

Governance – New Model Proposed

Te Puni Kokiri has released a discussion document, which proposes a new governance model for Maori collectives. The objective of the model is to provide a clear relationship between the collective (the members) and the people responsible for governing the collective's assets and operations (the governors). It is intended that the model will provide Maori collectives with more flexibility and certainty about how their interests are governed. The proposal suggests that governance would be more receptive to the Maori collective's tikanga and kawa.

A new legislative framework is proposed which would allow any entity that met certain minimum requirements to apply for incorporation. Under the framework, an entity would have the flexibility to allow collectives to provide benefits

to the members in any form that they want. The model aims to enable Maori collectives to mould their entities to suit their own requirements.

Te Puni Kokiri will be consulting with Maori throughout November to late December 2004 and submissions on the proposal close on Christmas Eve, 24 December 2004.

To access a copy of the working paper visit www.tpk.govt.nz.

Peter Johnston



*Mere Kirihimete ki a koutou katoa. Ka nui nga mihi hoki mo te tau hau.
Ma te Atua koutou e manaaki e tiaki hoki.*

We wish you all a very Merry Christmas and a prosperous and safe New Year.



Rainey Collins Maori Issues Team

Back row: Campbell Duncan, James Johnston, Peter Johnston
Front row: Clare Maihi, Rebecca Sunde, Kiri Skipwith, Sam Mainprize

RAINEY COLLINS LAWYERS

Receive future editions of *In Brief*

If you are not on our mailing list and would like to receive future editions of *In Brief*, phone Maureen on 04 473 6850 or email mharris@raineycollins.co.nz
You can unsubscribe in the same way if you do not want to receive future copies.

TELEPHONE 64 4 473 6850 • FACSIMILE 64 4 473 9304 • DX SP20010 • WWW.RAINEYCOLLINS.CO.NZ
LEVEL 23 • MOBIL ON THE PARK • 157 LAMBTON QUAY • PO BOX 689 • WELLINGTON

HOT TIPS

Seven Simple Ways To Maximise Value for Money

There are many ways for you to make sure that you get cost effective service from your legal advisors. Here are seven things that you can do:

1. Give clear instructions of what your needs are and what you want to achieve.
2. Bring as much relevant information as you can to your appointments. If you are not sure about relevance bring it just in case. It is better for your advisors to have too much information rather than too little.
3. Quickly deal with any tasks that your advisor gives you so that they can progress matters efficiently.
4. Ask questions if you are unclear of the advice. If you do not say anything, it will be assumed that you understand everything.
5. Tell your legal advisors immediately of any changes to your expectations or wishes.
6. Make sure you keep your contact details up-to-date and advise whether it is best to contact you by telephone, post or email.
7. Good communication is the key. If there is a problem, let your advisor know straight away so that it can be sorted out straight away.

IN BRIEF FROM RAINEY COLLINS MAORI ISSUES

RAUMATI 2004/05

Whanau Trusts - The Importance of Getting it Right

Whanau trusts are being used by Maori to avoid the problems associated with the fragmentation of shares. In this article, James Johnston looks at the importance of getting it right and what can happen when it goes wrong.

Hemi (not his real name) owned land interests in a number of Maori land blocks. Following the passing of Te Ture Whenua Maori Act 1993, Hemi decided to transfer all of his Maori land interests to a whanau trust. Other whanau members did the same and trustees were appointed to administer the whanau trust.

Some time later Hemi decided that he would like to build a family home on one of the Maori land blocks and sought permission from the trustees.

Unfortunately, the trustees decided not to support Hemi and actively opposed Hemi building on the land. One of the reasons put forward by the trustees was that as Hemi had transferred his interests to the whanau trust, he no longer had a right to build on the land.

As a result, Hemi was forced to spend a significant amount on legal costs to obtain a decision from the Maori Land Court that he was entitled to build on the land.

This situation could have been avoided if Hemi had obtained advice when the whanau trust was set up. In particular, Hemi could have made sure that the trust contained appropriate clauses to enable him to build on the land in the future.

Hemi could also have taken steps to ensure that the trust deed contained suitable clauses giving him the right to appoint and remove trustees. The trust deed could also have included a process for resolving disputes with the trustees and beneficiaries without the expense of going through the Maori Land Court.

