RANGAHAUA WHANUI NATIONAL THEME K

MAORI LAND COUNCILS AND MAORI LAND BOARDS: A HISTORICAL OVERVIEW, 1900 TO 1952

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EDITORIAL NOTE

Unless otherwise noted, all references to 'Councils' and 'Boards', or 'Land Councils' and 'Land Boards' relate to the 'Maori Land Councils' of 1900 to 1905 and 'Maori Land Boards' of 1906 to 1952. The land boards constituted to administer Crown lands have been referred to as 'Crown Land Boards'.

Government departments and other institutions are described by the titles in use at the time under discussion. Thus the Maori Land Court, the Maori Affairs Department, and the Maori Trustee are dealt with as the Native Land Court, the Native Affairs Department and the Native Trustee up to 1947, and so forth. Where the period in question overlaps 1947 I have used the later form.

All monetary figures given are sterling, and all land figures are acres. In compiling data, acreage totals in publications have been rounded to nearest acre. Unless otherwise noted, totals given in tables are based on figures after rounding, so may vary slightly from comparable totals given in the publications themselves.

LIST OF ABBREVIATIONS

AJHR	*Appendices to the Journals of the House of Representatives*
BPP	*British Parliamentary Papers: Colonies New Zealand* (17 vols, Shannon, Irish University Press, 1968–69)
CFRT	Crown Forest Rental Trust
DNZB	*Dictionary of New Zealand Biography*
doc	document
MA-MLP	Maori Affairs–Maori Land Purchase Department
NLC	Native Land Court
no	number
NZJH	*New Zealand Journal of History*
NZPD	*New Zealand Parliamentary Debates*
pt	part
RDB	*Raupatu Document Bank* (139 vols, Wellington, Waitangi Tribunal, 1990)
s	section (of an Act)
sec	section (of this report, or of an article, book, etc)
Wai	Waitangi Tribunal claim

PREFACE

This study was commissioned by the Waitangi Tribunal with a view to filling in a rather large gap in the historical literature relating to Maori lands in the twentieth century. The Maori Land Councils and the Maori Land Boards have not been entirely neglected by scholars to date. Several monographs and academic theses have dealt with them in one way or another. Most of these studies, however, relate more to Liberal politics and land policy than the organisations themselves, and all, in my opinion, fail to explain some key features of the development of the land board system. Studies delving into the post-1911 period are in any case almost non-existent, even though a large portion of the original records appear to be available[1] and there is a wealth of information in the *Appendices to the Journals of the House of Representatives*, which had not been exploited.

I have attempted to provide a survey of the history of Maori Land Councils and the Maori Land Boards which discusses their place in Maori land administration in sufficient detail to give a clear picture of the significance of these institutions. It was essential for this purpose to include a rather lengthy discussion of the statistical material bearing upon the land councils and boards, particularly in relation to vested lands. My apologies to the innumerate, but sometimes there is no substitute for a quantitative approach. The result of these efforts is not a complete and definitive history of the Maori Land Councils and Boards, by any means. This would undoubtedly be a worthwhile exercise, but an examination of all the individual land councils and boards and their year-to-year operations would require far greater resources than I was able to bring to bear upon the problem.

This project was originally scheduled for completion in February of 1995, but illness and other personal problems have led to repeated delays. I would like to thank everyone concerned for the patience which they have displayed throughout. No doubt they are as relieved as I am that it is finally finished. I would also like to thank Professor Alan Ward for many encouraging words and much good advice, and Dr Grant Phillipson for his constructive comments on the first draft, but any errors are entirely of my own making. The views expressed and conclusions drawn in this report are also my own, and do not necessarily reflect those of the Waitangi Tribunal or any other institution.

1. See J L Hutton's inventory of 'Archival Material Relating to the Maori Land Boards: 1900–1952', CFRT, Wellington, 1996, which was commissioned by the Crown Forestry Rental Trust to supplement this report, and is based on personal inspection of the archives of the Maori Land Court offices.

INTRODUCTION

Late in its final session of the nineteenth century, New Zealand's fourteenth Parliament passed 'An Act to Provide for the Administration of Maori Lands'. Better known as the Maori Lands Administration Act 1900,[1] this legislation provided for the creation of 'Maori Land Districts' in the North Island, and for the formation of a 'Maori Land Council' in each District. Six districts and six land councils came into being within the next two years. Some 51 years and 10 months later, the thirtieth Parliament passed 'An Act to amend the Maori Land Act 1931. This Maori Land Amendment Act 1952',[2] which abolished the seven Maori Land Districts then in existence, together with their associated 'Maori Land Boards'. Most of the powers, duties, assets, and liabilities of these boards were handed on to the Maori Trustee, with the balance defaulting to the Department of Maori Affairs.

The history of the Maori Land Councils (1900 to 1905) and their successors the Maori Land Boards (1906 to 1952) lends itself to a rough but ready division into three chronological periods. The first of these, from 1900 through to 1909, was a time of rapid change. The original powers and responsibilities of the land councils were greatly expanded as more and more Maori land of various categories came under their control, voluntarily and otherwise. The Royal Commission on Native Lands and Native-Land Tenure of 1907 to 1909 (the Stout–Ngata commission) was instrumental in transforming the Maori Land Boards from minor to major players on the land-administration scene. These boards soon became the principal Government agency in charge of matters relating to 'Native freehold lands'[3] – particularly matters relating to their alienation. As the powers of the Maori Land Councils and boards were expanding, however, their composition became increasingly restricted. The original Maori Land Councils had a plurality of Maori members, most of whom were elected by the owners of the Maori freehold lands in each district. These land councils were then transformed into 'Maori Land Boards' in 1905 by the simple expedient of eliminating all elected members. One of the three Government appointees remaining was required to be a Maori, but in 1913 the boards would be reduced to two members each, both of whom were officers of the Native Land Court.

The second stage in the development of the Maori Land Boards, from the passage of the 1909 Act through to the early 1930s, was one of relative stability on the legislative and administrative sides, and of much activity with respect to the alienation of Maori freehold land by and through the land boards. The Native Land Act of 1909 consolidated a large number of statutes flying in loose formation into an integrated system for the control and alienation of such lands. This system

1. Statutes, 1900, no 55. The Act received Royal assent on 20 October 1900.
2. Statutes, 1952, no 9 (29 August 1952)
3. That is, lands which had had their ownership determined by the Native (or Maori) Land Court. Those which had not been so dealt with by the court are usually referred to as 'Papatupu' or customary lands.

remained largely intact for half a century or more. By 1911 close to a million acres of such land had been vested in the Maori Land Boards for lease or sale, or was being administered by them at the request of the owners. A portion had already been leased or (to a lesser extent) sold, and the disposal of the rest was the focal-point of board activity thereafter. But the boards also had a major role to play in the alienation of lands which did not come under their direct control. Not only did they negotiate many sales and leases on behalf of owners, but, beginning in 1908, all alienations of Maori freehold land had to be approved by the land boards. During the 1920s land board funds came increasingly to be used to provide Maori farmers with capital for land development. At the end of the decade these institutions were employed to kick-start Sir Apirana Ngata's ambitious programme for the development of Maori lands, initially by providing Maori with access to capital. Their use for this purpose reflected, in part, the lack of Crown agencies possessing either the constitution or the resources to provide Maori with the assistance required. The land boards were dragooned into service for want of anything better.

After this hectic phase passed, the range of activities carried out by the Maori Land Boards narrowed abruptly as their involvement with Maori land development was reduced, and particularly when their power of final approval over Maori freehold land alienations was returned to the Native Land Court in 1932. Like the Native Trustee, the land boards increasingly became an appendage of a revitalised and expanded Native Affairs Department. As time went on – and particularly as the leases of a large proportion of the 'Vested Lands' neared their end in 1957 – the land boards became increasingly dispensable. When the Maori Land Boards disappeared in the great Maori Affairs Department reconstruction of 1952, few rose in their defence. Fewer still, it would seem, mourned their passing.

PART I

'Practically the Difficulty in Respect to Our Native Lands is Solved'

CHAPTER 1

THE ORIGINS OF THE MAORI LAND COUNCILS

In a recent study of the myths and realities of the Liberals' Maori land policy, Dr Tom Brooking laments that the Government in office during the last decade of the nineteenth century 'lost an opportunity for the development of a truly bicultural society' through its failure to give Maori farming 'a chance to succeed'.[1] If the Liberals had actively supported Maori agricultural development at that point in time, this historian suggests:

> the results would almost certainly have benefited everyone in that the cycle of dependency, into which Maori were forced slowly but relentlessly, could have been broken. Our national debt would also have been lower and environmental damage less considerable ....

The author is careful to point out that this scenario is 'all speculative and counterfactual'. Some might consider the projected results of these speculations to be unduly optimistic. None the less, the idea that a crucial turning-point was passed in the waning years of the nineteenth century seems indisputable.

The immediate source of the Maori lands crisis of the late 1890s is easily identified. It forms the subject of Dr Brooking's aforementioned article, '"Busting Up" the Greatest Estate of All'. Simply put, between 1892 and 1900 the Crown purchased some 2.7 million acres of Maori freehold land, much of it at artificially low prices facilitated by the re-assertion of the Crown's pre-emptive right in 1894.[2] In 1891, after half a century of European land-buying, Maori retained some 10.8 million acres of land. When purchasing was provisionally suspended by the Crown at the end of 1899, less than eight million acres remained[3].

Richard Seddon's Liberal government had pursued this land-purchasing programme with single-minded determination – a determination explained, in no

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1. Tom Brooking, '"Busting Up' The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', NZJH, April 1992, vol 26, no 1, p 97
2. AJHR, 1907, G-1c, p 5. The Crown paid only £775,500 for this land. Private individuals acquired another 423,184 acres during the same period. See Brooking, p 84, for a discussion of the effects of pre-emption on prices.
3. See 'Statement showing the Position of Native Lands in the North Island', AJHR, 1911, G-6, which offers a useful summary of Crown acquisitions for 1891–1911. The 1899 figure is an estimate based on data compiled for the Royal Commission on Land Tenure, which identified 7.5 million acres of Maori land in the North Island in 1903; AJHR, 1905, C-4, p 1566. I have not yet found any comparable figures for 1899–1900.

small measure, by the fact that the political survival of the Government depended upon finding sufficient land to satisfy the demands of thousands of European settlers for farms. As Sir Robert Stout and Apirana Ngata pointed out in 1907, it is essential to bear in mind when examining Maori land issues during this era 'that the question of land-settlement generally . . . more than any other subject occupied the forefront of colonial politics'.[4] Breaking up large European estates for the purpose of closer settlement (a centrepiece of Liberal land policy[5]) did not even begin to satisfy this land-hunger. Purchases from Maori eventually provided more than twice as much new land for settlement as 'estate-busting', and at considerably less that one-tenth the price per acre.[6]

In order to expedite and accelerate its purchasing programme, the Government passed Maori lands legislation in wholesale quantities during the early 1890s. This is not the proper place to reconstruct or review the process, which has yet to be systematically studied by historians.[7] Suffice it here to say that the result was a body of legislation which opened avenues through, over and around many of the problems which at the start of the decade had been inhibiting the rapid transfer of land out of Maori hands. In restoring the Crown's right of pre-emption, for example, the Native Land Court Act 1894 freed the Crown from interference by and competition with private purchasers. Some of the measures involved may well have had beneficial consequences for Maori, but on the whole 'coercive and punitive' elements dominated the Liberal approach.[8]

The consequences of the loss of so much land at derisory prices were severe and far-reaching. Maori agriculture showed clear signs of growth (in some parts of the country at least) during the 1880s.[9] The Liberal 'land grab' of the 1890s, Brooking argues, 'stifled then shattered that recovery'.[10] A major factor was the loss of the remaining first-class lands. Premier Richard Seddon told the House in 1899 that he did not think Maori had a million acres left which was 'fit for settlement'. Wi Pere, the member of Parliament for Eastern Maori, commented in the same debate that much Maori land was to be found 'On the top of the Tararua Ranges and places like that': 'All the best of the land', he lamented, 'has long ago been acquired by

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4. AJHR, 1907, G-1c, p 4
5. J S Duncan, *The Land for the People: Land Settlement and Rural Population Movements, 1886–1906*, p 170. This identifies the three 'main tenets' of this policy as 1. the prevention of land aggregation; 2. the use of legislation to enable the resumption and subdivision of large freehold estates; and 3. the use of leasehold tenures and cheap credit to enable European settlers with limited financial resources to take up farming.
6. Brooking, p 78. The average price per acre paid for Maori lands by the Crown in 1892–1900 was slightly in excess of 6s, whereas the average cost-per-acre for estates acquired under the Lands for Settlements Acts was about 84s.
7. As noted in Brooking, p 80. His own discussion, at pp 83–88, offers a useful overview and starting-place. See also *The Maori Land Legislation Manual*, Crown Forestry Rental Trust, Wellington, 1995, 2nd edition. This gives a comprehensive list and descriptions of legislation passed during this period which affected Maori land title and tenure.
8. Brooking, p 84
9. See R J Martin, 'Aspects of Maori Affairs in the Liberal Period', MA thesis, Auckland, 1956, pp 159–160, and John A Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1900*, Auckland University Press/Oxford University Press, Auckland, 1969, chapter 1, especially pp 25–26.
10. Brooking, p 97

Europeans'.[11] The Stout–Ngata commission on Native Lands and Native-Land Tenure would comment eight years later that:

> the area of good [Maori] land available . . . is not as great as is generally supposed. Of inferior land not suitable for close settlement, and fit only for forest reserves and such purposes, there is ample, but we doubt if there will be any keen demand for such land . . .[12]

It would not be in keen demand by European settlers, of course, because turning low-quality land into viable agricultural units was a much more arduous and expensive process than doing the same with good land. Selling the best of their property for artificially low prices thus created its own vicious circle for Maori landowners.

The Maori rights movements which became increasingly active during the 1890s were not simply a response to the new Government's land policies. The roots of the Kingitanga (Maori King) and Kotahitanga (Maori Parliament) lay much deeper in the New Zealand experience of race relations. Nor was land their sole concern, by any means. None the less, the Government's handling of the 'Native land question' was always a central issue, and opposition to the Native Land Court in particular became a rallying point for these movements. It was no coincidence that, as Martin notes, 1894 saw the Kingitanga and Kotahitanga, together with Apirana Ngata's Young Maori Party, fall into 'a loose alliance' on land issues.[13]

One of the first fruits of this alliance was the Native Land Court boycott of 1895. The land court occupied a key position in the process of land alienation. Basically, until it had determined ownership and a title had been issued, Maori land could legally not be sold or leased to anyone, including the Crown. Moreover, final land court approval was required for all such transactions.[14] In 1895 those who objected to the resumption of Crown pre-emption, which forced land prices down, joined those who objected to the very idea that a Pakeha-dominated court should have control over the way Maori landownership was ascertained. A boycott of the Native Land Court was declared through the Maori Parliament. Landowners were asked not to have anything to do with the land court, offering the prospect that:

> If you will be brave and patient for one year then at last you will reap some reward, inasmuch as the bad laws enacted by the present Government for the native people will fail. If the Maoris will only cease this land dealing then favourable legislation will eventuate . . .[15]

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11. NZPD, vol 110, pp 744 (Seddon), 749 (Pere). The Premier was presumably referring to available (that is, unleased) Maori lands here. A 1903 survey by the Commissioner of Crown Lands concluded that 1,661,235 acres out of 7,491,463 acres of Maori land in the North Island (22.2 percent) were considered 'unfit for Settlement Purposes' of any kind. A substantial portion of the remainder would have been of marginal utility. See 'Report of Royal Commission on Land Settlement and Tenure, together with Minutes of Evidence', AJHR, 1905, C-4, p 1566.
12. AJHR, 1907, G-1c, pp 15–16
13. Martin, p 59
14. Under the Native Land Court Act 1894, by which the old Trust commissioners were abolished and the court itself was given sole authority to grant final approval of alienations.
15. Quoted by Williams, p 72

After a promising beginning, though, the boycott faltered. Whatever the reasons for this may have been, the desired effect was not attained.[16]

The principal goal of the boycott had been to stop Crown land-purchasing by cutting off its source of supply. Before long, as a result of 'numberless meetings all over the North Island' and many petitions 'setting forth general principles for the future administration of Native lands', opinion shifted in favour of a different approach.[17] In 1897 (her Jubilee year) a petition was sent to Queen Victoria by the Maori Parliament. This stated that, having sold some 60 million acres of land to 'private persons and the Crown' since 1840, Maori now desired 'to retain and utilise our surviving land ourselves'. The petitioners pointed out that their request 'can only be given effect to by passing such legislation prohibiting for ever the sale of our surviving lands to the Crown and private persons', and called upon the Queen 'as a momento of your anniversary' to cause such legislation to be adopted. But they also noted that 'any portions [of land] that we may not be able to cultivate we are willing and shall be pleased to lease for the purposes of settlement and development of the colony'.[18]

Commissioners Stout and Ngata, writing a decade later, stated that this 'numerously signed' document asked:

> (i) That the Crown cease the purchase of Native lands;
> (ii) That the adjudication, management, and administration of the remnant of their lands be vested in controlling Councils, Boards, or Committees composed of representative Maoris.

'Though divided on many points', they claimed, 'the tribes were unanimous' in requesting these changes.[19] The petition itself, however, did not actually contain any specific reference to 'Councils, Boards, or Committees',[20] while subsequent developments in the period 1897 to 1900 do not suggest that all (or perhaps even a majority) of Maori thought such institutions would necessarily be desirable.

