Appendix 1 – Summary of Proposed Amendments by Act

Te Ture Whenua Maori Act 1993

Clarify that the trustees and beneficiaries of Māori land trusts can meet electronically (if they choose to)

1. The Act is silent on whether Māori land trusts can meet and conduct their business electronically.[1] This means that for some trusts, it is unclear as to whether meetings can be held online. This is problematic when circumstances prevent trusts from meeting in person. It also limits those trustees and trust beneficiaries who live away from the whenua from engaging in the business and administration of the whenua.
2. An amendment to Part 12 of the Act is required so that Māori land trusts can determine how they meet and conduct their business – be that electronically, in-person or a hybrid of both. The Māori Land Court would retain the ability to review any decisions made at meetings of Māori land trusts to ensure that decisions made by trustees are fair and transparent.
3. Amendments to the Maori Incorporations Constitution Regulations 1994 and Maori Reservations Regulations 1994 are also required to clarify that Māori incorporations and reservations committees can meet electronically.
4. Consequential amendments to Te Ture Whenua Maori Act 1993 and its secondary legislation may be necessary to ensure consistency across the provisions relating to electronic meetings.

Amend the law so that the Māori Land Court, when considering contractual matters before it, has the same powers as the High Court in Part 2 of the Contract and Commercial Law Act 2107, including subpart 6 (minors' contracts)

5. Section 24A of Te Ture Whenua Maori Act 1993 states that the Māori Land Court may exercise any power conferred on the High Court by subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 (CCLA) and other specified sections of the CCLA. Subpart 1 of Part 2 covers contractual privity. The specified sections cover cancellation, the powers of the court to grant relief, and provisions purporting to prevent the court inquiring into a matter.
6. At the time section 24A of Te Ture Whenua Maori Act 1993 was enacted, the Contracts (Privity) Act 1982 conferred powers on the High Court in relation to contractual privity issues. However, there is no longer any need to confer such powers because section 9 of the CCLA defines "court" as the court or tribunal before which a matter falls to be determined.
7. The Māori Land Court has existing jurisdiction under section 18(1)(d) of Te Ture Whenua Maori Act 1993 to hear and determine any proceeding founded on contract or tort where the debt, demand, or damage relates to Māori freehold land. This means that the Māori Land Court has jurisdiction to determine matters of contract privity and grant remedies related to Māori freehold land where the court is exercising its jurisdiction under section 18(d). However, the powers under subpart 6 of Part 2 of the CCLA are currently not conferred on the Māori Land Court. This is because the

9(2)(h) [redacted]

definition section in subpart 6 defines court as the High Court, or in certain circumstances, the District Court, or Disputes Tribunal.

8. An amendment is required so that the Māori Land Court, when dealing with contractual matters before it, has all the powers under Part 2 of the CCLA, including powers relating to minors' contracts.

Other changes to Te Ture Whenua Maori Act 1993, the Maori Incorporations Constitution Regulations 1994 and Maori Reservations Regulations 1994

9. Amendments to sections 273 and 279 of Te Ture Whenua Maori Act 1993 are required to modernise the language of 'chairperson' and make it consistent with the language used in the Maori Incorporations Constitution Regulations 1994.

10. Amendments to the Maori Incorporations Constitution Regulations 1994 and Maori Reservations Regulations 1994 are required so that Maori Incorporations and Maori Reservations can appoint co-chairs. Co-chairs are common practice in many forms of Māori committee. Consequential amendments to those parts of these regulations where a 'chairperson' is specified are also required.

11. Amendments to the definition of "special resolution" in clause 1 of Schedule 1 of the Maori Incorporations Constitution Regulations 1994 are necessary so that the regulations are consistent with notification requirements in Te Ture Whenua Maori Act 1993.

Māori Trustee Act 1953

Amend the Act so that the direct investment costs associated with the purchase of an investment are factored into the calculation for distributable income

12. The Māori Trustee may invest money it holds in the Common Fund to purchase bonds. However, when the Māori Trustee purchases bonds at a premium, which can have a greater return on investment for account holders, it is required to use money from its General Purposes Fund to cover these costs. This is because legislation does not allow the Māori Trustee to include bond premiums in its calculation for 'money received' under section 26(3) of the Act. Section 26(3) only allows for money received to be capital gains less capital losses.

