lessees are free to sell to a third party at that price or higher without further reference to the owners.

**Or**

Give owners notice they have entered an agreement to sell the lease and owners have 20 working days to meet that price or the lease can be sold

**What about a public auction?**

As long as you give landowners 20 working days notice you are free to sell your lease to the highest bidder at the auction. The owners' right of first refusal does not apply in this situation.

**What about a sale negotiated shortly after the auction?**

If a lessee enters negotiations with a potential purchaser following an auction, the lessee has two working days following the auction in which to complete negotiations and notify the owners of the agreed purchase price. The owners have one further working day to match that price.

**Who are the landowners? How do I deal with them?**

It depends on the area in which the lease you are thinking of buying is located. In Taranaki, for example, most leases are held by a single group, the Paranihi ki Waitotara Incorporation. In Nelson and Motueka the major land owning group is the Wakatu Incorporation. In Greymouth it is the Mawhera Incorporation and in Wellington, the Wellington Tenths Trust. The Māori Trustee also administers a number of leases.

Each of the land-owning groups is experienced in negotiating market rents as more than 400 of the approximately 2000 leases had moved to a market rent approach before the Māori Reserved Land Amendment Act 1997 was passed. (There is a list of the landowner groups and their postal addresses on pages 15)

**What about buying the land on which a lease is located?**

If the landowners want to sell the land on which your lease is located they must first offer it to you as lessee. However, where the land is Māori freehold land this right is subject to no one in the owners' whanau group wishing to buy. The question of price is between you and the landowners.



## ALTERNATIVE COMPENSATION OPTION - LAND VALUATION TRIBUNAL

The Māori Reserved Land Amendment Act 1997 gives both owners and lessees the option of taking either the compensation provided by the formula in the Act or having compensation determined by the Land Valuation Tribunal.

The Chief Executive of the Ministry of Māori Development will write to lessees and landowners by 2 March 1998 setting out the compensation payable to them under the formula in the Act. The letter will advise lessees and owners they have the option of either accepting the compensation under the Act or having their compensation determined by the Land Valuation Tribunal.

Those who accept the compensation under the compensation formula in the Act must inform the Ministry of Māori Development of their choice three months after receiving the letter. They will be paid their compensation - exempt from income tax and not subject to GST - soon after advice of acceptance is received by the Ministry.

Those who choose to take the option of having their compensation determined by the Land Valuation Tribunal must file their application to the Tribunal within three months of receiving the letter from the Chief Executive of the Ministry of Māori Development setting out their compensation options. The application should be filed in the nearest appropriate District Court. Those who take the option of having their compensation determined by the Tribunal are not eligible for compensation under the compensation formula in the Act.

If you do not indicate which compensation option you prefer within three months of receiving the letter notifying you of your options, you will be deemed to have accepted the compensation formula in the Act and be paid accordingly.

The Tribunal will determine compensation for landowners for the delay, as from the commencement of the Act on 1 January 1998, in the change to a more frequent rent review, in the change to a fair annual rent based on the unimproved value of the land and for the conditions on transfers (right of first refusal).

The Tribunal will determine compensation for lessees for the move to market rents, more frequent rent reviews and for the conditions on assignments (right of first refusal) on the basis of the difference between:

- the market value of the lessee's interest in the lease at 1 January 1998 as if the Act had not been enacted; and
- the market value of the lessee's interest in the lease as at 1 January 2001

Compensation will be paid soon after the amounts are determined by the Tribunal.

# **Market Rental - Phase in Dates**

<b>Lease Expiry Dates - expiry dates of your present lease</b>	<b>Market Rental - year of first market rental review</b>
1998	2001
1999	2001
2000	2001
2001	2001
2002	2001
2003	2002
2004	2002
2005	2002
2006	2002
2007	2002
2008	2003
2009	2003
2010	2003
2011	2003
2012	2003
2013	2003
2014	2004
2015	2004
2016	2004
2017	2004
2018	2004

Under the Act leases on reserved land move to market rentals and a seven-year rent review period in batches according to the lease expiry dates.



## ADDRESSES OF LANDOWNER GROUPS

### Wellington Tenth Trust

Secretary: Mr B Farquhar  
NZ Guardian Trust  
PO Box 913  
Wellington  
Ph 04 495 7900

### Mawhera Incorporation - Greymouth, Hokitika, Westport, West Coast

Secretary: Mr J A Wheelans  
C/o Ashton, Wheelans & Hegan  
PO Box 13-042  
Christchurch  
Ph 03 365 4098

### Paraninihi ki Waitotara Incorporation - Taranaki

Secretary: Mr P Charleton  
Paraninihi ki Waitotara Incorporated  
PO Box 82  
Stratford  
Ph 06 765 6019

### Palmerston North Reserves Trust

Secretary: Mr M Kinder  
NZ Guardian Trust  
PO Box 628  
Palmerston North  
Ph 06 358 4012

### Wakatu Incorporation - Nelson, Motueka

Secretary: Mr R P Shore  
PO Box 10  
Nelson  
Ph 03 545 6840

### Rore Family Trust - Motueka, Nelson

As for Wakatu

### Pukeroa Oruawhata Trust - Rotorua

Secretary: Mr M Patchell  
C/o Hulton & Patchell  
PO Box 992  
Rotorua  
Ph 07 346 1010

### Māori Trust Office - Auckland, Kawhia, Otorohanga, Te Araroa, Tokomaru Bay, Waipiro Bay, Utiku, Tokaanu, Hokonui.

Mr V P Connelly  
Office of the Maori Trustee  
Contact: PO Box 5038  
Wellington  
Ph 04 496 9200

### Tiki Te Kohu Ruamono Trust

Secretary: B Nikora  
PO Box 770  
Rotorua

### Others - Rotorua

Owner: S A Hahunga and Others  
8 Sherriff St  
Rotorua

### Te Ata-i-Rangi Kaahu

Solicitor: D B O'Shea  
PO Box 460  
Hamilton

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