This story provides a classic example of the importance of getting it right at the outset.

**James Johnston
Chairman of Partners**



Contents

| | |
|---|---|
| Recent News | 1 |
| Whanau Trusts - the Importance of Getting it Right | 1 |
| What All Employers Need to Know about the New Smoke Free Legislation..... | 2 |
| Recent Changes to the Holidays Act..... | 2 |
| End of Year Review | 3 |
| Governance - New Model Proposed..... | 4 |
| Seven Simple Ways to Maximise Value for Money | 4 |

RAINEY COLLINS CHRISTMAS HOURS

Rainey Collins will be open until 5:00pm on Thursday 23 December 2004. We are open to look after your interests again from 8:30am on Wednesday 5 January 2005.

Recent News

Te Puni Kokiri's Governance Website Launched

Te Puni Kokiri launched its website for effective governance education on 30 October 2004. The site is designed to help trustees and directors of Maori organisations with their roles and responsibilities as guardians and leaders. Rainey Collins provided professional advice to Te Puni Kokiri for this project. To view the website go to www.governance.tpk.govt.nz.

Turanga Report Released

The Waitangi Tribunal's Turanga Report on the Turanganui A Kiwa claims was presented to Claimants on 30 October 2004. Please refer to our website www.raineycollins.co.nz for further information on the Report's findings.

Maori Grants & Scholarships

The Maori Education Trust administers grants and scholarships to Maori students studying at tertiary level. Application forms are available at www.maorieducation.org.nz.

Urewera Inquiry

The Waitangi Tribunal Urewera Inquiry has continued with recent hearings being held at Waikaremoana from 18 to 22 October 2004 and for Ngai Tamaterangi ki Ngati Kahungunu at Rangiahua Marae from 29 November to 3 December 2004.

New Zealand Business Roundtable Commissions Report

The Business Roundtable has commissioned a report tentatively entitled "Te Oranga O Te Iwi Maori" concerning the economic and social development of Maori. It is expected to be published in 2005.

What All Employers Need to Know About The New Smoke Free Legislation

From 10 December 2004 the smoke free legislation requires all internal areas of workplaces, licensed premises and certain public enclosed premises to become smoke free.

Failure to take all reasonably practicable steps to prevent someone from smoking in an internal area in a workplace or licensed premises could result in a maximum fine of \$400 for employers and \$4,000 for body corporates.

An internal area is an area within or on the premises or vehicle that is completely or substantially enclosed. Smoking will only be legally allowed in open areas. An open area means a part of a premises that is not an internal area. However, employers may choose to prohibit smoking in these areas as well.

Marae premises are only covered by the smoke free legislation when they are being used as a workplace, school or kohanga reo or when a liquor licence is held. At other times, Marae are considered to be 'private cultural spaces' to which the general public does not have access.

However, many Marae have chosen to adopt a 100% smoke free policy.

Enforcement Officers will have limited powers to investigate complaints, including being able to enter and inspect premises at a reasonable time, take photographs and/or videos, and take

air samples. The maximum fine for obstructing an Enforcement Officer exercising their powers, or failing to provide the information required, is \$1,000.

For further information on the new smoke free law go to www.smokefreelaw.co.nz.

Clare Maihi



Recent changes to the Holidays Act

If you are an employer or employee there have been recent changes to the Holidays Act that you need to be aware of.

The Holidays Amendment Act came into force on 25 October 2004. It rectifies some of the unintentional effects of the Holidays Act 2003.

The recent changes ensure that an employee who works on a public holiday gets paid at least time and a half for the time worked as well as a day in lieu. The employee must be paid at whichever rate is greater:

- Their daily pay rate less penal rates, plus half of that amount again; or
- Their daily pay rate including all penal rates.

'Penal rates' are anything that is intended to compensate the employee for working on a certain day such as a Saturday or

Sunday or a public holiday. They do not include any additional payments for working a sixth or seventh day in a week or at a particular time such as overtime, night rates or shift allowances.