13. Amendments are required so that bond premiums paid by the Māori Trustee can be included in the calculation of distributable income.

Amend the Act to require the Māori Trustee to report to account holders on prescribed amounts of distributable income

14. The Māori Trustee must annually report to account holders on the distributable income they receive (the dividends on investments in the Common Fund). For the 2021/22 financial year, 99 percent of accounts managed by the Māori Trustee received $50 or less, with the average amount being $12.25. Te Tumu Paeroa has advised that this reporting is in addition to the reporting it does on the income account holders receive for their land interests. It notes that it currently provides reports to account holders on this type of income where the annual return is greater than $2.

15. Section 26B requires amendment to introduce a prescribed threshold for when the Māori Trustee must report to account holders on distributable income. This change also requires a consequential amendment to the Māori Trustee Regulations 2009 to set the threshold at $50.

16. Te Tumu Paeroa has advised that this change would reduce Māori account holders' confusion about the money they receive from the Māori Trustee. It also removes the

obligation of the Māori Trustee to provide a report to account holders where the report explains why an account holder has only received a few cents in distributable income.

17. This change will not impact the funds that account holders receive, nor their ability to access information through Te Tumu Paeroa about the funds they receive.

Provide for a new operational account into which fees and commissions can be received

18. The Māori Trustee currently pools the fees and commissions it receives with the funds located in the General Purposes Fund (which includes its accumulated profits and reserves). Amendments to sections 17 and 23 of the Act are required to provide for a new operational account into which fees and commissions can be received. This will enable the Māori Trustee to be more transparent, better manage its finances and reconcile its balance sheets.

Change the term 'Maoris' to Māori

19. Amendments to the Act are required to replace the word 'Maoris', as meaning more than one Māori, with 'Māori'. Modernising the language in this Act helps fulfil the Government's responsibility to ensure that legislation is fit-for-purpose.

Update sections that refer to repealed legislation (for example the Maori Affairs Act 1953)

20. Amendments to the Act are required to replace reference to the repealed Maori Affairs Act 1953 with the equivalent sections or Parts of Te Ture Whenua Maori Act 1993. The sections that refer to the repealed Land Transfer Act 1952 also need updating.

Proposed changes to the Māori Trustee Regulations 2009

21. The minor, technical and non-controversial amendments to the Māori Trustee Regulations 2009 are:

    a. Amend regulation 8(b) in how interest on accounts is to be calculated, from 'the last day of the month' to 'at the end of each day of the month'. This amendment ensures that account holders receive interest based on the actual time money is in an account, rather than receiving up to a month's worth of interest based on money being in an account for one day.

    b. Amend regulation 10(1)(b) in how management fees are to be charged – so that it is calculated as a proportion of costs against the Common Fund as a whole, rather than being costs specifically charged to individual accounts. This change reflects current practice and does not change the management fee that account holders are currently charged.

    c. Remove the word 'net' from Regulation 10(1)(c). This change removes a redundant word already provided for in legislation.

<u>Maori Trust Boards Act 1955</u>

Clarify that Māori Trust Boards and committees can meet electronically, including Māori Trust Board annual general meetings

22. Amendments to sections 18, 22 and 23(c) of the Maori Trust Boards Act 1955 are required to make it clear that Māori Trust Boards and committees can meet electronically, including for Māori Trust Board annual general meetings. These sections are currently silent on this matter.

Clarify the process to fill extraordinary vacancies on a Māori Trust Board.

23. Section 16(3) sets out the process for filling extraordinary vacancies of Board members. Currently, the section states that members filling extraordinary vacancies "*shall not be elected in the manner provided in this Act for the filling of vacancies caused by the expiry of the term of office of members*". This wording creates confusion about the process for filling extraordinary vacancies.