At that time the Crown had recently acquired, or was in the process of acquiring, a large amount of Maori land. The very success of its land purchase policy made possible a concession to Maori opinion, in the form of a termination of land-purchasing.[21] Looking to the future, however, the Government would not be in a position to continue with such a moratorium unless Maori land continued to be made available to European farmers in quantities deemed to be sufficient to maintain the momentum of New Zealand's agricultural development: any political party which cut off the supply of Maori land altogether in the middle of an economic boom was likely to be ejected from the Treasury benches with unseemly haste. From this perspective, a termination of purchasing had to be compensated-for by a significant increase in the supply of Maori land made available for settlement by other means.

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16. Williams, pp 72–73
17. As Stout and Ngata put it; AJHR, 1907, G-1c, p 5.
18. Petition reproduced in testimony of Wi Pere before the Native Affairs Committee, AJHR, 1899, I-3A, p 19.
19. Summary by Stout and Ngata, AJHR, 1907, G-1c, p 5. See also Williams, pp 73–74.
20. A point which Henare Kaihau made to the Native Affairs Committee in 1899; see AJHR, 1899, I-3A, p 19.
21. So Martin suggests, p 69

But availability was not simply a question of volume. In order for the trade-off to be effective, the costs and complications of leasing Maori land had to be reduced to a minimum. One obvious way to do so was to put in place a land administration system which would facilitate the utilisation of lands which were surplus to Maori requirements, by allowing substantial quantities to be leased to European settlers and farmers. As Premier Seddon would note in 1899, the Government saw terminating Crown purchase and establishing a land administration system as one indivisible package. The basic 'objects sought for' by the Government, he told the House, were:

(a) that there shall be no alienation (of Maori land) by way of sales;
(b) that the Maori lands shall not remain as they are at present, a burden to certain districts, keeping back the progress of the whole colony; and
(c) that in lieu of the Natives going to law, and so wasting their substance and losing their land, there shall be a body corporate, who shall decide how the land is to be dealt with.[22]

Seddon was at this stage anticipating that a million acres of Maori land would be made available for leasing through the new system 'in a very short time', once the requisite legislation was passed. In this manner, he hoped, 'the difficulty that obtains at the present time in respect to large tracts of Native lands would be removed: they would not remain idle and unoccupied, and so prove only a barrier to the settlement of many districts'.[23]

The idea of using some kind of body corporate to administer the remaining Maori freehold lands did not, of course, originate with 'King Dick' Seddon in 1897.[24] Variations on the same theme had often been proposed in the 1880s and 1890s, in response to a pressing need to find a modern substitute for the tribal structures which had regulated the use of Maori land before the Native Land Court system was imposed on Maori in the 1860s. The authority of these traditional structures and their traditional leaders had been eroded by the application of European concepts of land title and tenure, which in most cases gave absolute priority to the rights of individual landowners. When such a principle was applied to lands owned by dozens or even hundreds of owners – as much Maori land was after its passage through the Native Land Court – the result was 'confusion, loss, demoralisation, and litigation without precedent'.[25]

The individualisation of titles also, in many cases, created serious problems for Maori landowners wishing to occupy and utilise the land which they retained. Such people, the Native Land Laws Commission noted in 1891, often found themselves in 'a galling and anomalous position', for:

> As every single person in a list of owners comprising, perhaps, over a hundred names had as much right to occupy as anybody else, personal occupation for

22. Maori Lands Administration Bill, NZPD, vol 110, p 743. See below.
23. NZPD, vol 110, p 743
24. Although according to both Wi Pere and Henare Kaihau (and, by implication, James Carroll) the initial proposal for the adoption of a board system in 1897 came from the Government; see AJHR, 1899, I-3A, p 19.
25. 'Report of Royal Commission on Native Land Laws', AJHR, 1891, G-1, pp x

> improvement or tillage was encompassed with uncertainty. If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture. That apprehension of results which paralyses industry cast its shadow over the whole Maori people.[26]

Settler criticism of Maori for failing to make use of their lands seldom took adequate account of such factors.

The first attempts to find a solution were aimed primarily at expediting the utilisation of Maori land through lease or sale. In 1886, after several attempts, John Ballance succeeded in having the Native Land Administration Act, 1886 passed.[27] This suspended direct dealings in Maori lands, unless the Crown was the purchaser or lessee. Instead, it enabled the owners of a block to elect a representative committee.[28] The members of this block committee would then decide if any of the land under their control should be sold or leased, and on what terms and conditions. Lands to be alienated would then be handed over to a commissioner, or commissioners, appointed by the Crown under the Act, who would carry out the instructions of the block committee.[29] Income from leases or sales would be received by the commissioner who, after deducting costs, would distribute it to the owners.

In so far as the 1886 Act enabled the owners of a given block of Maori freehold land to act as a single legal entity, it was a significant improvement over anything which had gone before. None the less, the owners' involvement in land administration would cease altogether once they had handed their land over to the commissioner: they would have no say in the decisions which followed. Although Ballance was under the impression that he 'had won Maori acceptance of his proposals' prior to the passage of the Act,[30] few owners proved to be willing to entrust their interests to block committees, and none whatsoever were prepared to hand land over to a Crown-appointed commissioner. After a vigorous campaign for the repeal of the 1886 Act, the status quo ante was more or less restored in 1888.[31]

Soon afterwards, in 1891, a Royal Commission 'to inquire into the subject of the Native Land Laws' was appointed. Its members included W L Rees, James Carroll,

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26. AJHR, 1891, G-1, pp x–xi. Quoted in AJHR, 1907, G-1c, p 3. It was also noted, incidentally, that 'The pernicious consequences of Native-land legislation have not been confined to the Natives, nor to the Europeans more immediately concerned in dealing with them for land. The disputes then arising have compelled the attention of the public at large, they have filled the Courts of the colony with litigation, they have flooded the Parliament with petitions, given rise to continual debates of very great bitterness, engrossed the time of Committees, and, while entailing very heavy annual expenses upon the colony, have invariably produced an uneasy public feeling.'
27. See also K Sorrenson, 'The Purchase of Maori Lands, 1865–1892', MA thesis, Auckland University, 1955, pp 171–175, for a discussion of Ballance's policies and the 1886 Act.
28. This only applied where the block had seven or more owners, but blocks with less than seven owners could still be brought under the Act if all of them agreed to do so (s 12).
29. Dissenting owners could have their interests partitioned out by the land court (s 18).
30. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, University of Toronto Press, Toronto: 1974, p 297. See also T McIvor, *The Rainmaker: A Biography of John Ballance, Journalist and Politician, 1839–1893*, Heinemann and Reed, Auckland, 1989, pp 142–143.
31. With the Native Land Act 1888. See Ward, p 298. Sorrenson, p 175, notes that a few committees were formed and one auction was held under the 1886 Act.

and Thomas Mackay – all men with considerable experience in matters relating to Maori lands. Rees himself had long been an advocate of the incorporation of Maori landowners for administrative purposes, and his ideas on the subject had influenced Ballance in 1886.[32] James Carroll was a rising star in the Liberal party who would later become the first person of Maori descent appointed as Native Minister (1899–1912), while Thomas Mackay was a former Native Land Court judge who was at this time administrator of the West Coast Settlement Reserves in Taranaki.[33] Since Mackay died before the task was completed, the final report was largely the work of Rees and Carroll.

The commissioners were called upon to answer five questions, which, as their final report put it, could:

> be fairly condensed into two, thus:—
> 1. What are the origin, nature, and extent of the present defects (a) in the Native-land laws, (b) in the alienation of interests in native land, and (c) the Native Land Courts?
> 2. What are the principles on which the Native lands should henceforth be administered, so as to benefit both Natives and Europeans and promote settlement?[34]

Based on their findings with respect to the first question, the commissioners recommended in answer to the second that the Native Land Court and the Native land laws, 'as presently constituted', should 'cease to operate'.[35] They proposed that a comprehensive new system for the management of Maori lands be created.[36] This was to be based on committees representing individual blocks and tribes. These committees would carry out most of the work hitherto undertaken by the Native Land Court in the determination of titles, with a stripped-down land court providing 'a tribunal powerful enough to decide cases of dispute as a last resort'.[37] Administration of Maori lands was to be the responsibility of a 'Native Land Board'.

In commenting on previous Native Land legislation the commissioners had advanced two principal reasons why, in their view, Ballance's 1886 Act had been 'inoperative'.[38] The first was:

> that the total control of their lands was taken away from the Maoris and placed in the hands of persons not in any way responsible to them.

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32. See Ward, p 296, and McIvor, p 141
33. See DNZB, vol 2, pp 409–411 (Rees) and pp 78–81 (Carroll), and G H Schofield (ed), *A Dictionary of New Zealand Biography*, Wellington, 1940, vol 2, p 22 (Mackay) for brief biographies.
34. Report, AJHR, 1891–II, G-1, p v
35. Ibid, p xxv. Carroll also wrote a sub-report which disagreed with Rees' conclusion that the Crown should resume its pre-emptive right (pp xxvii–xxx). Thomas Mackay died before the commission's work was completed, His notes contained a rather modest proposal for the creation of a Native Land Administration Board, the principal role of which would have been to advise Maori landowners on matters relating to title and administration; AJHR, 1891, G-1A, pp 20–21.
36. The following discussion, unless otherwise noted, is derived from pp xxii–xxiv of the report.
37. Titles would be issued by the Native Land Board, acting on the advice of committees.
38. Rees commission, AJHR, 1891, G-1, pp xvi

The second reason was that participation:

> was made optional and not imperative. The Natives objected to being totally deprived of all authority and management of their ancestral lands, and therefore they refused to bring those lands under the Administration Act.

The commissioners concluded, in other words, that Ballance's experiment had failed because Maori owners wanted to retain some kind of ongoing control over their land, whatever might be done with it. If most or all of the board members had been elected representatives of the landowners, it was implied, the scheme might have succeeded. Failing that, compulsion would have been necessary to make it work as intended.

The 'Native Land Board' scheme which the commissioners put forward in their 1891 report was quite far-reaching. It was proposed that the board consist of six members, including three Crown appointees and three elected by 'the whole tribal committees of the North Island [sic]'. The board was to hold 'plenary powers in regard to Native-land matters, save where the rights of Europeans come into question', and have 'full power to act in all things as trustee of the Native lands for the Native owners'. The owners were to appoint committees for each block, who would 'choose sufficient reserves for the people, and instruct the Native Land Board to lease or sell the balance as the case may be'. Should the owners fail to form a committee, the board could step in and itself 'perform the duties incumbent on owners. When committees failed to carry out their assigned work, the board was to 'perform it for them'.

All transactions between Europeans and Maori which affected Maori lands – other than land with a single owner, or whose owners held it in partnership[39] – would have to be carried out or approved by the Native Land Board. In the case of Maori freehold land, all leasing and sales proposed by the committees would be carried out by the board. The commissioners also recommended that all of the Maori reserved lands in the North Island be vested in the proposed board, including those presently administered by the Public Trustee,[40] and that this board be given 'sole power and authority' over all Maori lands for which titles had not yet been determined by the Native Land Court. The board was to enjoy 'the sole power of leasing of all Maori tribal lands'. It would act on the directions of the block committees, but the leasing itself was to be carried out 'under regulations somewhat similar to the Waste Lands Regulations'. That is, once the committees handed lands over to the board for leasing, they would be treated much as if they were Crown lands of a comparable category. Where sales were concerned, the Crown alone would be allowed to purchase Maori land in fee-simple.[41]

Far-ranging as these provisions would have seemed at the time, they were only the beginning. The commissioners envisaged their Native Land Board as an

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39. Question no 4-v, p xxiii
40. Which at this time included, under separate pieces of legislation, the reserves in Westland (including Greymouth), the Nelson and Wellington Tenths reserves, and the West Coast Settlement Reserves in Taranaki. See D M Loveridge, 'The Adoption of Perpetually-Renewable Leases for Maori Reserved Lands, 1887–1896', Wai 145 record of documents, doc D1.

institution whose influence would be felt in almost every facet of Maori dealings with the Crown. As they put it:

> To this Board could be relegated most of the matters now coming before Parliament by petition. To this Board all applications for rehearing might be referred. . . . Not only would the Native Land Board relieve Parliament of the bulk of the Native work now cast upon it, and which it cannot understand – it would also relieve the Courts of much labour. The Maori real-estate management would practically devolve on the Board. The Trust Commissioners' Courts, the Supreme Court and Court of Appeal, the officials of the Stamp and Registration Offices, the Survey Department, the Native Department, and the Native Land Court would be more or less relieved; while the Public Trust Office would be delivered from the burden of administering the large reserves which now embarrass it.[42]

With such a board in control, the commissioners concluded, 'The public would be able to obtain land in many districts now locked up, in suitable areas, at an inconsiderable cost, with perfect titles, and without delay'.

The Rees–Carroll scheme clearly was intended to correct the deficiencies which the authors had identified in Ballance's ill-fated 1886 legislation. The commissioners sought to provide for Maori representation by formally incorporating committees of owners and tribal representatives into the proposed land administration system. They sought to ensure that Maori would cooperate by giving the Native Land Board control over transactions affecting most kinds of Maori land, and also by enabling the board to compel intransigent or reluctant owners to alienate unused lands. If their plan had been fully implemented, the result would have been a rather draconian regime – and probably an unpopular one. It is by no means certain that the provisions for representation would have been considered adequate by landowners: for one thing, the Maori members of the board were to be appointed by the 'Tribal Committees' rather than being elected by owners themselves. Similarly, it seems certain that the provisions for the board to make decisions about alienation (where committees failed to act) would have been seen as a breach of the owners' Treaty rights under article 2.

We will never know, however, if the 1891 plan would have worked any better than the 1886 system. The recommendations of the Native Land Laws Commission were adopted by the Liberal government in a selective manner. The comprehensive system for Maori lands administration based on block committees and a Native Land Board was not one of the pieces which found favour. The 'Native Land Purchase Board' which was established in 1893 bore some superficial resemblance to the commissioners' 'Native Land Board', but as the name suggests its sole concern was the permanent alienation of Maori land. Maori representation on the Native Land Purchase Board was nominal, and the only role assigned to the

41. Carroll objected to the idea of a resumption of Crown pre-emption (pp xxvii–xxx). He argued that the best way to encourage Maori to dispose of lands which were surplus to their needs was to ensure that they would receive the best possible prices for them. 'Evidence adduced before the Commission', he noted, 'proved conclusively that, where the Government interposed with its pre-emptive right . . . the Natives could not obtain a fair price for their land', p xxviii.
42. Page xxiv

landowners themselves was to accept or reject the board's offers.[43] On the whole, it is not unreasonable to conclude that the Liberal government chose to adopt the sections of the 1891 report which would assist in their land-buying programme – such as Rees' recommendation that the Crown resume its pre-emptive rights – and to ignore those which might impede the march of Liberal progress.[44]

But seven years and hundreds of thousands of acres later the situation was different. In response to the petition to the Queen the Premier himself would introduce legislation for the establishment of Native Land Boards. A draft of the proposed 'Native Lands Protection and Administration Bill' emerged early in 1898, and was widely circulated and discussed at numerous hui.[45] The initial response was largely unfavourable, though, and a number of petitions opposing the Bill were drawn up. A national meeting was then held at Papawai in the Wairarapa in May of 1898, at which Seddon, Carroll, and other Government representatives and sympathisers explained the Bill at length and urged its adoption.

Their explanations were not, on the whole, very well received. Three main factions were represented at the Papawai meeting. There were, firstly, the Kotahitanga supporters, who wanted (as contemporary usage had it) some form of 'home rule' in which a Maori Parliament would enjoy complete jurisdiction over Maori land. Further Government land legislation simply was not on their agenda. The second group also rejected the very concept underlying of the Protection Bill. Kingitanga supporters wanted all Maori lands to be brought under the Maori King, to be administered by a 'Maori Council', as proposed in a Bill prepared earlier by Henare Kaihau (member of Parliament for Western Maori).[46] These two factions joined forces to do battle against the third, which was made up of Maori who (as Paratene Ngata of Ngati Porou put it) saw Parliamentary action as the only way Maori could get 'the redress and assistance that they hope for'.[47] This pragmatic minority, which drew much of its support from the East Coast, wanted some kind of legislation to facilitate the administration of Maori land to be enacted immediately.[48]

The last-named group was the only one prepared to cooperate with the Government and promote its Protection Bill. Seddon accordingly asked the people involved to propose any amendments to his Bill which they considered desirable. This was carried out, and a much-altered version of the Bill was drawn up during June and circulated.[49] It called for the formation of Native Land Boards in designated districts, made up of the local Commissioner of Crown Lands and four

43. See the Native Land Purchase and Acquisition Act 1893; Martin, p 18; and Brooking, p 85
44. See Brooking, pp 84–85
45. The proceedings of six hui held during March, April, and May, are reproduced in 'Notes of Meetings between His Excellency the Governor (Lord Ranfurly), The Rt Hon R J Seddon, Premier and Native Minister, and the Hon James Carroll, Member of the Executive Council representing the Native Race, and the Native chiefs and peoples at each place, assembled in respect to the proposed Native Land Legislation and Native Affairs generally during 1898 and 1899', Wellington, 1900, pp 1–47. See AJHR, 1898, I-3A for comments by Paratene Ngata (pp 56–57) and Te Heuheu (p 25).
46. His Maori Councils Constitutional Bill was introduced in 1897 and 1898. It proposed the creation of a Maori Council sitting under the mana of the Maori King, which would assume full power over all matters relating to Maori land (among other things). See Williams, p 103.
47. AJHR, 1898, I-3A, p 72 ?882
48. See Ngata's account of Papawai in AJHR, 1898, I-3A, p 57.