If an employee is sick or bereaved on a public holiday on which they were scheduled to work, the day is to be treated as an un-worked public holiday instead of as sick or bereavement leave. The employee will get paid for the day but will not be entitled to time and a half or an alternative holiday.

The Holidays Act allowed employers to require an employee to produce proof of sickness or injury where the employee has been sick for three or more consecutive calendar days. Recent changes mean that

an employer is now able to request such proof within the three-day period if the employer:

- Has reasonable grounds to believe that the leave is not genuine; and
- Informs the employee of the requirement to produce proof as soon as possible after forming the suspicion.

The employer must agree to meet the employee's reasonable expenses in obtaining such proof of the sickness or injury.

Campbell Duncan



Are Your Affairs in Order? End of Year Review with Peter Johnston

With the end of the year fast approaching and plans being made to return home, attend reunions or celebrate the festive season with whanau and friends, it is a good time to review, update, or check those things that can be easily overlooked during the year.



Wills

It is important to keep your Will up-to-date, especially if there have been any major changes in your life, such as:

- Getting married or divorced. Your Will becomes void if you get divorced as far as it related to your ex-partner, but if you have separated and not yet divorced, your ex-partner would still be entitled to any gifts under your Will. Your Will is also void when you marry unless the will was made in contemplation of the marriage.
- Entering into or ending a de facto relationship.
- Having children.
- Starting a business.
- Buying significant property.
- Inheriting money.

Remember that there are special rules about Maori land. If you get it wrong your wishes may not be followed. Check with your legal advisors to make sure that your Will complies with the law.

Unclaimed Dividends

The Maori Trust Office holds details of unclaimed dividends. The end of the year is a good time to check the unclaimed dividend register to see if you or any members of your whanau (including those who may have passed on) have any unclaimed dividends. The register can be viewed at your local Maori Trust Office, Maori Land Court or Te Puni Kokiri office.

Whanau Trusts

It is a good idea to regularly review your whanau trust to ensure that it is operating efficiently. Ensure beneficiary lists are current. Also make sure that all accounts and records are accurate and up-to-date.

Your whanau trust may also be reviewed by the Maori Land Court. Check your trust deed for any specific review requirements.

Maori Land Blocks

The holiday period provides an opportune time to review the status of your Maori land block as many members of the whanau go back home. Are the rates up to date? Is the land being utilised effectively? Is the land being leased? Is the lease due for renewal or review? A meeting to discuss such issues can be timely during the holiday period.

Marae

On returning to your Marae over the holiday period, it may be a good time to liaise with your Marae committee about progress on any proposed projects. Are you able to offer some of your skills to help? Can you join the Marae committee? Are you able to coordinate special projects such as painting, maintenance of ablution blocks, urupa maintenance and general maintenance? Also check to ensure that the insurance cover for the Marae is up-to-date. Coordinated approaches with the blessing of the Marae committee can achieve a lot over a short period when many more willing hands may be available to assist.

Insurance

The end of the year is a good time to review your insurance policies to ensure that they are up-to-date. You may need to increase your cover. If there have been any changes in your circumstances, you should let your insurance company know as this could affect the amount of cover you need and the premium you are paying.

Superannuation

Many superannuation or savings plans may automatically increase your contribution on an annual basis to take into account inflation. However, it is a good idea to review the regular amount you are saving to see if you can make even a small increase (keeping in mind that you may have received a pay increase or similar during the year).

Employment Agreement

The end of the year is a good time to review your employment agreement – are you due for a performance review? What annual leave entitlement do you have left?

Legal Audit

If you are in business, it is sensible to arrange for a legal audit to be completed on all facets of the business including contracts, insurance, minutes, policies and personnel manuals to ensure they are up-to-date and compliant. Ensure that any risks or issues raised by the audit are eliminated.

Business Plan

If you have a business plan in place, take time to review it. Have you achieved the goals you set out to achieve? What worked? Was anything less successful than you had envisioned? Spend some time on a business plan for the coming year. What improvements could you make? What do you want to achieve over the year? What steps will you need to take to reach your goals?

Peter Johnston

Foreshore And Seabed Update

Please refer to our website www.raineycollins.co.nz for the latest developments on the foreshore and seabed.