24. Amendments to section 16(3) of the Act are required to clarify that Boards may run an election process to fill extraordinary vacancies if they wish, but that this does not have to be held in accordance with triennial election requirements. This amendment allows those Boards who do want to run an election process to fill extraordinary vacancies to do so.

Additional amendments to the Maori Trust Boards Act 1955

25. Other minor, technical and non-controversial amendments to the Act are:

    a. Amend section 19 of the Act so that Board Secretary remuneration no longer requires Ministerial approval. This is an issue for Boards to decide – it is an operational issue the Minister need not be involved in.

    b. Amend section 36 of the Act so that the use of Board seals is optional, and to update currency references from pounds to dollars. These amendments modernise the practice and operation of Māori Trust Boards in a manner that is consistent with other similar entities.

    c. Amend section 46 of the Act to change the requirement that Board nominations must be listed in a local daily newspaper from two consecutive days to one day. This reflects that there are now other ways to communicate messages, and regional newspapers are no longer published with the same frequency – in that it is hard to publish a notice on two consecutive days.

<u>Maori Purposes Fund Act 1934–35</u>

Clarify that annual general meetings, ordinary meetings and special meetings can be held electronically

26. The Maori Purposes Fund Act 1934–35 is silent on whether annual general meetings, ordinary meetings and special meetings can be held electronically and requires that annual meetings be held in Wellington. Amendments to section 9 of the Act are required to clarify that these types of meeting can be held electronically.

Modernise the language used in the Act

27. Sections 7, 9, and 12 of the Act use outdated language that should be modernised. This includes 'telegrams', the 'Minister of Maori Affairs' and gendered language. Amendments to the Act fulfil the Government's responsibility to ensure that legislation is modern, up-to-date and fit-for-purpose.

Remove the Māori Purposes Fund Board's power to acquire land and chattels

28. Section 10 of the Act currently provides the Māori Purposes Fund Board the power to acquire (and sell) land and chattels. This Board can then use its funds to maintain and improve the lands or chattels it owns. The Board can also agree to any land vested in it being subject to any consolidation or development scheme under the Maori Land Act 1931 or any other Act relating to Maori land or other land held or administered for the use or benefit of Maori.

29. Section 10 of the Act should be repealed as this power has almost certainly never been exercised. It is also unlikely to ever be exercised. Removing this power provides greater clarity to Māori and the public as to the purposes and functions of the Board.

Change the tabling of statutory documents in Parliament to 'sitting days' from 'days'

30. Section 14(2) of the Act requires the Board to provide a report of its operation and commitments to the House of Representatives within 14 days after its annual meeting. 'Days' should be amended to 'sitting days' to provide greater flexibility around the tabling of reports in Parliament. This is especially important given the introduction of new public holidays that may impact the time to table a report in Parliament.

Maori Soldiers Trust Act 1957

Modernise language in the Act and references to repealed Acts

31. Sections 7, 9, 10, 13, 14 and 17 of the Act use outdated language. This includes references to pounds, gendered language, 'Maoris', 'telegram' and the Acts Interpretation Act 1924. Modernising the language in the Act fulfils the Government's responsibility to ensure that legislation is up-to-date and fit-for-purpose.

Allow appointed members to continue in office until their successor is appointed

32. The Act sets out strict criteria for the term that members are allowed to sit on the Trust committee. Terms of committee members are to last two years with the possibility of being reappointed for a further year, on which three members will be required to retire from office, with the remaining three members to retire the next year. Te Tumu Paeroa has advised that this creates a risk where there may be insufficient members on the committee to reach quorum.

33. Amending section 8 of the Act will allow appointed members to continue in office until their successor is appointed. This will assist with the operation of the Committee and is consistent with other legislation, including the Crown Entities Act 2004.

Clarify that Trust Committees or district committees can meet electronically

34. The Act is silent on whether meetings can be held electronically. Amending section 14(1) of the Act will clarify that the Trust Committee and district committees can meet electronically.

Change quorum requirements so that half, or a majority of appointed members, is quorum

35. The Māori Soldiers Trust Committee is required to have five members present to meet the quorum requirements for a meeting. However, Te Tumu Paeroa has advised that the Committee has in recent times been at risk of not meeting quorum due to the time it can take to appoint members. This presents a risk to the operations and business of the Committee if there are unfilled Committee seats.