Maori elected by local landowners.[50] This board would act as an agent for block committees, arranging for the lease of such lands as the committees decided to vest in it, and would have all the powers of the Native Land Court over such lands. 'The Judges of the Native Land Court', one clause of this 'Papawai Bill' cheerfully declared, 'are hereby dispensed with'.

Opponents of the original Protection Bill continued to mobilise over the winter of 1898.[51] A committee was set up, based in Wellington, to lobby against it and get petitions ready for presentation to Parliament. They eventually collected some 10,000 signatures from Maori, objecting to the Government's proposals. The supporters of the 'Papawai Bill' hastened to circulate their own petitions, garnering some 3000 signatures over the next three months – again, mostly from the East Coast.[52]

While this went on, the Government proceeded to draw up a new Bill – apparently without much reference to the Papawai recommendations. Laid before the House by the Premier on August 3rd, 1898, as the 'Native Lands Settlement and Administration Bill',[53] it provided for the creation of a suitable number of Native Land Districts. Each of these was to have a Native Land Board consisting of five members. These boards were to be made up of the local Commissioner of Crown Lands plus two Europeans appointed by the Crown and two Maori elected by the landowners of the district. One Maori member would be required for a quorum.

The clauses of the legislation relating to land administration were a curious mixture of compulsory and voluntary features. The Bill was not to apply automatically to all Maori lands, but neither was the decision left up to individual block committees. Instead, the landowners of each district were to decide if the legislation should be adopted for any given district – with a simple majority being required if a vote had to be taken (cl 11). If the landowners of a district agreed to come under the Act, then 'all Native lands therein' would be vested in the Native Land Board, in trust for the owners (cl 13), and the board would exercise all the powers of the Native Land Court over lands vested in it (cl 21). The boards were also empowered to set aside reserves from the vested lands, for residence, cultivation and other purposes, if they deemed it necessary (cl 18). The balance could be leased for a maximum of 42 years (a 21-year term plus one renewal), on terms set by the board (cl 16). Provision was made for the Native Land Board to borrow the funds required to prepare vested lands for leasing (cl 32).

The new 'Native Lands Settlement and Administration Bill' was sent straight to the Native Affairs Committee for consideration in August of 1898. The committee was then faced with the rather formidable task of considering a numerously-signed set of petitions relating to the Government's original Protection Bill, another set of

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49. Reproduced in AJHR, 1898, I-3A, app B, pp 110–112. The amended Bill was formally presented to Seddon at a meeting held in Wellington on 5 July 1898: see 'Notes of Meetings', pp 48–52.
50. Clause 2 of this draft Bill stated that the Maori members were to be 'appointed', but see cl 39–40.
51. The Government continued to meet with various Maori groups, to discuss the original Bill and the Papawai amendments. Two such hui are covered in see 'Notes of Meetings', pp 52–66 (1 August and 26 September 1898).
52. AJHR, 1898, I-3A, p 86
53. Reproduced in AJHR, 1898, I-3A, pp 94–109

petitions relating to a revised version of this Bill (the 'Papawai Bill'), and the Government's new Bill – which bore little resemblance to the subjects of either petition. During September and October witnesses from both sides were heard, and were subjected to vigorous cross-examination by Maori members of Parliament supporting the witnesses' opponents. Wi Pere of Eastern Maori, for example (who had spoken in support of the original Bill at Papawai) at one point accused Mr. Te Heuheu of Tuwharetoa (who opposed it) of misleading the committee,[54] while Henare Kaihau of Western Maori and Paratene Ngata spent a good deal of time exchanging personal and political insults.

In the end more heat than light was generated. Despite the length of the hearings, and despite the fact that Paratene Ngata and his supporters repeatedly requested that some kind of administrative scheme be implemented in 1898 – for their own districts if a national scheme was not possible[55] – nothing was done. The Native Affairs Committee concluded that it was 'impossible, at this late period of the session, to give due consideration to this measure', and recommended that the Bill stand over until the following year.[56] According to one biographer, Premier Seddon was by this stage feeling so 'harassed and irritated' by the conflicting demands of the rival factions that he was happy to go along with such a postponement.[57]

These factions returned to the fray in 1899. In the 1898 their only significant point of agreement had been that land sales should cease. The new session brought signs of a growing consensus among Maori that some kind of a board or council system should be (or, perhaps, would have to be) adopted. Parliament had received a new set of petitions pointing in this direction, and the Native Affairs Committee sat to consider them, with a view to working out a compromise.[58] This year Maori Members of Parliament did most of the talking.

The first to give evidence was Henare Kaihau of Western Maori. Basically, he suggested that if the Government was prepared to give way on the question of granting some measure of self-government, as outlined in his earlier Maori Council Bill, the people he represented would be prepared to accept the adoption of some of the land administration measures proposed in the Government's Native Lands Settlement and Administration Bill of 1898.[59] The people he spoke for would want such a land council to have full control over alienations within its district, and to have all the powers of the Native Land Court.[60] Kaihau was followed by Hone Heke of Northern Maori. Heke's personal preference was for all restrictions upon Maori lands to be removed. He was, however, prepared to support a modified version of

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54. AJHR, 1898, I-3A, p 24
55. As noted above, both the Papawai Bill and the Government's revised Bill provided in different ways for the land administration scheme to be applied selectively.
56. AJHR, 1898, I-3A, p 1
57. R M Burdon, *King Dick: A Biography of Richard John Seddon*, Whitcombe and Tombs Ltd, Christchurch, 1955, p 184
58. The proceedings of three meetings between the Government and various Maori groups in March of 1899 are covered in 'Notes of Meetings', pp 66–88. They provide a useful insight into the chief concerns at this stage of the proceedings.
59. See especially AJHR, 1899, I-3A, p 3 ?3
60. See 'Clauses proposed by Mr Kaihau, MHR', AJHR, 1899, I-3A, pp 24–25, and NZPD, vol 110, p 740 (Seddon)

the Government's 1898 Bill, provided that bringing lands under the control of boards was optional. That is, he opposed any such measure unless the initiative lay solely with owners. 'It should not be', he stated, 'that the Board have the immediate and absolute right to control and administer all or any Native lands unless in the first place the owner or owners submit their lands for the Board to administer and control'.[61] Heke was also opposed to giving boards the powers of the Native Land Court, unless all of the boards' members were elected representatives of the owners.

Wi Pere of Eastern Maori was the last to speak. He continued to support the Government's 1898 Bill, but wanted modifications which would strengthen the power of the boards. Like Heke and Kaihau, Pere thought that block committees of owners should be able to dictate which of their lands were made available for alienation. 'It should be for the owners', he stated:

> to tell the Board what part of the land they propose to lease, and what part they propose to retain for any particular specific purpose, and then, having informed the Board of their wishes, it will be the duty of the Board to see that their wishes are carried out.[62]

Like Kaihau (but for different reasons), but unlike Heke, Pere wanted the boards to have a monopoly on the sale and lease of the lands in their districts. All lands would come under the Act, and those who did not wish to go through the boards would be unable to lease their land. Allowing 'private arrangements' to continue without board involvement, Pere thought, 'will simply again result in the evil leases of which we have had experience in times past'.[63] If, on the other hand, all alienations had to be arranged through the boards, he was certain that Maori lands 'will be put on the same footing as lands leased by Europeans to Europeans', and their rental rates would rise to market levels.[64]

Maori landowners, in other words, should be free to ignore the boards, but if they did should not be able to lease their lands. And Pere demanded further limitations. He proposed that:

> Where lands are shut up and not worked by the Native owners, the Board should be given power to make a stipulation: that if those lands are not worked or some return got from them within a specified time, then the Board shall have the right to take over the control and administration of those lands and see that something is done with them. That would still be for the benefit of the Maori owners – that is, with regard to people who are too lazy to work their lands so as to derive any benefit or return from them.[65]

To put his position another way, Pere felt that:

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61. AJHR, 1899, I-3A, p 12 ?11
62. Ibid, p 14
63. Ibid
64. Ibid, pp 15, 20 ?5
65. Ibid, p 15

> the principle desire of Native owners, generally speaking, is that they should retain the mana of their own land. Let them retain the mana of their own land, but they must work the land. If they like to work the land with their own hands, well and good, but if they like to put the Board in the position of their hands and let the Board do the work for them that will also meet the case.[66]

The people on the East Coast, he told the committee, wanted such a system even if those in other parts of the country did not.

As a result of these hearings, the Native Affairs Committee recommended to the Government in October of 1899 that 'legislation be introduced this session to, as nearly as possible, meet the views of the Natives'.[67] Shortly afterwards a revised version of the Government's 1898 Bill was introduced in the House. This Maori Lands Administration Bill probably pleased Hone Heke more than anyone else. It proposed the adoption of a land council system for the North Island (only) based on block committees of owners, whose permission would be required before land could be vested in a council. The owners could also chose whether or not the land council should be able to exercise the powers of the Native Land Court over their land. Private alienations would be allowed, but all transactions had to be approved by a council, which among other things was required to ensure that the vendor or lessor had 'sufficient land left for his occupation and support'.[68] Both Heke and Pere supported the new Bill, but none the less it lapsed without being passed. According to Seddon, speaking in 1900:

> Last session amongst the Maori representative there was a divergence of opinion, and so material was it that they were unable to proceed.[69] They asked that we should stay proceedings with respect to the purchase of Maori lands, to give the Maoris an opportunity during the recess of again reviewing the proposed legislation, and bring it up this session.

'That course', he concluded, 'was followed'. The requested 'stay in proceedings' was provided in the Native Land Laws Amendment Act 1899, which was passed on 24 October 1899.[70] Section 3 specified that Native land could no longer be purchased by the Crown, the only exception being made for the completion of sales where sale agreements had already been entered into.[71]

The deadlock reached in 1899 was, in essence, the same one which had arisen at the Papawai meeting. The supporters of Maori 'home rule' remained at odds with those who considered it both necessary and desirable to seek a solution to Maori problems through the Parliament of New Zealand. The Government's decision to stop buying Maori land was probably a significant factor in tipping the scales in favour of the 'legislative' faction, along with the appointment of James Carroll as

66. Ibid, p 20 ?5
67. Report, 3 October 1899, AJHR, 1899, I-3A, p 1
68. NZPD, vol 110, pp 740–745
69. At the time Hone Heke had accused Seddon of cutting short the proceedings of the Native Affairs Committee before the Maori members could reach a consensus: NZPD, vol 110, p 287.
70. See NZPD, vol 111, p 264. The Act was presumably needed to stop the statutorily-stipulated expenditure of funds on land purchase. It was repealed in 1902.
71. Which took in almost 800,000 acres of Maori land in 1899–1900: see AJHR, 1900, G-3

Native Minister in December of 1899.[72] In any case, this group succeeded in dominating the next meeting of the Maori Parliament, held at Rotorua early in March of 1900. Proposals were put forward and approved which led to the introduction of two sets of legislation to Parliament later in the year. One dealt with land administration[73] and the other with local government. The latter provided for the creation of elected councils for Maori communities, which would enjoy powers comparable to those exercised by European local bodies. In return for the support of the 'legislative' faction for this measure, the 'home rule' faction was prepared to support a Bill setting up a board system to facilitate the administration of Maori lands.[74] One key issue, however, was not resolved at Rotorua: the question of whether the vesting of land in these boards would be voluntary or compulsory.

When the Maori Lands Administration Bill was committed on 11 October 1900, Premier Seddon commented on the difficulties which had attended its birth. A different Bill, he noted, had been submitted to Maori for consideration, and 'brought before the House and circulated':

> The difference between the two Bills was material. Under the one Bill the Maori landowners are given the right voluntarily to surrender their lands to the Board. . . . In respect of the other Bill – that vesting the land in the Board – it was made absolute – that was, immediately the Board was formed in the district all the papatupu land, as well as any land under the Land Transfer Act or any other act, was immediately vested in the Board.

Opinion had been divided, Seddon stated. On the one hand, 'Exception was taken by a large section of the Natives to their lands, without their consent or without their being consulted, being handed over to this Board'. On the other, 'A very large section of the Natives were afraid of this voluntary system. Some of them say they are so slow in coming to conclusions that they would not within a reasonable time bring their lands under the Act'.[75]

This fundamental issue was not resolved until the last moment, when the two Bills were placed before the Native Affairs Committee. As Seddon put it:

> we used the Bill containing the voluntary system as the parent stock upon which could be drafted the absolute [system] – if the majority of the Maoris favoured that. I

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72. Alan Ward, 'James Carroll', DNZB, vol 2, p 80. Also, the Government had extended an olive branch to the Kingitanga, seeking a compromise. It was proposed, among other things, that Mahuta be appointed to the Legislative Council. Such measures were discussed with Waikato representatives as early as early as March of 1899, if not before: see 'Notes of Meetings', pp 81–88, Auckland, 18 March 1899).
73. The first Native Lands Administration Bill was introduced by Carroll on 16 August, but was allowed to lapse after first reading. A Maori Lands Administration Bill No 1 was then introduced by Seddon on 2 October, but was also allowed to lapse after first reading. A Native Lands Control and Administration Bill was introduced by Seddon on 25 September, which went to the Native Affairs Committee on 11 October. The Maori Lands Administration Bill No 2 introduced by Seddon on 3 October was the basis for the Act finally passed on the 12 October.
74. See Williams, pp 106–109, for a discussion of the 1899 deadlock and its resolution. Apirana Ngata had played a leading role on the pro-Government side. According to G V Butterworth, 'The Politics of Adaptation: the Career of Sir Apirana Ngata, 1874–1928', MA thesis, 1969, p 43, however, 'Ngata's role in this should not be overstated'.
75. NZPD, vol 115, p 166

> may say that when the matter came before the Committee there was no support at all of the absolute system – practically none. Such being the case, we are now dealing with this bill as amended by the Committee.[76]

As introduced, and eventually passed by the House, this Maori Lands Administration Bill contained no provisions which forced Maori to bring their lands under the proposed Maori Land Councils.

According to the Native Land Laws Commission of 1891, the principal reason for the failure of Ballance's earlier land board experiment was that, given a choice, Maori had opted not to become involved. Seddon could not ignore this uncomfortable precedent, but chose to down-play it. 'We have had legislation from time to time in the past', he acknowledged, 'and each measure was supposed to solve the difficulty':

> but the trouble had always arisen from the fact that the Maori landowner had no confidence in the legislation. Look at Mr Ballance's Act of 1886 – one of the most beneficial measures that could be introduced, and which would have saved thousands [of acres of land] to the Maoris; but the Maoris had no confidence in it, and it was practically a dead letter.

Anticipating a potential line of attack by the Opposition, the Premier expressed confidence that history was not about to repeat itself. 'Members may say', he asked rhetorically, 'How do you come to that conclusion?' Seddon's answer was:

> I say we have the chiefs and representatives of the Maoris in the north, east, and west of the North Island. . . . We have had the King natives here for the first time taking part through their chiefs or arikis in the discussion of this proposal. They are now asking for this legislation.

In short, there was no need for any concern because all of the principal Maori leaders had declared their support for the new land council scheme. Assured that the Government was starting out 'with . . . the confidence of the Maori landowner', Seddon predicted that 'once a move is made and this Bill is passed, practically the difficulty in respect to our Native lands in the North Island is solved'. That was his opinion, he declared, 'and I have the assurance of those who are able to advise me that that will be the case'.[77]

It should be noted here that the Premier's closest advisers on this legislation included the Native Minister, James Carroll, and Apirana Ngata, one of the authors of the Rotorua compromise. But Ngata, it later transpired, saw the Maori Lands Administration Act 1900 as 'an unworkable compromise between opposing principles', which he only accepted as being better than nothing at all.[78] One of the 1907 reports of the Royal Commission on Native Lands and Native Land Tenure, which he co-authored, would conclude that the 1900 Act had been 'doomed to fail'

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76. Ibid
77. Ibid, p 168
78. According to Williams, p 111. Ngata objected in particular to the combination of judicial and administrative functions. Hone Heke gave voice to very similar objections during the 1900 debates in the House.

for exactly the same reasons that the 1886 Act had failed.[79] And the Native Minister's private opinion may have been similar. One historian notes that Carroll could hardly have failed to realise that the 1900 Act had the same basic flaw as the 1886 Act, and that the land council system would in fact be likely to 'reduce the rate at which land could be made available for settlement'.[80] It is difficult to argue with this observation: in 1891 Carroll himself had advocated a compulsory system of Maori land administration as the only way of overcoming the flaws of the Ballance plan. There are grounds for supposing that Seddon was misled by his advisors on this issue – or perhaps found it expedient to be misled by them.

If the principal Maori supporters of the Bill were pessimistic, what of its former opponents? R J Martin has concluded that 'Maori support for the measure was a matter of expediency rather than approval of the policy as a whole'.[81] By simply agreeing to the passage of the Maori Land Administration Act 1900, which did not actually bind them to any action, they secured the continuance of the Crown's voluntary moratorium on new purchases. The question in 1900 was, would Maori landowners also consider it expedient to vest their unused lands in the Land Councils? And what would the Government and Legislature do if the 1900 Act, like its predecessor of 1886, failed to achieve the expected results?

79. AJHR, 1907, G-1c, p 6
80. Martin, p 79
81. Ibid, p 118

CHAPTER 2

THE MAORI LANDS ADMINISTRATION ACT 1900

The preamble to the Maori Lands Administration Act 1900 identified four problems which Parliament hoped to alleviate with this legislation.[1] The first concerned the decline in the amount of land left in Maori hands after a decade of intensive purchasing by the Crown. The petitions of 'chiefs and other leading Maoris', it was noted, had repeatedly requested:

> that the residue (about five million acres) of the Maori land now remaining in possession of the Maori owners[2] should be reserved for their use and benefit in such wise as to protect them from the risk of being left landless . . .

The second problem was the state of those same millions of acres. It was deemed to be in the best interests of all of the people of New Zealand, Maori and Pakeha alike, to make provision 'for the better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive', although Maori were to be encouraged and protected 'in efforts of industry and self-help'. Finally, it was considered necessary to prevent 'useless and expensive dissension's and litigation' when Maori lands were dealt with: 'better administration' was identified as the remedy here.

The stated concerns which the 1900 Act was designed to address, in other words, were that Maori might not have sufficient lands left for their future needs if any more was permanently alienated; that the lands which they retained were not being profitably used by either Europeans or Maori; and that the procedures in place for managing them were inadequate. These problems were to be tackled by means of a new system of regulation for Maori freehold lands in the North Island.[3]

To begin with, section 5 of the Act specified that at least six 'Maori land districts' were to be formed. Each of these was to have a 'Maori Land Council'[4] consisting of between five and seven members. Included were a president and two or three members appointed by the Government, plus two or three members elected 'by the Maoris of the district out of their number'.[5] The Government-appointed members

1. Stout and Ngata (AJHR, 1907, G-1c) described the preamble as a policy statement, but it is carefully worded so as to avoid actually stating approval of the first item.
2. As noted earlier, Maori appear to have held approximately 7.5 million acres at this time. Certain categories of land, however, may not have been counted in reaching this figure.
3. Although the 1900 Act applied to the whole country, the Native Land Court retained jurisdiction over Maori freehold lands outside of the North Island, and continued to do so until a South Island Maori Land Board was created in 1914. See Part II.

were to include at least one Maori (s 6). At least half, and probably a majority, of the members of any given council would thus be Maori.[6] A simple majority of the membership of a land council would constitute a quorum, but only if their number included at least one Maori member.[7]

These Maori Land Councils were given three related roles to play. The first involved the supervision of a revised system of land alienation, and the second, the exercise of judicial powers relating to the ownership of Maori lands. Both of these represented intrusions into areas which had previously been the sole domain of the Native Land Court. The third role was to act for Maori landowners in the administration of lands vested in or placed under the authority of the land councils.

The centrepiece of the new system for regulating alienations was 'papakainga' land. The Maori Land Councils were to proceed 'with all convenient speed'(s 21):

> to ascertain and determine what land each Maori man, woman and child has suitable for his, her or its occupation and support, and to determine how much thereof and what portion is necessary to be a papakainga[8] for each such Maori for his or her maintenance and support and to grow food upon . . .

Each individual would receive a certificate which clearly identified themselves and their papakainga, which land became 'absolutely inalienable'.[9] Nor could any alienation of Maori freehold land, whether by lease, sale or mortgage, take place unless each of the owners was able to prove that he or she had 'sufficient land left for his occupation and support'. This involved producing either a papakainga certificate or other evidence that a papakainga had been allocated to them.[10] Although provision was made for existing restrictions on the alienation of any given piece of Maori freehold land to be removed by the Governor, on the

4. Described as 'Native District Land Councils' in earlier Bills (see B Gilmore, 'Maori Land Policy and Administration during the Liberal Period, 1900–1912, MA thesis, Auckland, 1969, p 17), and sometimes referred to subsequently as 'Maori District Land Councils'. I have preferred the shorter title. It would appear that the title 'land board' was discarded at some point because it was considered in some quarters to imply a lack of consultation. See, for example, Carroll's comments in 1898: 'Notes of Meetings', pp 11–18 (Huntly, 4 April 1898).
5. Maori could be members of only one land council at a time. Section 7(10) specified that 'Every election shall be held in the same manner, as nearly as may be, as in the case of an election of a member of the House of Representatives for a Maori electoral district.' The Maori Land Council regulations issued in January of 1901 stated that any Maori 21 years of age or over was entitled to vote in land council elections for the district in which they resided, and any male Maori aged 21 or over could be a member of a land council: *New Zealand Gazette*, 7 January 1900, p 1.
6. That is, in a five-person land council, at least three would necessarily be Maori (one appointed plus two elected), and in a seven-person land council at least four would be Maori (one appointed plus three elected). A six-person body could include either three or four Maori.
7. Also, all orders issued by councils required the signature of at least one Maori member before they could be sent to the land court for confirmation (see below). In 1903 the Act was amended to define a quorum as one European and two Maori members, for all but 'purely formal' matters (s 4).
8. Defined in s 3 as 'an inalienable reserve set aside for the occupation and support of any person of the Maori race'.
9. The only exception was under s 21(7), where all of the land owned by an individual Maori was unsuitable for their occupation and support. In such cases the land could be exchanged, or sold to buy more, under to supervision of the land council.
10. Sections 23 and 25. There were also several requirements relating to the nature of the alienation instrument and the method of payment of the money, similar to those in force under the 1894 Act.

recommendation of a land council, it was explicitly stated that this was not to be construed as authorising the alienation of papakainga lands (s 24).

Subject to this limitation, all Maori freehold land was potentially open to alienation. Where leasing was concerned, the land councils were given final authority over all lands in this category, except that they could not waive or alter existing restrictions on alienation. They could, however, under section 24, recommend to the Governor the removal of any such restrictions.[11] The land council of the district in question had to consent to all leases. This consent could not be granted until and unless certain criteria had been met. These included production of the owners' papakainga certificates (or proof that papakainga land had been allocated), and of an instrument of lease which embodied a certified Maori translation. The lease agreement also had to carry the signature of a witness of a specified status[12] who attested 'that each alienating Maori understood the meaning and purport' of the document (s 25(2)).

Where sales – permanent alienations – were concerned, however, the Maori Land Councils had a limited role. If the land concerned was owned by only one or two individuals, then the new Act was deemed 'to in no way affect' the transaction. These sales would be dealt with under section 117 of the Native Land Court Act 1894, requiring approval by the court rather than the land councils.[13] If the land concerned was owned by three or more individuals, then the prior consent of the Governor in council was necessary, but the conditions required for a valid alienation were the same as those for leases under section 25 of the 1900 Act.[14] In addition, in the case of sales or mortgages witnesses had to certify on the instrument of transfer that they had seen the money paid to the vendor (s 25(3)).[15]

The land councils were thus charged with the duty of ensuring that all Maori landowners retained sufficient land for their future maintenance, and with the protection of their interests when lands were leased to private individuals or the Crown. The land councils had little to do with sales. The Crown, however, had promised in 1899 that it would not purchase any more Maori land for the time being, and the many restrictions on private purchase set in place during the mid-1890s remained in effect. For all practical purposes, new sales of Maori freehold land were suspended.[16]

The land councils were also given judicial powers for determining the ownership of customary lands, and for dealing with other ownership-related matters. These

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11. These provisions were modified but not substantially altered in 1903 (s 24).
12. A member of a land council, a stipendiary magistrate, a justice of the peace, a postmaster, or a licensed interpreter.
13. See also Sir John Salmond, 'Notes on the History of Native-Land Legislation', *The Public Acts of New Zealand 1908–1931*, vol 6, reprint, p 91. The following year, an amendment to the Maori Land Administration Act put leases of land owned by one or two individuals on the same footing (s 4).
14. This is not explicitly stated, but follows from the fact that specific conditions are laid down for sales in s 25(3), as noted below.
15. Between 20 October 1900 and 28 October 1907, restrictions were removed to enable the lease of 167,500 acres of land and the sale of 53,116 acres: National Archives MA 16/1 'Return' of 27 October 1907 (quoting the corrected figures added by hand to the typed original).
16. Crown and private purchases which were already under negotiation, however, could be completed (s 34 and 35 of the 1900 Act).

bodies were to 'have and exercise', with respect to all Maori lands within their individual districts (s 9):

> all the powers now possessed by the Native Land Court as to the ascertainment of ownership, partition, succession, the definition of relative interests, and the appointment of trustees for Native owners under disability.

These powers represented a substantial portion of those vested in the Native Land Court under the Native Land Court Act 1894 and its amendments. Section 14 of this Act had given the land court jurisdiction over (among other things), the investigation of title and the determination of ownership, the definition of relative interests in and the partition of land, and the determination of successions.[17] The Native Land Court had controlled the appointment of trustees for Native owners under disability by virtue of section 3 of the Maori Real Estate Management Act 1888.

Where ascertainment of ownership was involved, the land councils were to be assisted in their judicial role by 'Papatupu Block Committees' representing the claimants to each piece of customary land whose ownership required determination. These committees were to carry out their investigations 'having due regard to Maori customs and usages', and to provide the land council with a written report on the block and a sketch-map showing boundaries. The report was to identify the families and individuals with an interest in the land, and the relative shares to which they were entitled. After the land council had held a hearing at which all parties could be heard, it was empowered to issue an order confirming the report 'with such modification or alterations as it finds to be necessary' (s 19). The land councils was also able to call upon block committees for assistance when dealing with any other matters within their jurisdiction (s 11).[18]

None of the powers so conferred upon the land councils, however, were to be exercised 'unless and until directed so to do by the Chief Judge of the Native Land Court' (s 9). Further, any and all orders issued by land councils were to be forwarded to the chief judge. If no appeal was lodged within two months of his notification of the order in *Kahiti*, the chief judge was to 'countersign and issue the same, whereupon the order shall have effect as though it were an order of the Native Land Court' (s 14). The circumstances under which the chief judge might order the land councils to exercise these judicial powers – or decline to allow them to do so – were not specified in the 1900 Act.

This created a grey area which lasted until 1909. As John W Salmond (later Chief Justice Sir John Salmond) noted in his commentary on that year's Native Land Bill, the land councils:

> were in certain matters given the same jurisdiction that up to that time the [Native Land] Courts alone had exercised, but it was not made clear what relation existed between the provisions of that Act and the different provisions in pari materia of the

17. For the relevant amendments, see Statutes, 1895, no 52; Statutes, 1896, no 27 and 53; Statutes, 1897, no 25; and Statutes, 1899, no 30. 'Special Provisions' relating to these powers are detailed in Part V.
18. The Act thus assumed that the block committees formed to deal with uninvestigated customary lands (dealt with at s 16–20) would remain in existence after ownership had been determined.

> Native Land Court Act, 1894. Consequently the law contained two sets of different and inconsistent provisions dealing with the same matters, and also recognized two different bodies . . . having concurrent and discordant powers and duties in respect of the same matters.[19]

It should be noted, though, that chief judge of the Native Land Court had the power to both initiate and approve land council judicial operations, and also acted as the first stop in the process of appeal. When and if objections were made to a land council order, the chief judge could either investigate the matter himself or refer the appeal to the Native Appellate Court (s 10).

The land councils thus took over most of the land courts' responsibilities for confirming alienations of Maori land, and a portion (not clearly identified) of their responsibilities for ascertaining ownership. The new institutions' third role was administrative, and much of this was a new departure. The Native Land Court Act 1894 had had little to say about the administration of Maori lands. The relevant section dealt only with incorporation of the owners of specific blocks of land, with the approval of the land court.

The 1900 Act gave the Maori Land Councils sole authority over the approval of incorporations, superseding the Native Land Court (s 30).[20] But it also went a good deal further: the legislation offered Maori landowners the option of using land councils to manage their holdings. Two ways of doing so were set out. Firstly, section 28 provided that:

> Any Maori or Maoris, whether incorporated or other wise, owning Maori land may transfer the same, or any definite part thereof, by way of trust to the [Land] Council, upon such terms as to leasing, cutting up, managing, improving, and raising money upon the same as may be set forth in writing between the owners and the Council . . .

Where the owners were not incorporated, all of them had to approve the transfer of title to the land council (s 28), but a simple majority would suffice where they were incorporated (s 30(2)).

As noted, the land council's powers over a piece of land so vested in it would be restricted by the nature of the written agreement made with the owners. Further provisions were also made by the Act itself. Firstly, allowance was made for portions of the land involved to be turned into inalienable reserves at the request of the owners. This might include:

> such portion of such land as may be required for [the owners'] . . . occupation and support, and also to reserve any land as burial-grounds, eel-pas or eel-weirs, fishing-gronnds, or as reserves for the protection of native birds, or the conservation of timber and fuel for the future use of the Maori owners.[21]

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19. Sir John Salmond, 'Preliminary Note: Extract from Introduction to the Native Land Act, 1909, by Sir John Salmond', *The Public Acts of New Zealand (Reprint) 1908–1931*, vol 6, pp 91–92. This is an edited version of the memorandum which Salmond prepared in 1909 while counsel for the Law Drafting Office. The original is held with the Bills in the Legislative Library, and a copy in the New Zealand Room of the Auckland University Library.
20. Statutes, 1903, no 92 also empowered the land councils to incorporate owners for the sole purpose of operating a farm.

The initiative for making such reserves had to come from the owners themselves.[22] The land councils were not explicitly required to meet such requests, but given the nature of its relationship with the owners it seems likely that they would have been difficult to refuse.

Secondly, the land council could not sell the lands vested in it under section 28. The description of the scope of the written agreements with owners, quoted earlier, referred only to leasing as a method of alienation. The following sub-sections empowered the land councils to enter into agreements for the lease or mortgage of vested lands, but did not authorise permanent alienations of any kind.[23]

Once a given block had been vested in it, then, a Maori Land Council's freedom of action would be constrained by the original vesting agreement and by the aforementioned statutory restrictions. It must be emphasised, though, that the owner(s) would no longer be able to exercise any direct influence over the administration of their own land after vesting it in a land council. Their only means of exercising any control at all was through their elected representatives. Given the absence from the 1900 Act of any provision for returning lands held by the land councils to the control of their owners, either on request or after a fixed period of time, it is apparent that a decision to use the land councils' services in this manner was not one to be entered into lightly.[24]

The other method by which Maori landowners could use land conncils to manage their holdings did not involve vesting in trust. Rather, the land in question could be placed under the administrative control of a land council, subject to a modified set of statutory regulations rather than a set of terms agreed upon with the owners. This method could only be used where a block was held by 11 or more owners, who were not incorporated, but in this case the interests of dissenting owners could be partitioned out. (Under section 28, as noted above, where the owners of a block were not incorporated unanimous consent was required before the land could be vested in a land council.) Subject to proper provision having been made for papakainga, the land council would then 'For the purpose of the administration of such land . . . have all the powers of a [Crown] Land Board in respect of Crown Lands'.[25] These powers, however, were subject to one major restriction: the land council would have 'full power and authority to alienate by way of lease or mortgage, but not by sale'.[26] It would 'for all purposes of administration be deemed to be the owner of the land' (s 31(7)), but the ban on permanent alienation made the effect of the arrangement very similar to that of a vesting in trust under section 28.

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21. Section 29(1). A provision was added in 1901 for setting apart Native Townships; s 8(11).
22. Until 1903; s 17.
23. Note that Professor Ward is mistaken in noting that land councils were able to sell vested land: see 'Sir James Carroll', DNZB, vol 2, p 80.
24. The Act was amended in 1901 to allow owners to request the return of land to their control when a lease had expired. The land council, though, could 'decline to entertain any such request' if the land was subject 'to any right of renewal, charge, lien, or encumbrance'. See Statutes, 1901, no 42, s 8(11).
25. This was similar to the system enacted in 1886, and proposed by Rees and Carroll in 1891, in which the Native Land Board was to function much the same way as the (Crown) land boards where alienations were concerned.
26. Section 31(3). The only exception was provision for the sale of unsuitable papakainga land, as specified in s 21(7). See above.

The section 31 alternative was a rather clumsy method of circumventing the possibility that a few uncooperative individuals could prevent lands with multiple owners from being brought under the control of the land councils. It was soon abandoned for a more direct approach. In 1901 an amendment was introduced allowing lands with more than 11 owners to be vested when a majority of them (in both number and interest) agreed to the measure.[27] It seems unlikely, given that the amendment came into force before many of the land councils were in full operation, that much if any use was ever made of the original section 31.

Although the income collected from lands vested in or administered by the land councils was to be passed along to their owners, certain deductions would be made on the way. The land councils themselves had first call, being empowered to extract a sum sufficient to defray the cost of administration for each block. Next came deductions for all monies due 'in respect of any valid mortgage, lien, charge, or liability affecting the land'. What was left was to be paid – at 'prescribed intervals' – to the owners in shares proportionate to their individual interests.

This, then, was the new system put in place to protect Maori from the risk of becoming landless, to promote the settlement and utilisation of their unoccupied and unproductive lands while encouraging Maori industry and self-help, and to simplify procedures for land administration. A strong emphasis was placed on leases, rather than sales of Maori freehold land. This would serve to keep lands in Maori ownership while ensuring that those which the owners themselves could not utilise were available to others who would. Income from leasing lands which were surplus to requirements would provide owners with capital for the development of their remaining holdings, with papakainga ensuring that a sufficient amount of land remained available 'for [their] ... maintenance and support and to grow food upon'. The Maori Land Councils, which incorporated substantial Maori representation, would oversee most alienations, protecting the owners from fraud. They would also be available to administer any lands which the owners might care to vest in or sign over to the councils. These institutions might also provide, with the owners' participation, many of the judicial services which had hitherto been a monopoly of the Native Land Court.