36. Amendments to section 14(4) of the Act are required to change quorum requirements so that half or a majority of appointed members is a quorum. This amendment retains majority decision making and is consistent with quorum provisions in other legislation.

Update how the public can access reports on the Trust Committee's annual activities

37. Section 16(3) of the Act states that all Department of Māori Affairs offices must have a hardcopy of the balance sheets and yearly report of the Māori Soldiers Trust Committee and allow these to be made available on request. This requirement places administrative burden on the activities of the Trust, and to the best of my knowledge, these reports are not often requested.

38. This requirement should be amended so that reports on the Trust's annual activities must be made available through Te Puni Kōkiri's website, or on request to Te Tumu Paeroa or Te Puni Kōkiri. This change ensures that there continues to be sufficient transparency of the Trust's activities without imposing unnecessary administrative burden.

Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003

Reflect the Māori Television Service's trading name changed to Whakaata Māori

39. In June 2022, the Māori Television Service changed its trading name to Whakaata Māori. This change reflects the entity's growth into a multi-media content provider. Whakaata means 'to mirror', 'to reflect' or 'to display'. As such, the change in name demonstrates the role of Whakaata Māori in protecting, celebrating and promoting te reo and tikanga Māori – which are at the heart of Whakaata Māori's purpose and functions.

40. Amendments to sections 3, 6, 7 and 11 of the Act, along with adding to the preamble, are required to reflect Whakaata Māori's name in legislation. I also seek Cabinet's approval to request that the Parliamentary Counsel Office consider changing the title of the Act to give effect to this change.

41. As the preamble is written in both te reo Māori and English, any changes to the preamble will require translation. The time required to do this has been factored into the drafting process of this Bill.

Adjust Whakaata Māori's principal function to be a platform-inclusive approach, no longer specifying and/or expecting one required delivery platform (linear television) and allow for Whakaata Māori to cease broadcasting linear television on the agreement of the Minister for Māori Development, Minister of Finance and Te Mātāwai

42. The content delivery requirements in the Act distinguishes between platforms rather than focusing on audiences. The Act currently prioritises television as a platform over others. Section 8(1) sets out that "*the principal function of the Service is to contribute to the protection and promotion of te reo Māori me ngā tikanga Māori through the provision, in te reo Māori and English, of a high-quality, cost-effective television service that informs, educates, and entertains viewers, and enriches New Zealand's society, culture, and heritage."* Subsections 8(3) and 8(4), state "*The Service may undertake other functions that contribute to the protection and promotion of te reo Māori*;" and "*in performing its functions, the Service may provide a range of content and services on a choice of delivery platforms."*

43. The requirement for a television service as a platform for delivering its' principal function, with provisioning through section 8 implying traditional linear television as an expected delivery form, and specification of other forms of media as an 'optional extra' (permitted but not required) inhibits the ability of Whakaata Māori to focus on the needs and behaviours of audiences in line with contemporary media practices. Audiences expect to be able to access content when and where they want, with linear television just one of many content delivery mechanisms. The Government's priorities for the Māori media sector include "We support audiences to access quality Māori content through their preferred medium or device" [DEV-22-MIN-0196]. Current requirements tie Whakaata Māori to the provision of an expensive platform that is experiencing a marked decline in audience share and which is expected to increase in cost over time. This risks working against the Act's intent to promote and protect te reo me ngā tikanga Māori.

44. Amendments are required to sections 6 and 8 of the Act so that the principal function does not specify and/or imply a delivery platform, but instead requires Whakaata Māori to contribute to the protection and promotion of te reo Māori me ngā tikanga Māori by providing content to viewers (which could be through any content delivery platform). Further additions may also be required to the preamble. The proposed amendments reflect the continuing obligation the Crown has regarding the preservation of te reo Māori me ngā tikanga Māori, because if Whakaata Māori had been established in recent times, it would have a clearer remit covering all popular forms of media.