On paper, this revised system for the administration of Maori lands looked reasonably promising. There were a number of areas which might require improvement or refinement – the question of the division of judicial powers between the land councils and the land court is an obvious example – but the system laid out in 1900 appeared to be a feasible compromise. The Crown had agreed to cease its purchase of Maori freehold land, on the understanding that a substantial proportion of that remaining in Maori hands would voluntarily be made available by their owners for utilisation under lease. An institution to expedite such leasing had been provided, in which elected representatives of the owners held a prominent position. As far as the Pakeha public and politicians were concerned, though, the

27. See Statutes, 1901, no 42, s 6. The instrument of transfer had to be executed by at least 10 owners who had secured the written authorisation of a majority in number and interest to do so. In 1903 this was altered to require the 10 to secure such approval at a properly-convened public meeting; see Statutes, 1903, no 92, s 20. Where 10 or fewer owners were involved, the original 1901 provision requiring unanimity remained in force.

proof of the pudding would lie in the eating: specifically, their sole criterion for appraising the success or failure of the scheme would be the amount of 'idle' Maori lands brought into production under the new regime. If this did not happen at a satisfactory rate – or was perceived not to be happening at a rate deemed to be satisfactory (quite a different matter) – then it was by no means certain that Parliament would continue to accept the voluntary principle. And it should be remembered that the Liberal Government of the day was the same one which was prepared to 'burst up the great estates' of Pakeha landowners in the name of closer settlement and greater agricultural production. Under the circumstances they were unlikely to be reluctant to use compulsion against Maori landowners if the voluntary principle failed to produce acceptable results.

CHAPTER 3

SETTING UP THE MAORI LAND COUNCILS, 1900 TO 1903

The Government moved quickly to put the new Maori Land Council system into operation. Barely a month after the requisite legislation was passed, in December of 1900, five Maori Land Districts were created in the North Island.[1] These were quite distinct from the Native Land Court's districts, and would remain so until 1914.[2] The new Maori Land Districts included, working from south to north and east to west: Aotea, Te-Ikaroa, Tai-Rawhiti, Waiariki, and Tokerau.[3] That it had been intended to create seven, rather than five districts at this time, though, is apparent from the descriptions of the Waiariki, Aotea, and Te-Ikaroa boundaries. These incorporated references to a 'Waikato' and a 'Maniapoto–Tuwharetoa' Land District, covering the west-central part of the North Island. Since non-existent districts had been used to define the said boundaries, it was necessary to issue corrected descriptions of Waiariki, Aotea and Te-Ikaroa soon afterwards.[4]

The mid-western gap in the land district coverage took some time to fill. It was another year before the 'Hikairo–Maniapoto–Tuwharetoa' Maori Land District was created. This included the King Country and part of the southern Waikato.[5] Another six months passed before the 'Waikato' Maori Land District was created in July of 1902.[6] It encompassed the northern Waikato up to Manukau and included the Coromandel Peninsula. Minor changes followed. In October of 1902, 'Hikairo' was

1. Proclamation of 26 December 1900, *New Zealand Gazette*, 7 January 1901, no 1, pp 9–10. According to Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1900*, Auckland University Press–Oxford University Press, Auckland, 1969, p 118, the boundaries were worked out by the same 'representative Maori committee' of parliamentarians which had considered the Bill at all stages.
2. As defined in 1894, there were at this time four Native Land Court districts; see *New Zealand Gazette*, 1894, no 82 p 1664. This remained the case until 1914: see part 2, below. Butterworth and Young, *Maori Affairs*, Iwi Transition Agency–GP Books, Wellington, 1990, p 62, are incorrect in stating that the Maori Land Districts and Native Land Court Districts were contiguous.
3. I have yet to find a contemporary map which shows pre-1914 Maori Land District or Maori Land Council (or board) boundaries. The Aotea Maori Land District covered the south and west of the North Island, encompassing Wellington, the Manawatu, and all of Taranaki. The Te-Ikaroa district lay to the southeast, covering the Wairarapa and southern Hawke's Bay. The Tai-Rawhiti district extended north from the latter, taking in northern Hawke's Bay and Poverty Bay up to East Cape. The Waiariki District was centred on Rotorua and also took in the eastern Bay of Plenty. The Tokerau District took in Northland.
4. Proclamation of 17 January 1901, *New Zealand Gazette*, 18 January 1901, no 8, pp 217–218
5. Proclamation of 18 December 1901, *New Zealand Gazette*, 19 December 1901, no 106, pp 2412–2413. The boundaries of the Waiariki Land District were amended at this time to accommodate the new one, and to extend it northwards to take in the whole of the Bay of Plenty.
6. Proclamation of 10 July 1902, *New Zealand Gazette* of same date, no 55, pp 1472–1473. The northern boundary of the Hikairo–Maniapoto–Tuwharetoa Land District were amended at this time.

dropped from the title of the Maniapoto–Tuwharetoa Maori Land District.[7] Two years later the Aotea and Maniapoto–Tuwharetoa Land Districts were tidied up so that their common boundary line no longer ran through the middle of certain blocks.[8] These were the last major changes in Maori Land District boundaries until 1910.

Most of the delays encountered in setting up the land districts were attributed to the reluctance of the Kingitanga to continue cooperating with the Government. Its leaders had agreed to the 1900 compromise which led to the Maori Land Administration Act. In 1901, however, Williams notes, they 'withdrew their consent because the Government refused to include enough territory within their council district'.[9] Another year passed before a new agreement was reached. This involved (among other things) appointing the Maori King, Mahuta Tawhaio Potatau te Wherowhero, to the Legislative Council, and the Kingite member of Parliament, Henare Kaihau, to the Waikato Maori Land Council.[10] In the event, although this did not result in continuing Kingitanga support for the land council system, it served to get the system into operation in the areas where the opposition had been strongest.

The work of supervising the setup of the land council system was assigned to a new 'Maori Land Administration Department', which was headed by a 'Superintendent of Maori Land Administration'. It appears that this department came under the Department of Justice for administrative purposes,[11] but that the Native Minister was responsible for operational matters.[12] In any case Patrick Sheridan, a veteran of the old Native Department,[13] was appointed Superintendent in 1901. He would hold this position until its abolition in 1906.

The records of the Maori Land Administration Department are now held by National Archives (the MA-MLA series). They appear to be substantially intact, but very little use has apparently been made of the material by historians. It is therefore difficult to appraise the department's role and effectiveness during its brief life. Barbara Gilmore, in her 1969 thesis, suggests that the land councils suffered from

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7. Proclamation of 23 October 1902, *New Zealand Gazette*, 30 October 1902, no 86, p 2401
8. Proclamation of 15 April 1904, *New Zealand Gazette*, 21 April 1904, no 33, p 1113
9. Williams, p 118. See also J L Hutton, 'The Operation of the Waikato–Maniapoto District Land Board', CFRT, Wellington, May 1996, app 4
10. Williams, p 119. The author refers to Kaihau's appointment to the 'Waikato–Hauraki Maori Land Council', which is not correct (see *New Zealand Gazette*, 19 March 1903, doc 20, p 811 for his appointment to the Waikato Land Council). According to R M Burdon, *King Dick: A Biography of Richard John Seddon*, Whitcombe and Tombs, Christchurch, 1955, pp 186–187, Seddon himself played a key role in these developments. Hutton, app 5, reproduces correspondence relating to the 1902 negotiations.
11. I suggest this because 1. there was no department in charge of Maori affairs for it to be attached to and 2. later comments refer to Maori lands administration as a Department of Justice responsibility during this period. In 1892 the old Native Department had been broken up. The Native Land Court had been transferred to the Department of Justice and the Native Land Purchasing Branch to the Department of Crown Lands. See Butterworth and Young, *Maori Affairs: A Department and the People who made it*, Iwi Transition Agency–GP Books, p 56.
12. Carroll is the only Minister whose name seems to appear in connection with Maori Land Administration matters. Butterworth and Young, p 61 mention the creation of a 'Superintendency of Maori Councils', which came under Carroll, but do not discuss the Maori Land Administration Department.
13. He had replaced T W Lewis as the head of the Native Land Purchase Department in 1892.

the absence of central coordination and direction during their short existence, citing the absence of a common set of rules of procedure as evidence of this.[14] She did not, however, make use of the Maori Land Administration Department's records, and may not even have been aware of its existence.[15]

A different conclusion is suggested by Sam Katene's more recent study of the early history of the Aotea Land Council (or board). His examination of the land council's problems over the issue of perpetual leases is particularly revealing.[16] Katene made extensive use of the MA-MLA series records. They show Sheridan playing an active part in the formation of land council policy and in day-to-day administrative matters. The latter impression is supported by a charge levelled by Te Heuheu Tukino in testimony to the Native Affairs Committee in 1905. The Maori Land Administration Department, he complained, had far too much power over the land councils. Even though the latter were 'composed of men who have been carefully selected from amongst the principal men of the tribe', and so were 'people of knowledge', whatever decision a council might make in a specific case:

> they have got to send a report . . . to the Government, and we have people behind the Government in the Government Departments here, – and I can mention the names of two or three of them; one is Mr Sheridan . . . – and if they oppose the recommendation of the Council . . . [then it] is not given effect to. Then, if they desire to hang up the report of the Conncil they can hang it up for six months, and if six months has gone by the recommendation of the Council dies through effluxion of time. [17]

Te Heuheu asked that the power of officials like Sheridan, together with the controls which they exercised in the name of the Governor in Council, be 'swept away altogether at once', and the land councils instead be given 'the power to act without them'.[18]

The Maori Land Administration Department records also indicate that James Carroll took a close interest in the business of the department and the land councils. The most that can be said at the present time is that an examination of the history of the Maori Land Administration Department would likely be both interesting and useful, both in its own right and for the light it would cast upon Government attitudes and intentions concerning Maori land administration during this formative period.

Notwithstanding their speedy creation in December of 1900, it took some considerable time before the first land councils were fully operational. for each land district the Crown had to select and appointment a president and two (or three) other members, and two (or three) Maori representatives had to be elected. These elections took some time to organise and carry out. Although returning officers

14. B Gilmore, 'Maori Land Policy and Administration during the Liberal Period, 1900–1912', MA thesis, Auckland University, 1969, p 100
15. See Gilmore, p 92, where the author notes (incorrectly) that all of the files of the Native and Justice Departments prior to 1906 had been destroyed by fire. The Maori Land Administration Department is not mentioned in the thesis, and its records are not cited in her bibliography of archival source-materials.
16. S Katene, 'The Administration of Maori Land in the Aotea District, 1900–1927', MA thesis, Victoria University of Wellington, 1990, pp 153–174
17. AJHR, 1905, I-3B, p 15 ? 6
18. AJHR, 1905, I-3B, p 19 ? 38–39

were appointed and polling places were designated in January of 1901 for the first five districts,[19] the writs were not brought down until March 11th. The elections themselves were not held until May 17th,[20] when three Maori members were selected for the Tokerau, Waiariki, Tairawhiti, Aotea and Te Ikaroa Land Councils. The results were gazetted on 13 June. It appears that the competition had been vigorous, with more than ten candidates being nominated in three of the five land districts. The exceptions were Tokerau, with six nominees, and Te Ikaroa with only three.

The problems encountered in the Waikato and the King Country evidently led to delays across the board, for the Crown's appointments to the five original land councils were not announced until December of 1901, shortly after the formation of the Hikairo–Maniapoto–Tuwharetoa Land Council was announced. On 14 December, presidents and members were appointed for the Tokerau, Waiariki, Tairawhiti, Aotea, and Te Ikaroa Land Councils. This, with the elected Maori members, gave five land councils with the following composition:[21]

Tokerau Maori Land Council

Edward Clay Blomfield, stipendiary magistrate (president – Crown appointed)
Henry Speer Wilson (Crown-appointed member)
Kiingi Ruarangi (Crown-appointed member)
Iraia Kuao (elected Maori member)
Herepete Rapihana (elected Maori member)
Wiremu Rikihana (elected Maori member)

Waiariki Maori Land Council

David Scannell, Native Land Court judge (president – Crown appointed)
Richard John Gill (Crown-appointed member)
Timi Waata Rimini (Crown-appointed member)
Te Kanapu Haerehuka (elected Maori member)
Wikiriwhi te Tuaaha (elected Maori member)
Pouawha Meihana (elected Maori member)

Tairawhiti Maori Land Council

William Alfred Barton, stipendiary magistrate (president – Crown appointed)
John Townley (Crown-appointed member)
Edward Pattricks Joyce (Crown-appointed member)
Heta te Kani(Crown-appointed member)
Pene Heihi (elected Maori member)
Wiremu Potae (elected Maori member)
Epanaia Whaanga (elected Maori member)

19. *New Zealand Gazette*, 7 January 1901, no 1, pp 10–11
20. *New Zealand Gazette*, 14 March 1901, no 28, pp 677–678
21. *New Zealand Gazette*, 19 December 1901, no 106, pp 2421

Aotea Maori Land Council

William James Butler, Native Land Court judge (president – Crown appointed)
Thomas William Fisher (Crown-appointed member)
Ru Reweti (Crown-appointed member)
Taraua Marumaru (Crown-appointed member)
Takarangi Mete Kingi (elected Maori member)
Waata Wiremu Hipango (elected Maori member)
Te Aohau Nikitini (elected Maori member)

Te Ikaroa Maori Land Council

William Pattison James, stipendiary magistrate (president – Crown appointed)
Ihaia Hutana (Crown-appointed member)
Te Whatahoro (Crown-appointed member)
Hoani Paraone Tunuirangi (elected Maori member)
Rupuha te Hianga (elected Maori member)
Mohi te Atahikoia (elected Maori member)

In mid-1902 the sixth land council came into being.[22] It was comprised of the following members:

Hikairo–Maniapoto–Tuwharetoa Maori Land District

George T Wilkinson (president – Crown appointed)
John Elliot (Crown-appointed member)
John Ormsby (Crown-appointed member)
Pepene Eketone (elected Maori member)
Eruiti Arani (elected Maori member)
Te Papanui Tamahiki (elected Maori member)

The final appointments for the seventh land council,[23] however, were not announced until March of 1903, giving the Waikato Maori Land Council the following composition:

Waikato Maori Land Council

William Gilbert Mair, Native Land Court judge (president – Crown appointed)
William Duncan (Crown-appointed member)
Henare Kaihau, member of the House of Representatives (Crown-appointed member)
Mare Teretiu (elected Maori member)
Hare Teimana (elected Maori member)

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22. 'Election results', *New Zealand Gazette*, 13 March 1902, no 22, p 636 (only three nominees). 'Appointments', *New Zealand Gazette*, 24 July 1902, no 59, p 1558
23. 'Election results', *New Zealand Gazette*, 21 August 1902, no 66, p 1738. Mair, formerly president of the Aotea Land Council, was appointed president of Waikato on 23 October 1902 (*New Zealand Gazette*, 1902, vol 2, p 2401). Duncan and Kaihau were appointed by the Crown on 16 March 1903 (*New Zealand Gazette*, 1903, vol 1, p 811).

Wirihana te Aoterangi (elected Maori member)

As can readily be seen from these lists, the composition of the first land councils adhered to the letter and spirit of the Act. They were in fact not far removed from being Maori bodies with a European judge as president. The number of Native Land Court judges appointed as presidents is also noteworthy. Such individuals would have been obvious choices for the position, given their experience with Maori land legislation and alienation. Their presence, however, created a closer link between the land councils and courts than had perhaps been anticipated (or, in some quarters, desired) when the new system was drawn up. While informal in character, this link provided the basis for subsequent developments in the constitution of the Maori Land Councils.

Two years thus unfolded after the passage of the Maori Lands Administration Act in 1900 before all the requisite Maori Land Councils had been put in place and commenced operations. The lack of action on the ground was reflected in the relative absence of legislative activity during this period. Few significant changes were made to the range of powers conferred on the land councils by the 1900 Act. Partial exceptions were 1901 and 1903 legislation which put the land councils into the township business,[24] and a section of a 1903 Act which enabled them to incorporate and control so-called 'Farm Committees' nominated by the owners of a block to run agricultural operations. The latter had previously been a responsibility of the Native Land Court.[25] Such changes, though, seem not to have resulted in any major increase in the business conducted by the land councils. For all practical purposes, 1903 marked the point at which the land councils became a going concern. Yet barely two years after this starting-line had been reached, the Government found itself under considerable pressure to abandon the Maori Land Council system as an experiment which had failed.

24. See Statutes, 1901, no 42; Statutes, 1902, no 56; and Statutes, 1903, no 92, s 17(2); and below ('Compulsory Vesting of Maori land, 1900–1906').
25. Statutes, 1903, no 92, s 29

CHAPTER 4

THE DEMISE OF THE LAND COUNCILS, 1904 TO 1905

The administrative role which the new Maori Land Councils were called upon to carry out did not necessarily lend itself to rapid action. As James Carroll later noted:

> it was frequently impossible for [Maori Land Councils] . . . to move for the reason that there were many owners to the titles, making coucerted action difficult and in many cases impossible.[1]

That the large numbers of owners on many titles might slow things down should of course bave been foreseen in 1900: certainly no one should have been surprised when this problem became apparent. Where action was possible, however, it could take a good deal of time to draw up deeds of trust and obtain the necessary signatures, while questions about title and survey problems always had the potential to impose further delays. Even in the Aotea Land District, where Maori proved much more willing to vest their lands than elsewhere, such requirements meant that none of this property was ready for leasing until 1903.[2]

Further, Maori freehold lands which were unoccupied or unused at this point in time were as likely as not to be of poorer quality or located off the beaten track – or both. It might well be necessary for the land council to carry out a good deal of preparatory work before the land could be leased at a reasonable rental. The land councils, however, were intended to be self-supporting bodies – meaning that they were expected to fund their operations out of the various fees which they were empowered to collect.[3] By 31 March 1903 the total income from fees for all of the land councils put together was only £253 15s 6d. By 10 October 1905 the total had risen to only £768 16s 4d.[4]

The 1900 Act had anticipated such difficulties – at least to the extent that it made provision for the land councils to borrow money for use in:

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1. Confidential letter of 27 April 1909 from Carroll to Prime Minister, MA 16/1.
2. See AJHR, 1907, G-1A, p 11. See also S Katene, 'The Administration of Maori Land in the Aotea District, 1900–1927', MA thesis, Victoria University of Wellington, 1990, chapter 2 for a detailed discussion of the work involved.
3. See *New Zealand Gazette*, 7 January 1901, no 1, p 9, for the scale of fees set down in the land council regulations.
4. See AJHR, 1903, G-8, p 2 and 1905, G-8. Elections and salaries to 31 March 1903 cost some £3064 17s 4d, but these expenses were paid out of the consolidated fund (see AJHR, 1903, G-8).

> perfecting the title to the said land, or to any other lands owed by the same Maoris, and . . . in cutting up, surveying, roading, opening up, preparing, and advertising such land for lease, or generally improving such land or any other land of the same owners.

But there were restrictions. In the first place the owners had to agree in writing, in the instrument vesting the land in question in the council, that it could be used as security for such loans. Secondly, the Maori Land Councils could only borrow from Government institutions. They had no authority to borrow privately without permission.[5] It would appear that these provisions were less than adequate to meet the demands placed on the land councils. As Seddon himself observed in 1904, these bodies suffered many difficulties as a result of 'want of funds for preliminary and other necessary incidental expenses'. He noted that:

> If the policy which the [1900] Act lays down is to get a fair trial it will be necessary for Parliament to grant some temporary financial assistance to place the various [Land] Councils in full working-order.[6]

In other words, the land councils were seriously under-resourced for the execution of their principal task of making vested lands available for leasing. (This proved to be a persistent problem. In 1909, when the definitive Maori Land Board legislation was being put in place, W H Herries would complain that 'You have this elaborate system of taking over land, surveying, roading and cutting it up, and you do not give the Maori Land Boards any money to do it with').[7] But even where the requisite funds were available these preparations naturally took time. It would not have been unreasonable to expect that several years would be required before vested lands would be become available leasing in any significant quantity.

At the root of many of these problems, though, lay the fact that the Maori Land Councils simply did not have much land under their control to work with. Substantial amounts of Maori land were not immediately vested in the land councils. As Table I.1 shows, only 48,135 acres were transferred in 1902 and 50,528 acres in 1903. And almost all of this (some 96 percent) was located in a single land district. The Aotea Land Council aside, it was not a promising start. Sir Robert Stout and Apirana Ngata would comment in 1907 that 'The Act of 1900 was doomed to fail', because Maori landowners were unwilling to entrust their lands to the Maori Land Councils.[8] Landowners allegedly 'objected to being deprived of all authority and management of their ancestral lands', and were much more interested in matters of ownership per se than settlement (the title to much 'idle and unproductive' land, they noted, being in dispute at this time).

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5. Statutes, 1900, no 55, s 29(3)–(7)
6. See Seddon's comments in 'Financial Statement', AJHR, 1904, B-6, p xvii.
7. NZPD, 15 December 1909, p 1105
8. AJHR, 1907, G-1c, p 7

Table I.1: Lands vested in Maori Land Councils and boards under the 1900 Act, 1902–1909 (Source: AJHR, 1910, G-10.)[a]

Year	Acreage vested	Maori Land Council (or Board)						Total vested (cumulative)
		TO	WM	WR	TR	IK	AO	
1902	48,135						48,135	48,135
1903	50,528		693	3277			46,558	98,663
1904	76,493	57,306	18,065		1122			175,156
1905	61,494		49,656		700		11,660	236,650
1906	89,187	42,656			39,331		7200	325,837
1907	45,671	19,536			11,863	977	13,295	371,508
1908	23,725	22,848			409	468		395,233
1909	1133			240	893			396,366
Ttl 1902–05	236,650	57,306	67,892	3277	1822	0	106,353	
Ttl 1906–09	159,716	85,040	0	240	52,496	1445	20,495	
Ttl 1902–09	396,366	142,346	67,892	3517	54,318	1445	126,848	396,366

a. All totals are for calendar, rather than financial years. The abbreviations used for individual land boards are TO = Tokeroa; WM = Waikato–Maniapoto; WR = Waiariki; TR = Tairawhiti; IK = Ikaroa; AO = Aotea. The land boards used, it should be noted, were those in existence when the data was collected – after the revisions accompanying the Native Land Act 1909 (see below). The Waikato–Maniapoto figures, for example, incorporate those for the Waikato and Tuwharetoa–Maniapoto (formerly Hikairo–Tuwharetoa–Maniapoto) Land Councils and boards.

The stability and efficacy of the land council-based system, Stout and Ngata pointed out, were also open to question from an early stage. As far as the owners were concerned:

> Experience had not convinced them of the stability of legislative enactments, and they suspected that the new policy was only another attempt to sweep into the maw of the State large areas of their rapidly dwindling ancestral lands.

Nor were many of the less-suspicious convinced that vesting land in the land councils offered any significant benefits, for:

> They had not yet been convinced, as European lessees or purchasers knew to their cost, of the expense, delays, and uncertainty attending alienations by direct negotiation; that, in all these bargains the fair value of the alienated land was discounted by these elements in the mind of the European negotiator.

Given the long-term loss of control over land which necessarily went with vesting, it should hardly have come as a surprise that many owners would want to wait and see how the Maori Land Council experiment was going to work out before committing themselves. Many landowners may also have been wary of the new system because they did not understand how it worked.[9]

It is one thing, however, to say that the 1900 system for Maori land administration was flawed – as was undoubtedly the case – and quite another to conclude that it was 'doomed' from the start. For one thing, Stout and Ngata's remarks are unfair to the extent that they place the onus for the apparent failure of the experiment solely on the attitudes of Maori landowners. It is, I would suggest, abundantly clear that settler impatience generally, compounded by the manoeuvrings by politicians of both races, made a very substantial contribution to the apparent failure of the 1900 system. In any case it is open to question whether Maori held the same view of the land councils in 1904 or 1905 as they had in the beginning.

By the end of 1903 only 98,663 acres had been vested in these bodies. In 1904, though, some 76,493 acres were transferred by the owners, and in 1905 another 61,494 acres were vested in the land councils, making a total of 236,650 acres vested by the end of the latter year. The increase may well have represented the beginning of a swing in Maori opinion in favour of the 1900 system, once landowners had had a chance to see how it would work.[10] This seems to have been Seddon's view at the time. Without underplaying the problems being encountered, he thought there was room for optimism. 'The difficulties arising out of want of

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9. See R J Martin, 'Aspects of Maori Affairs in the Liberal Period', MA thesis, Auckland, 1956, p 112
10. There were certainly many Maori complaints about the land council system during this period (see, for example, J A Williams, *Politics of the New Zealand Maori: Protest and Cooperation 1891–1980*, Auckland University Press–Oxford University Press, Auckland, 1969, pp 119–120), but it is difficult to know how the extent to which they represented opposition to the system as a whole. For what it is worth, my impression at this stage is that by 1904 to 1905 there was a trend in support of land councils as useful institutions which could be improved. testimony given to the Native Affairs Committee in 1905 on the subject seems to support this idea, insofar as the Maori witnesses were calling for the reform rather than the abolition of the land council system: see, for example AJHR, 1905, I-3B, p 20.

funds . . . and the prejudices against new departures, which have hitherto beset the opening-up of the lands by the [Land] Councils', the Premier told the House in 1904, 'are gradually disappearing'.[11] (These comments, it must be noted, were made in a context of conceding that changes were needed to give the land council system 'a fair trial'.)

Moreover, to say in 1907 that the Maori Land Council-based system was doomed to fail, suggested that it had in fact been a complete failure. This might be true if the sole criterion was the amount of vested land actually leased by these bodies. Early leasing statistics are in rather short supply, but one report indicates that by late 1906, when some 286,184 acres of land had been vested in the land councils and boards, only 56,333 acres (19.7 percent) had been leased.[12] Although the latter figure had almost doubled by July of 1907, to 102,984 acres, this was not a particularly inspiring record.[13] But the leasing of vested land was not the Maori Land Councils' only function.

Under the terms of the 1900 Act, these bodies were also responsible for expediting the determination of titles for customary lands, by way of the Papatupu Block Committees. It seems that, in some areas at least, a good deal of useful work was done. Stout and Ngata had been 'given to understand that this method of investigation had ignobly failed'. Yet they noted in 1908 that the results in the Tokerau Maori Land District had been 'astonishing'. The activities of the block committees had led to titles being determined for 101,534 acres of land out of the 175,393 dealt with.[14] Much had also been accomplished in the Tairawhiti District.[15] Altogether, Maori had obtained titles to some 347,711 acres through the land councils by 1905.[16] Such work undoubtedly eased the way for more Maori lands to be put to productive use. The land councils also had the final say in all private leases of Maori land. Statistics, again, are not easy to come by, but one source notes that by late 1906 they had approved of private leasing arrangements involving at least 139,441 acres of land.[17]

The Maori Land Councils thus leased or approved the leasing of more than 190,000 acres of Maori land over the period 1901 to 1906. This was not a great deal in itself, but it should be noted that during the same period the Crown had acquired a further 398,302 acres of Maori land through purchases resulting from negotiations which had been initiated before the passage of the 1899 Act.[18] Stout and Ngata commented in 1907 that:

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11. AJHR, 1904, B-6, p xvii
12. Memorandum entitled 'Native Matters', in NA MA 16/1 ('Native 2/5'). Internal evidence indicates that this was prepared late in 1906, in the middle of the financial year.
13. Return of Maori Land Board statistics by Under-Secretary of Native Department, dated 13 July 1907, NA MA 16/1. Some 339,304 acres had been vested in the boards by this time.
14. AJHR, 1908, G-1J, p 8
15. According to Ngata, the titles for some 109,000 acres had been investigated, although 87,000 had had to be referred to the land court due to 'a technical defect in the [Land] Board's confirming order'; AJHR, 1908, G-i, p 16.
16. 'Return of 10 October 1905', AJHR, 1905, G-8
17. Memorandum entitled 'Native Matters', in National Archives, MA 16/1
18. AJHR, 1901–1906, G-3; total for 'area finally acquired' for the period 1 April 1900 to 31 March 1906.

> There is no doubt in our minds that the [1900 legislation] . . . by tying the hands of the Crown in the further acquisition of Native lands, by restricting the leasing of those lands and by substituting a system depending for its success on the willingness of the Native owners to vest areas in the administrative bodies constituted, created a deadlock and a block in the settlement of the unoccupied lands . . . [at a time when] the vigorous settlement of Crown lands under the Land Act and the Land for Settlements Act exhausted the available supply of lands available for close settlement.[19]

The same accusation – that the Maori Land Council system held back European settlement by locking up Maori land – had often been heard in 1904 to 1905. It had formed the centrepiece of the attacks on the Government's Maori land policy (launched by friends as well as foes) which led to major alterations in the 1900 legislation.[20] Given that in excess of half a million acres of Maori land were either leased or sold while this 'deadlock' was supposedly operating, however, there are grounds for suggesting that the problem was as much one of perception as of reality.

19. AJHR, 1907, G-1c, p 7
20. See Williams, p 123. The other main elements of the assault were the accusation that Maori were not paying their fair share of local rates and taxes, and that the Government's policy did not truly protect Maori because it did not encourage self-reliance through individual labour.

CHAPTER 5

COMPULSORY VESTING OF MAORI LAND, 1900 TO 1906

During the 1890s it had frequently been suggested by both Maori and European commentators that, if any kind of land board system for the administration of Maori land was adopted, the scheme would have to be compulsory in order to succeed. Many considered it essential that all Maori landowners be compelled to vest their lands in the proposed institutions. Their reasons varied. Some apparently thought that compulsion was necessary to avoid a re-run of the abortive 1886 experiment; others, that the remaining Maori land could not be adequately protected by any new system which did not have control over the whole of it. In 1900, though, the 'voluntary' school of thought prevailed. No provision was made for any Maori freehold land to be vested in the land councils without the consent of the owners.

The Maori Land Councils had barely begun to operate when reasons were found to dilute this founding principle. The first compulsory measures added to the statute books after 1900 touched upon a specialised type of land use – native townships – and a relatively small amount of land. Soon, though, semi-compulsory measures were being adopted. They were designed to enable Maori land which might otherwise have been lost due to financial difficulties, to remain in Maori possession. The price was its placement under land council control. In theory, good management by the latter would enable debts to be paid off, so that control of the property could eventually be restored to the owners. The next steps down this path were overtly compulsory from the beginning, and involved goals which were not necessarily in the best interests of the owners involved. Owners who were unable or unwilling to make full use of their lands could be required to vest all or part of them in the land boards. In the context of rising (and increasingly vocal) Pakeha dissatisfaction with the 1900 compromise,[1] compulsory vesting could be defended as a means of accelerating the productive use of Maori lands without involving loss of ownership. In theory, the owners would gain a good income and the property could be returned to their control at some future date.

These early types of compulsory vesting brought the lands concerned under the provisions of section 28 of the 1900 Act, which did not empower Maori Land Councils to sell the property in its care. In 1907, however, this safeguard was partially abandoned. A Royal Commission was set up to identify lands which were not required for occupation by the Maori owners, which would then be

1. See J A Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1900*, Auckland University Press–Oxford University Press, Auckland, 1969, pp 123–125

compulsorily vested in the land boards. For the first time, land boards were empowered – indeed, required – to sell part of the lands compulsorily vested in them. The income from such sales would go to the former owners, and the balance of the property could only be alienated by lease. None the less the Native Land Settlement Act 1907 forced some Maori to sell land, and the land boards were made a vehicle for obligatory sale.

5.1 SPECIAL CASES, 1902 TO 1904

The first use of compulsory vesting was for a special purpose. In 1902 the Governor was empowered to vest Maori land in a Maori Land Council 'as a site for a Native township' without the owners' permission. The land councils were given extensive administrative authority over such lands under section 10 of the Native Townships Act 1895, which enabled them to 'do . . . all things necessary or proper for the due administration of such township'. This legislation, however, was not the first step in what would prove to be a long and intimate association between the Maori Land Councils and boards, and native townships. That had been taken in 1901 when land councils had been empowered, at the request of a majority of owners, to set aside lands already vested in them as native townships.[2] In 1903, though, the need for such requests would be dispensed with: land councils could place vested lands under the 1895 Act on their own initiative.[3]

The practice of using compulsory vesting to safeguard Maori ownership began in 1903. Buried in the Maori Land Laws Amendment Act 1903 was a provision dealing with the practice of selling Maori land to settle mortgages 'derived through a survey lien' – that is, mortgages which had been taken out to pay for surveys. Under the Native Land Court Act 1894 the mortgagee could apply for a Native Land Court order vesting in him or her a portion of the block concerned. This would discharge the mortgage, but the owners would lose a portion of their land.[4] What the 1903 Amendment Act did was give the Native Minister the option of having the Crown itself pay off the mortgage. At this juncture one of two things could happen: either a portion of the land could be cut out and given to the Crown to cover the mortgage,[5] or the whole of the original block could be vested in trust in the local land council, with the Crown's mortgage becoming 'a first charge on the rents and profits derived from the land'.[6] The latter course could only be taken if a majority of the owners did not oppose it.

Maori landowners were thus given a choice where mortgages derived from survey liens were concerned. They could either allow part of the land to be taken – whether by the mortgagee or the Crown – to pay off the debt, or they could allow the whole of the block to be vested in a land council under the 1900 Act. Although owners could negate the vesting by reimbursing the Crown for its expenditures

2. Statutes, 1901, no 42, s 8(11)
3. Statutes, 1903, no 92, s 17(2)
4. Statutes, 1894, no 45, s 65
5. Statutes, 1903, no 92, s 35(1–3)
6. Ibid, s 35(4)

within two months, a substantial number of such blocks were later vested in the land councils.[7]

The element of choice (Hobsonian though it might have been) was dispensed with the same year, when Maori Land Councils and compulsory vesting were used to deal with an aspect of the evergreen problem of rates. The Native Land Rating Act 1904 specified which types of Maori lands were liable for local rates.[8] Where the Native Land Court had issued a judgment against owners for non-payment of rates, it made provisions which were roughly similar to those described previously for survey lien-based mortgages. The Native Minister was given the option of intervening in such cases. If he chose to do so, one of two things could be done. The first alternative was for the Crown to pay the outstanding rates itself, and assume ownership of the land. The second was for the minister to issue a notice authorising the local Maori Land Council to 'administer' the land. The block would then be treated as if it had been voluntarily vested in the land council by the owners under the 1900 Act, and the land council would become responsible for outstanding rates.[9] The choice of alternatives lay with the Native Minister, not with the owners.

5.2 THE 'RESUMPTION' OF IDLE LANDS, 1905 TO 1906

Few reasons for complaint could be found when the judicious application of compulsion served to protect Maori land from permanent loss through survey-lien mortgages or rates. It was a different matter when compulsory vesting was applied on a much larger scale to deal with the much larger question of 'idle' Maori lands. There were, Native Minister James Carroll told the House in 1905:

> large areas of waste Native lands owned by a large number of Maoris who cannot themselves utilise them, not having, nor can they expect to have, any initiative, and that consequently for years past these areas have remained unprofitable, of no use to the Maoris or to the owners themselves . . . [10]

Such lands had of course been the principal target of the 1900 Act, and the 1905 Bill which Carroll was discussing constituted an admission that the expectations raised five years earlier had not been met. As a means of regaining lost ground, compulsion was to be applied to the owners of some of the aforementioned 'waste Native lands'.