45. This amendment will not impact on the current service provision of Whakaata Māori – it will continue to provide linear television services in the short- to medium-term. To support this objective the Act should be amended to provide a safeguard for linear television provision, so that Whakaata Māori can cease the provision of linear television after receiving agreement from the Minister for Māori Development, the Minister of Finance and the board of Te Mātāwai.

Clarify te reo Māori requirements across all Whakaata Māori delivery platforms

46. The Act currently requires Whakaata Māori to broadcast mainly in te reo Māori during prime time, and at all other times to broadcast a significant proportion of content in te reo Māori. These requirements reflect the media environment in which Whakaata Māori was established 20 years ago. The notion of prime time is increasingly irrelevant to effective content provision in a modern online media environment where audiences can access content outside linear broadcasting schedules.

47. However, prime time still retains a degree of importance to both advertisers and certain audiences. The complete removal of a prime time requirement risks diminishing the mana of te reo Māori and the obligation under the Treaty of Waitangi to preserve, protect, and promote te reo Māori through broadcasting.

48. The prime time requirement of section 8(2)(a) will therefore be retained for as long as the delivery service(s) for which it is relevant exists, noting there is no expectation that Whakaata Māori maintain a linear television service in perpetuity. However, amendments to section 8(2)(b) are required to include a new obligation that Whakaata Māori provide a substantial proportion of content in te reo Māori across each of its delivery platforms. This recognises the move away from linear broadcasting and prime time and will allow Whakaata Māori to better cater and produce content for its Māori (and non-Māori) audiences.

Other proposed amendments to the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003

49. Other minor, technical and non-controversial amendments to the Act are:

    a. Update the requirement in section 26 of the Act that statements of intent be tabled in Parliament from once every year to at least once every three years. This amendment aligns with other statements of intent requirements for Crown-media entities. The rationale for additional accountability requirements is no longer relevant as Whakaata Māori has successfully operated for 20 years.

    b. Provide for Whakaata Māori to be consulted on the terms of reference for any review of the Act as set out in section 56 of the Act. Currently only Te Mātāwai is required to be consulted on the terms of reference. This amendment reflects good policy practice and aligns the Act with practices set out in other legislation (for example, Te Ture mō Te Reo Māori 2016).

c. Remove the words ‘cost-effective’ from section 8 of the Act. This amendment will enable Whakaata Māori to better exercise its rangatiratanga in producing a suite of content, some of which may deliver te reo Māori outcomes but not necessarily be considered cost-effective. Section 20 of the Act provides sufficient protection in terms of fiscal responsibility in that it requires the directors of Whakaata Māori to ensure the service performs its functions effectively, efficiently and in a financially prudent manner.

d. Add the words ‘me ngā tikanga Māori’ to relevant parts of the Act that are missing these words (for example, section 3). Existing sections, for example, section 8, refers to te reo Māori me ngā tikanga Māori).

Te Ture mō Te Reo Māori 2016 (The Māori Language Act 2016)

Improve the consistency of decisions made in writing so that they align with in-person requirements

50. Schedule 5 of the Act provides Te Mātāwai the ability to make decisions in-person, electronically or via writing (email). However, the requirements for decision-making via writing are stricter than those made in person or online. In person or online meetings require decisions to be made by a majority of quorum, whereas written decisions require all members’ agreement. This creates a risk that urgent decisions, which require faster consideration and agreement, are slowed down.

51. Clause 14 of Schedule 5 should be amended so that written resolutions may be signed or assented to in writing by a quorum of Te Mātāwai members rather than needing to be unanimous. This change will mean written decisions are consistent with in-person meeting requirements.

Provide a new regulation-making power to amend, add or remove the name of an iwi from a grouping of iwi

52. Within Schedule 3 of the Act, iwi are grouped into different clusters or groupings, which allows Te Mātāwai to better support those particular regions for investment purposes. This is particularly relevant where there are geographic and dialectic differences between Iwi, or where grouping those Iwi will strengthen the revitalisation of indigenous language within those spaces.

53. Over time the member iwi that form these clusters can change. However, there are no provisions within the Act that allow Schedule 3 to be updated as member iwi change, outside of the parliamentary process. This is overly cumbersome, and limits iwi and Te Mātāwai’s ability to exercise rangatiratanga over what is an operational issue.

54. Amendments to the Act are required to provide for a new regulation-making power to allow the Governor-General (on the recommendation of the Minister and after the Minister has confirmation that Te Mātāwai has consulted with the relevant iwi) to make regulations to amend Schedule 3 by amending the name of a kāhui or adding or removing the name of an iwi in a kāhui. This goes further than the Regulation making power in section 45(3) of the Act, which provides for the ability to add or remove organisations that comprise Te Reo Tukutuku.

55. Sufficient safeguards are built into this proposal, in that the views of both iwi and Te Mātāwai must be sought before a change is recommended. Further, the governance group of Te Mātāwai are iwi representatives. This provides reassurance that no iwi will have their name added, removed or updated in Schedule 3 of the Act without their express input.

Ensure that the title of Schedule 3 reflects appropriate terminology for Moriori and ta rē Moriori

56. The title of schedule 3 of the Act should be amended so that rather than reading "Regional clusters of iwi" it reads "Regional clusters of iwi/imi". This is because Moriori are listed in Schedule 3 of the Act – and it is appropriate to use ta rē Moriori when referencing Moriori in the Act.

Other proposed amendments to Te Ture mō Te Reo Māori 2016

57. Other minor, technical, and non-controversial amendments to the Act are:

    a. Update the English version of the Act so that it more accurately aligns with the reo version of the Act. For example, section 13 of the Act currently translates 'iwi cluster/s' to 'kāhui ā-iwi'; and 'Te Reo Tukutuku cluster/s' to 'kāhui o Te Reo Tukutuku'. This is an imperfect translation. Maintaining accurate translations in the Act is important to ensure that the Act remains accessible to both te reo and English language readers, and to honour the dual language nature of the Act.

    b. Allow Te Mātāwai to appoint co-chairs. This is because Te Mātāwai currently operates with co-chairs in practice, and use of co-chairs is common practice for many Māori committees. This amendment requires changes to section 20 of the Act, as well as subsequent amendments to Schedule 5. It also requires consequential amendments to the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003 at section 5(2)(c) and subpart 3 which references 'the chairperson of Te Mātāwai'.

    c. Update the review requirements of the Act as set out in section 44(2) so that the Minister must (rather than may which is the status quo) from time to time, review the operation and effectiveness of the Act in accordance with the terms of reference set by the Minister and Te Mātāwai. This change better reflects the uniqueness of this Act in that it is an Act that has been developed in partnership with Māori, rather than an Act that has been developed for Māori.

    d. Clarify the meaning of duties under the Act to promote the Māori language. This change is needed so that stakeholders can better understand what promotion means in relation to Te Mātāwai's role in raising awareness of revitalisation activity, encouraging, supporting and empowering.

    e. Remove the word 'actual' from section 23(d) of the Act. This word adds no meaning to the section and is not mana enhancing for Te Mātāwai: "*to provide a base against which actual performance can be assessed.*"

    f. Clarify clause 20(2)(b) of Schedule 5 that Te Mātāwai's primary duty is to iwi and Māori rather than to the public generally. This amendment is a minor language change that ensures, for the avoidance of doubt, that the purpose and duties of Te Mātāwai is to Māori. This amendment will not remove the 'spirit of service' phrasing in that clause.

    g. Amend the reo Māori version of the Act to align with amendments already made to the English version by other Acts, including the Coroners Amendment Act 2023. For example, the Coroners Amendment Act 2023 updated the definition of legal proceedings in section 7(7)(b) of the English version of Te Ture mō Te Reo Māori 2016 so that it includes proceedings before a coroner or an associate coroner (previously it included proceedings before a coroner). However, the reo version of the Act was not consequentially amended. This is

an issue as section 12(2) of the Act states that "*The Māori and English versions of this Act are of equal authority, but in the event of a conflict in meaning between the 2 versions, the Māori version prevails.*"