The 'Maori Land Settlement Bill' called for compulsory 'resumption' of Native lands. Carroll noted that this was:

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7. See Schedule 1 of Statutes, 1904, no 49 for lands so vested, and s 3 for the 'buy-back' provision. It should be noted that the 1900 Act made no provisions for lands vested in trust in the land councils to be re-vested in the owners.
8. Williams, p 125 implies that this Act was the first in which compulsory vesting in land councils was employed as a mechanism, which is not correct. He may well be right, however, that it was the first time such a mechanism was used in response to political pressure as a means of offsetting criticism of the Government's Maori land policy.
9. Statutes, 1904, no 41, s 9
10. NZPD, vol 135, p 703

> an entirely new element associated with the disposition of Native lands. It is the first time it has ever been introduced into any form of legislation.

This was true, but the idea was not a new one by any means. Such an element had been incorporated in the Native Land Board plan which he and Rees had put forward in 1891, and had been strongly advocated by the defeated side in the disputations which led to the 1900 Act. There is reason to suspect that Carroll would have welcomed compulsory vesting at that time. In any case, what 'resumption' meant in 1905 was that 'Any surplus Maori land' which in the opinion of the Native Minister was 'not required or is not suitable for occupation by the Maori owners' could be compulsorily vested in the local Maori Land Board to be administered on behalf of the owners.[11] The land board would be able to lease the property for a total of up to 50 years, but would not be authorised to sell any part of it.[12]

Carroll wanted to have the whole of the North Island brought under this regime, but his Parliamentary colleagues would not cooperate. He later stated that:

> Personally, I wanted the resumption of waste areas to be of general application, but this did not meet the views of some of the members of the [Native Affairs] Committee; therefore, in order to test the efficacy of the policy, I agreed that it should apply only to two districts in the North Island . . . I feel certain the result of the working of this Act will be that other portions of the colony will desire to be included.[13]

In short, the Native Minister would have preferred to have had all 'unused' Maori freehold land in the North island vested in the land boards for leasing. In the event, the best he could manage was to have the 'efficacy' of compulsory vesting tested in two Maori Land Districts. Those selected were Tokerau in the north, and Tairawhiti in the northeast.[14]

The leading Opposition spokesman on Maori affairs, W H Herries, claimed credit for the change in plan. 'It was in the Bill proposed', he stated:

> to make this [compulsory vesting] apply to the whole of the North Island. Well, I myself, and the honourable member for Napier, and other members of the Committee fought against this . . .

Their reason for doing so, Herries claimed, was a matter of conscience or principle. Compulsory vesting, in his view:

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11. NZPD, vol 135, p 703. Carroll was reading from s 6 of the Bill, which with minor alterations became s 8 of the Act. The Maori Land Councils were renamed 'Boards' by this Act: see below.
12. When land was vested the land board could set aside parts of it as inalienable reserves. The Maori owners could be given a right of first refusal on leases for any portion of the land which the board considered appropriate. Provision was made for the land to be returned to the owners at their request after 50 years, if all of all 'incumbrances' had been discharged. See s 8 and 14.
13. NZPD, vol 135, p 704
14. According to Herries, 'those members who represent that part of the country' asked for it to be applied; NZPD, vol 135, p 707. He was presumably referring to MPs holding the Northern and Eastern Maori seats, Hone Heke and Wi Pere. See also G Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', NZLR, August 1985, p 245.

> is not fair to the Maoris, and . . . is a gross violation of the Treaty of Waitangi, because it practically confiscates their lands; it takes the land away for fifty years . . . [but] practically, it means that they part with their land forever.[15]

Herries and his friends preferred a different kind of 'resumption': the Act also authorised the Crown to begin purchasing of Maori land in five of the seven land districts in the North Island. Tokerau and Tairawhiti were exempted until 1 January 1908.[16]

The Crown had not initiated any new purchases of Maori lands since 1899.[17] It seems certain that Carroll saw compulsory vesting as the only means available to him of forestalling a return to such sales. Herries claimed that, the Maori Land Council system having failed because Maori had refused to have anything to do with them, the object of the Bill was clearly:

> to try to endeavour to make those [Land] Councils work, and the way of doing so was to dragoon the Maoris into putting their lands under the [Land] Councils by a compulsory process.[18]

He was probably right, but Carroll's plan had come adrift under pressure from his colleagues and opponents in the House who saw Crown purchase as the quickest and most reliable way to settle and develop 'waste Native lands'. The deferment of purchase in two districts was scant consolation – except perhaps to Apirana Ngata, whose efforts to protect Tairawhiti from the tender attentions of Crown purchase agents reportedly helped him to win Eastern Maori in the 1905 election.[19]

Over the next four years (1906 to 1909), a total of some 136,471 acres of Maori land was vested in Maori Land Boards under section 8 of the 1905 Act.[20] This figure included 51,286 acres in the Tokerau Maori Land District, and 85,185 in the Tairawhiti Maori Land District (see Table I.2) As can be seen, a substantial amount of land (80,463 acres) was vested in the new Maori Land Boards within a year of the passage of the 1905 Act. This may help to explain why the Maori Land Settlement Act 1905 was soon being used as a template for the application of further compulsion. A 1906 amendment provided that Maori lands which had not been properly cleared of 'noxious weeds' could be vested in land boards on the same terms as those defined as 'not required or not suitable for occupation by the Maori owners' in the 1905 Act (s 3).[21] Under another section of this statute, the

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15. NZPD, vol 135, pp 707–708
16. Statutes, 1905, no 44, s 20–25. In the event, all of the lands which were vested in Maori Land Boards under the 1905 Act (some 56,008 acres in the period 4 September 1906 to 18 October 1909, according to proclamations in the *Gazette*) were located in the Tokerau and Tairawhiti Maori Land Districts: see below.
17. The purchases made in 1900 to 1905 involved lands where negotiations had begun prior to the 1899 Act: see above.
18. NZPD, vol 135, p 960
19. Butterworth, p 245, states that Ngata's promotion of the 1905 Act 'had the effect of ensuring Ngata's election, with Carroll's covert backing, to represent Eastern Maori in the 1905 election'. Note that Williams, p 126 implies that Ngata 'took the lead' in Parliament in the passage of the Act, but in fact he was not elected until December of 1905, almost two months after it was passed.
20. This provision was not continued in the Native Land Act 1909, so that the ability to vest land under s 8 ceased when it came into effect in 1910: see NZPD, 1909, p 1102 (Carroll).

Table I.2: Lands vested under section 8 of the Maori Land Settlement Act 1905. Totals are based on a search of the *New Zealand Gazette* for 1906–13. This search, it should be noted, relied upon the *Gazette*'s annual indexes, and therefore is only as complete as those indexes.

Year	Tairawhiti	Tokerau	Total	Percentage total
1906	38,163	42,300	80,463	60.0
1907	12,722	19,536	32,258	23.7
1908	0	22,849	22,849	16.7
1909	401	500	901	0.7
Total	51,286	85,185	136,471	100.0
Percentage total	37.6	62.4	100	

Maori Land Settlement Act Amendment Act 1906, the same treatment could be accorded to Maori land which was 'not properly occupied by the Maori owners . . . but suitable for Maori settlement' (s 4). In this case, though, the lands vested could only be leased to other Maori.[22] Either of these provisions could be applied to Maori land anywhere in the North Island.

The impact of these pieces of legislation seems, in the event, to have been relatively limited. Up until the time of their supercession by the Native Land Act in 1909, only 5975 acres had been vested in land boards under the 'noxious weeds' section, and 11,505 acres under the 'occupation' section.

Table I.3: Lands vested under sections 3 and 4 of the Maori Land Settlements Act Amendment Act 1906. The totals are based on a search of the *New Zealand Gazette* for 1906–13. The 60-acre block was vested in the Waiariki Maori Land Board on 7 February 1910, a month before the 1909 Act came into effect.

Year	Section 3	Section 4	Total	Percentage total
1906		7200	7200	41.2
1907	5975	3100	9075	51.9
1908	0	905	905	5.2
1909		240	240	1.4

21. Statutes, 1906, no 62, s 3
22. Statutes, 1906, no 62, s 4. Further, land board permission was required before these lands could be subleased to non-Maori. It should be noted that lands vested in the land boards under this section were subsequently made equivalent to those vested under part II of the 1907 Act; see Statutes, 1907, no 76, s 23.

Table I.3: Lands vested under sections 3 and 4 of the Maori Land Settlements Act Amendment Act 1906. The totals are based on a search of the *New Zealand Gazette* for 1906–13. The 60-acre block was vested in the Waiariki Maori Land Board on 7 February 1910, a month before the 1909 Act came into effect.

Year	Section 3	Section 4	Total	Percentage total
1910		60	60	0.3
Total	5975	11,505	17,480	100.0
Percentage total	34.2	65.8	100	

These lands were vested in Maori Land Boards in the Ikaroa, Aotea, Waiariki, and Tokerau Maori Land Districts. The compulsory vesting provisions of the 1906 Act, however, saw greatest use in the Aotea Maori Land District, which accounted for fully 15,295 acres of the 17,480 vested (87.5 percent).

The Maori Land Settlement Act 1905 was to form part of and be read together with the Maori Lands Administration Act 1900. These Acts and their various amendments formed a single body of legislation which would govern the administration of Maori freehold land from 1900 until the end of March in 1910, when the Native Land Act 1909 came into force.

By the end of 1905 some 236,650 acres of Maori land had been vested in the six Maori Land Councils.[23] A portion of this may have been the result of the compulsory measures brought in during 1902 to 1904, but no specific evidence of compulsory vesting prior to 1906 has yet come to light.[24] Over the next four years, from the beginning of 1906 to the end of 1909, a grand total of 159,714 acres of Maori land were vested in the new Maori Land Boards under the terms of the 1900 Act and its amendments (Table I.1). As Table I.4 shows, some 137,536 acres of this land (87.1 percent) were vested in the Tokerau and Tairawhiti Land Boards. Almost all of the balance, some 20,495 acres (12.8 percent of the total), was vested in the Aotea Land Board.

Table I.4: Lands vested in Tokerau and Tairawhiti Maori Land Boards under 1900 Act and Amendments, 1906 to 1909. Source: Table I.1, 'Lands vested in Maori Land Councils and boards under 1900 Act, 1900–1909'.

Year	Tokerau	Tairawhiti	Total (year)	Cumulative
1906	42,656	39,331	81,987	81,987
1907	19,536	11,863	31,399	113,386
1908	22,848	409	23,257	136,643

23. See Table I.1: Lands vested in Maori Land Councils and boards under 1900 Act, 1900–1909
24. None could be found in the *New Zealand Gazette* for 1900 to 1905.

Table I.4: Lands vested in Tokerau and Tairawhiti Maori Land Boards under 1900 Act and Amendments, 1906 to 1909. Source: Table I.1, 'Lands vested in Maori Land Councils and boards under 1900 Act, 1900–1909'.

Year	Tokerau	Tairawhiti	Total (year)	Cumulative
1909	0	893	893	137,536
Total	85,040	52,496	137,536	137,536

It appears that most of these lands were vested under the compulsory provisions of the 1905 Act. An analysis of vesting proclamations published in the *New Zealand Gazette* shows that, during 1906 to 1909, a total of 153,891 acres of Maori freehold land were vested in Maori Land Boards under the compulsory provisions of the 1905 and 1906 Acts.[25] This represented 96.4 percent of all the lands (159,714 acres) vested in the boards during this period (Table I.5).

Table I.5: Compulsory vesting in Maori Land Boards 1906 to 1909. Source: *New Zealand Gazette* for 1906–09.

Legislation	1906	1907	1908	1909	Totals
1905 s 8	80,463	32,258	22,849	901	136,471
1906 s 3	0	5975	0	0	5975
1906 s 4	7200	3100	905	240	11,445
Totals	87,663	41,333	23,754	1141	153,891

All told, some 153,891 acres of the 396,366 acres of Maori land placed under the control of Maori Land Councils and boards between the start of 1902 and the end of 1909 by way of the 1900 Act and its amendments – some 38.8 percent – were compulsorily vested in these bodies. Approximately 96.4 percent of the lands vested in 1906 to 1909, however, were taken over by the Maori Land Boards by means of legislative compulsion.

25. Totals are based on date of proclamations, not date of *Gazette* issue.

CHAPTER 6

THE STOUT–NGATA COMMISSION AND THE 1907 ACT

In 1905 James Carroll added a new ingredient to the Maori Land Council experiment. 'Idle' Maori lands were to be made available for agricultural development by way of compulsory vesting in the new Maori Land Boards. This attempt was partially defeated, but the Native Minister did not give up. As one historian puts it, Carroll returned to the fray with 'a new strategy that would appeal to the greatest number of Maoris and Pakehas alike'.[1] His proposal once again called for compulsory vesting of 'idle' lands, but in this case the exercise was to be based on a systematic inventory and appraisal of the status of Maori lands in the North Island.

Throughout the period under discussion it seems to have been assumed by a majority of Europeans that a great deal of the land held by Maori was unused, suitable for agricultural development and surplus to the requirements of the owners. Accurate information about the state of Maori land tenure, however, was in very short supply. Premier Seddon acknowledged in 1904 that 'Before any comprehensive system of administration can be fully inaugurated, a careful stock-taking of all Maori lands will be required'. Only when this information was available, he thought, could the Government advance towards its goal of 'opening up every acre not required by the Maoris for their occupation and support'.[2]

It is perhaps surprising that the need for such a 'stock-taking' was not recognised earlier, and especially during the debates which led to the 1900 Act. The explanation may be that there was little point to such a survey unless the information collected would actually be used to compel Maori landowners either put their unused lands into production themselves, or give others the opportunity to do so. By 1904, faced with the apparent failure of the Maori Land Councils to accomplish this goal, the Liberals were beginning to think along exactly these lines.

The new strategy which Carroll adopted after his partial defeat in 1905 was to set up a Royal Commission to 'Inquire into the Question of Native Lands and Native-Land Tenure'. The water was tested in a memorandum produced by the newly-reconstituted Native Department in mid-1906. This identified the need:

> To provide a more simple and workable method of ascertaining without delay what lands are needed by Maoris, and for at once setting aside selected areas for their use

1. G Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', NZLJ, August 1985, p 245
2. 'Financial Statement', AJHR, 1904, B-6, p xvii

> and occupation, giving to each section of Maori owners, in a simple way, a direct voice in selecting such lands to be retained by themselves, and in deciding in what way their surplus lands shall be dealt with; but taking away the power of pure obstructiveness.

Maori assets were to be inventoried, in other words, and landowners' requirements assessed on the working principle that no one would not be permitted 'to own land without using it'.[3]

This proposal was soon adopted by the Government. In August of 1906 Joseph Ward announced in the course of a statement on Maori land titles[4] that:

> It is not only desirable to settle Native titles as quickly as possible, but also to devise some means to bring the land under cultivation in the meantime. To meet these points the policy of the Government is—
>
> (1.) To set aside a sufficiency of Native lands for the maintenance of the Natives;
>
> (2.) To as far as possible give the Natives a 'start' to farm these lands and to guide them in making the land productive;
>
> (3.) To throw the balance open for settlement and cultivation – by (a) the Crown purchasing at the Government valuation, (b) vesting it in the Boards for lease in limited areas for terms not exceeding sixty-six years, and (c) allowing the Natives to lease it themselves for such a term under the supervision of the [Maori Land] Boards . . .

The Royal Commission which was to set this process in motion was formally appointed in January of 1907.

Selected as commissioners were Sir Robert Stout, the chief justice of New Zealand since 1899, and the recently-elected member of the House of Representatives for Eastern Maori, Apirana Ngata. These were shrewd choices. The widely-respected Stout, who was appointed chairman, had during his political career in the 1880s and early 1890s supported John Ballance's reforms. He could be relied upon to reach conclusions which the Government could live with.[5] One historian describes Ngata's appointment as attempt 'to conciliate the Maoris and those in parliament who represented Maori interests', describing him as 'a man who realized the Government's dilemma and who would temper as far as possible the blow to the Maori landowners'.[6] This is putting it rather mildly: having Ngata on the commission was the next best thing to having Carroll himself. On the whole, the Government could not have done much more to ensure that its goals were met without having Cabinet write the commission's findings itself.

In their terms of reference, the attention of the commissioners was drawn to 'large areas of Native lands of which some are unoccupied and others partially and unprofitably occupied'. It was deemed to be:

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3. 'Native Matters', MA 16/1, p 2
4. 'Financial Statement', 28 August 1906, AJHR, 1906-II, p xiii–xiv
5. 'Robert Stout', DNZB, vol II, pp 484–487. See also 'Memorandum on Owhaoka and Kaimanawa Native Lands, by the Hon R Stout', AJHR, 1886, G-9, for his blistering critique of Native Land Court procedures.
6. B Gilmore, 'Maori Land Policy and Administration during the Liberal period, 1900–1912', MA thesis, Auckland, 1969, pp 49–50

for the benefit of the Natives themselves and to the advantage of European settlement if prompt and effective provision were made whereby such lands should be profitably occupied, cultivated and improved . . .[7]

Accordingly, Stout and Ngata were to 'inquire and report as to the best methods to be adopted' for these purposes.

Their inquiries were to be guided by four questions. The commissioners were, firstly, to ascertain:

1. What areas of Native lands there are which are unoccupied or not profitably occupied, the owners thereof, and, if in your opinion necessary, the nature of such owners' titles and the interests affecting the same.

They were then to consider:

2. How such lands can best be utilized and settled in the interests of the Native owners and the Public good.

For this purpose, Stout and Ngata were to specify:

3. What areas (if any) of such lands could or should be set apart—
(a.) For the individual occupation of the Native owners, and for the purposes of cultivation and farming.
(b.) As communal lands for the purposes of the Native owners as a body, tribe, or village.
(c.) For future occupation by the descendants or successors of the Native owners, and how such land can in the meantime be properly and profitably used.
(d.) For settlement by other Natives than the Native owners, and on what terms and conditions, and by what modes of disposition.
(e.) For settlement by Europeans, on what terms and conditions, by what modes of disposition, in what areas, and with what safeguards to prevent the subsequent aggregation of such areas in European hands.

They were also to report on:

4. How the existing institutions established amongst Natives and the existing systems of dealing with Native lands can best be utilised or adapted for the purpose aforesaid, and to what extent or in what manner they should be modified.

Stout and Ngata, in other words, were to examine the condition of all Maori lands in the North Island,[8] in order to identify those which were not being used to their full potential. They were then to categorise these 'idle' lands according to modes of future disposition which would enable optimum use to be made of them. The commissioners were also to look at the various bodies involved with or influencing

7. See commission of 21 January 1907, in 'Interim Report of the Commission appointed to Inquire into the Question of Native Lands and Native-Land Tenure', AJHR, 1907, G-1, pp i–ii
8. There is no express geographical limitation in the commission of 21 January 1907, but as far as I am aware no effort was made to deal with any other part of the country. The Native Land Settlement Act 1907 applied only to the North Island (s 3A).

the administration of Maori land, and identify changes which might streamline the process.

Care was taken to spell out what the Government expected from the inquiry. Stout and Ngata were ordered:

> to make such suggestions and recommendations as you may consider desirable or necessary with respect to the foregoing matters and generally with respect to the necessity of legislation . . .

Lest there be any misunderstanding of the role which the commission was expected to play in the formulation of new legislation – or of what the focal point of that legislation would be – the instruction was elaborated:

> you are directed to so frame your reports as to facilitate prompt action being taken thereon, and in particular to furnish in such reports such detail as to the lands available for European settlement as will enable Parliament, if it deem fit, to give immediate legislative effect to such parts of your reports.

The fundamental purpose of the exercise, then, was to identify with precision which Maori lands were 'available' for settlement by Europeans, so that appropriate legislative action could be taken.

In preparation for this work, the Department of Lands was requested by the Native Minister to compile a detailed list of Maori lands in the North Island. Its confidential *Return of the Native Lands in the North Island suitable for Settlement* was produced early in 1907, in time for the start of the commission's work. The report covered 956 blocks, encompassing some 4,975,444 acres. The name, area, present utilization, and value per acre of the blocks were detailed, along with sundry other information.[9] The acreage figure gives some idea of the magnitude of the task which Stout and Ngata were being set. In the event, though, they would be required to deal with only part of this land. It appears that approximately half of the lands on the department's list were already leased, or under negotiation for lease. Some 2,791,190 acres were ultimately made 'available for inquiry by the Commission', and recommendations were made relating to some 2,040,878 acres thereof.[10]

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9. New Zealand Department of Lands (W C Kensington, Under-Secretary). *Return of the Native Lands in the North Island suitable for Settlement (Confidential). Compiled by Direction of the Hon the Native Minister for the Use of the Native Land Commission, 1907*, Wellington, 1907, Turnbull Library. See also AJHR, 1907, C-1, 'Annual Report on Department of Lands', p 5, 'Maori Land Commission', which commented that 'No doubt a copy of this return will be attached to the Commissioners' report'. It was not – possibly because no comprehensive 'final report', as such, was ever prepared. AJHR, 1909, G-1G is the closest thing available.

10. See AJHR, 1909, G-1G, pp 1–3, 5, in which it was estimated that there were some 7,465,000 acres of Maori land in the North Island. Of this, 468,752 acres were Papatupu land; 1,709,871 acres were held under special Acts or vested in Maori Land Boards (374,856 acres); 145,187 acres were vested in or administered by the Public Trustee; and 2,350,000 acres were leased or under negotiation for lease. None of these 4,673,810 acres came within the terms of reference of the commission. Although not explicitly stated, it would appear that the 1907 departmental list 'Return' included leased lands, but excluded Papatupu or vested lands. As was acknowledged at the time, all of these figures should be treated as rough estimates.

It should be noted here that it was entirely up to the commissioners (subject of course to their terms of reference) to decide which blocks of Maori land they could and would deal with. Some commentators have suggested, usually in relation to the dispute over section 11 of the 1907 Act, that the commissioners were unable to examine and make recommendations about a particular block if the owners did not voluntarily cooperate.[11] This was not the case. The misapprehension may have arisen over Stout and Ngata's remark in 1908 that this had 'hampered us in obtaining the consent of Maoris to the opening-up of lands for settlement'.[12] In fact, there was nothing in their instructions requiring the consent of the owners, and the commissioners made no reference to such a limitation in their reports. In practice, though, they sought to consult the owners whenever possible. As they put it in the same report quoted above:

> if the Maori owners do not come before the Commission, and do not offer any land for sale or lease, their lands will, *unless the Commissioners recommend that their lands be taken without their consent*, remain unsettled . . . [Emphasis added.][13]

The commissioners had the power to act unilaterally, but seem to have been most reluctant to use it.

The commissioners began work soon after receiving their instructions, and by March 1907 had produced the first of many 'interim' reports.[14] These were based on numerous hearings held at centres all over the North Island. Stout and Ngata commented in their final report that:

> We considered it our duty wherever possible to meet the Maori owners of the lands, and to ascertain from them their wishes with regard to the disposition and settlement thereof. While making ample provision to meet the views of the minority or of individual owners whenever possible, we were guided by the expressed wishes of the majority so far as they were ascertainable in the open sittings of the Commission, and we can say that with very few exceptions the recommendations we have from time to time made in our reports were in accordance with the wishes of the Maori owners of the respective blocks.[15]

One historian who has taken a close look at the commission (one of the few) has concluded that the Maori owners who appeared before it were given a fair hearing. Gilmore, however, adds a caveat. In her opinion, although attention was paid to the expressed wishes of Maori landowners:

> the wishes of the Maoris were conceded only so far as they agreed with the general recommendations of the Commission, made on its analysis of the existing situation with regard to Maori land and land ownership and only to the extent that they agreed with the policy of the Legislature.[16]

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11. See for example, R J Martin, 'Aspects of Maori Affairs in the Liberal Period', MA thesis, Auckland, 1956, p 129
12. AJHR, 1908, G-1F, p 1
13. Ibid, pp 1–2
14. Gilmore, p 50 notes that it was decided early on that a single, general report would not be suitable.
15. Report of 21 December 1908, AJHR, 1909, G-1G, p 3

Another way to put this would be to say that the wishes of the owners were given priority subject to the informed opinion of the commissioners, which in turn was constrained by the commission's terms of reference and the political climate in Wellington.

In evaluating the role which Maori landowners played in the commission's findings, the context of its proceedings must be considered. Basically, owners had the choice of cooperating with the commission, and making the best of the situation, or not cooperating, and having no say whatever in what was to be done with their lands. It appears that the first course of action was generally preferred. The fact that most of the commission's work was carried out in the shadow of the Native Land Settlement Act 1907 may go a long way towards explaining this.

By mid-July of 1907 the commissioners had produced reports on only four cases, some of which would require further investigation.[17] None the less, they were ready to issue their first 'General Report'. This included an extensive review of Maori land policy and legislation since 1865, including the legislation currently in operation, and of the present tenure situation.[18] At the conclusion of this survey, Stout and Ngata outlined the priorities which they intended to apply when making recommendations concerning the disposition of Maori lands. These were, in summary, that:

1. The settlement of Maori on the remaining Maori lands should be the first consideration;
2. In the leasing of the surplus lands provision should be made for future occupation by the descendants and successors of the present owners; and
3. While some of the surplus Maori land should be sold, the purposes of any such sale should be clearly defined.

With respect to the last, the commissioners commented that:

> the area of good land available for disposition in this manner, having regard to the present necessities of the Maori people, their prospects as settlers under a proper system, and the needs of their descendants, is not as great as is generally supposed. Of inferior land not suitable for close settlement, and fit only for forest reserves and such purposes, there is ample, but we doubt if there will be any keen demand for such land. Where we have recommended areas for sale, we have done so at the request of the owners . . .[19]

Given such statements, Maori could expect fairly rational recommendations from Stout and Ngata, which were not likely to include permanent alienations on a large scale. They could not, unfortunately, expect a comparable level of rationality from Parliament – or if anyone did, they were disappointed.

The 1907 session, which had began a few weeks before the above-mentioned 'General Report' was penned, eventually produced the Native Land Settlement Act

16. Gilmore, p 51. Much of chapters 4 and 5 of her thesis focus on different aspects of this question.
17. AJHR, 1907, G-1c, p 1
18. It should be noted that the Stout–Ngata review of legislation was presented as an extension of that in the Rees commission's 1891 report.
19. AJHR, 1907, G-1c, pp 15–16

1907.[20] The purpose of this legislation was to give effect to the recommendations of the commissioners. Two categories of Maori land were created by these recommendations: the first, when they reported 'that any Native land is not required for occupation by the Maori owners, and is available for sale or leasing' (s 4(1)); the second, when they reported that 'any Native land should be reserved for the use and occupation of Maoris' (s 54(1)).

The latter lands could be brought under 'Part II' of the Act by Order in Council, which meant that no person could acquire any kind of interest therein without the consent of the Governor in Council. But there were two exceptions. Where the commission had recommended that all or part of the land 'should be leased to Maoris', the local land board was authorised 'to act as the agent of the Maori owners . . . for the purpose of leasing the same' (s 55(1)). Similarly, where Stout and Ngata recommended that all or part of the land be leased to a specific Maori or Maoris, the Maori Land Board could act as the owners' agent and 'lease such land accordingly without public notification, public auction, or tender' (s 56(1)). Leases arranged by the land boards under these sections were to be dealt with as if the lands had been made available for leasing under part I of the Act, with certain modifications. Sale was prohibited, and all leases and sub-leases had to be held by Maori. The board was also empowered to reduce rents under certain conditions (s 57).

Under Part II of the Native Land Settlement Act 1907, then, Maori owners retained the title to their lands. Their ability to transfer any interest in them was restricted, with the land boards being given jurisdiction over all leasing. In effect, a specified portion of the lands remaining in Maori ownership was to be taken 'off the market' as far as Europeans were concerned. Some 867,479 acres of the 2,040,878 which were eventually the subject of recommendations by the commission (42.5 percent) were potentially subject to Part II.[21]

The lands deemed by the Native Land Commission not to be required for occupation by their owners were provided for in Part I of the Act. Where such recommendations were made, the Governor could by Order in Council place the land under Part I. This meant that it automatically became vested in trust in the local Maori Land Board (s 4(1) and s 5). The terms of land boards' trusteeship, however, were quite different from those which it exercised in the case of lands vested in the boards under the 1900 and 1905 Acts. Lest there be any misunderstanding of this point, it was expressly provided that the boards could not exercise over Part I lands any powers conferred on them by those Acts and their amendments (s 9). In other words, the 1907 Act was not to be considered part of the body of land-administration legislation based on the 1900 and 1905 Acts and their amendments.

When lands were vested under Part I, the land boards were required to divide them into 'two portions approximately equal'. One of these portions was to be set aside for sale, the other for leasing (s 11(1)). The allocations could be varied with the consent of the Native Minister, but 'a due proportion as aforesaid' between the two categories had to be maintained. After certain preparations had been made, the

20. Statutes, 1907, no 62
21. Statutes, 1909, G-1G, p 5

land for sale was to be disposed of at public auction, subject to an upset price fixed by the Native Minister (which, as Professor Ward notes, at least brought the era of 'secretive purchasing for trivial prices' to an end[22]). Conditions similar to those for Crown Lands under the Land Act 1892 were imposed, requiring occupation and improvement of the land purchased (s 16 to 26).

The lands set apart for leasing were also to be disposed of at public auction, subject to an 'upset rental' fixed by the Native Minister, for a maximum term (renewals included) of 50 years. Provision was made for compensating lessees for their permanent improvements at the end of the lease, and for the revesting of the land in the owners at that time, under certain conditions.[23]

At this point in time (1907) the commissioners had earmarked some 346,000 acres of Maori land as being available for 'general settlement', of which 66,000 acres was designated for sale (19.1 percent) and 280,000 for leasing (80.9 percent).[24] They would eventually place some 696,261 acres out of the 2,040,878 which the commission dealt with (34.1 percent), into a category which potentially made them subject to Part I.[25] Stout and Ngata's deliberations would thus eventually mean that almost 700,000 acres of Maori land – around one-tenth of the total remaining in Maori hands at this time – were liable to be involuntarily vested in land boards, out of which some 350,000 acres might be sold to European settlers and the rest leased. The revenue from the sales would accrue to the owners, via the land boards, but the land itself would be lost. Vesting Maori land in the boards without the permission of the owners was not a complete novelty by 1907: but empowering the land boards to sell vested lands was a new departure. Until this time, the only form of alienation permitted for lands vested in the boards, whether voluntarily or involuntarily, had been leasing. One historian has described this provision as 'a serious invasion of the relatively non-discriminative legislation which had been introduced by the Liberal Government'.[26]

The 50–50 split of 'general settlement' lands, it should also be noted, was not based on any recommendation made by the Native Lands Commission. Indeed, this provision was completely out of step with the procedures adopted by the commissioners from the beginning. Their practice was to consult (as far as possible and practicable) with the Maori owners concerning the disposition of their land, and then to produce lists which, piece by piece, made specific proposals for what was to be done with the land. One of the commission's first major reports, for example, which appeared on 22 March 1907, dealt with a number of blocks on the East Coast, in the Tairawhiti Land District. One of these was the Mohaka Block.[27] Stout and Ngata had held two hearings in Mohaka earlier in the month, at which they discovered that the land in question had been subdivided into 55 units. Specific

22. 'James Carroll', DNZB, vol 2, p 80
23. Sections 29(1) and 32. Under-Secretary. 29(2) the land board was required to set aside a fund, from rental income, to compensate lessees for improvements.
24. Gilmore, p 60
25. AJHR, 1909, G-1G, p 5
26. Martin, p 128–129
27. Actually Mohaka 1 and 2, situated on the north bank of the Mohaka River; AJHR, 1907, G-1, pp 9–11 (report), pp 14–16 (Schedule)

proposals were made by the owners for each unit. The commissioners apparently approved of most of these proposals, and produced a schedule which made specific recommendations for each of the 55 units. Out of 24,255 acres, 910 were to be reserved as papakainga, 20,870 were required for Maori occupation (including 17,576 which would come under Part 1 for leasing to specified Maori), and 2,475 acres were to be leased to the highest bidder.

The Maori owners of the Mohaka blocks had thus identified 2475 specific acres of land which they did not require for their own purposes, and were prepared to lease. If this land was placed under Part 1 of the 1907 Act, however, the ownership would be vested in trust in the Tairawhiti Land Board. Approximately 1237 acres would then be designated as land for sold at public auction to the highest bidder. Neither the land board nor the owners would have any choice in the matter.[28] Similarly, if the owners had wanted to sell all of this land to raise capital, they would not have been able to do so.[29] Stout and Ngata later commented concerning section 11 that:

> We are of opinion that the full effect of this provision was not clearly seen by the Legislature, else we feel sure it would not have been enacted into law, and we have no doubt that now we have pointed out the position the Government and the Legislature will both consent to an alteration of the existing law.[30]

While acknowledging that 'It is not our duty or function to enter upon any disputed political question', they then proceeded to point out at great length why the provision was discriminatory. Section 11, the commissioners clearly implied, amounted to confiscation of Maori lands.[31]

In describing the provisions of section 11 as an inadvertent 'mistake' by parliamentarians, Stout and Ngata were indulging in a polite fiction. Ngata better than anyone else knew that the objectionable provisions had been placed in the Act because the Government had succumbed to political pressure: he himself had toed the party line and voted for the measure he later condemned.[32] According to one historian, the Liberals were forced into this course of action by internal pressure. An election was imminent, and it was feared that the Government would lose the rural vote unless a substantial portion of the 'waste' Maori lands was made available for freehold tenure by European farmers. Barbara Gilmore concludes that:

> as the interests of the Maori landowners and the [European] farmers were not compatible, something had to be sacrificed. The half leasehold, half freehold provision of the 1907 Act was the sacrificial 'burnt offering'.

It should also be noted that many of the likely drawbacks of section 11 were pointed out in the course of debate on the Bill.[33]

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28. In this instance, though, for reasons unknown, all of the land in the Mohaka block was later placed under Part II in February of 1908 (see *New Zealand Gazette*, 18 February 1908, 1908, vol 1, p 620.
29. An eventuality which Stout and Ngata noted; AJHR, 1908, G-1F, p 1.
30. AJHR, 1908, G-1F, pp 1–2
31. AJHR, 1908, G-1F, p 4: 'many Europeans own unoccupied lands, and we think it has not been suggested that such lands should be confiscated by the State'.
32. See Gilmore, pp 64–65, and NZPD, 1907

proposals were made by the owners for each unit. The commissioners apparently approved of most of these proposals, and produced a schedule which made specific recommendations for each of the 55 units. Out of 24,255 acres, 910 were to be reserved as papakainga, 20,870 were required for Maori occupation (including 17,576 which would come under Part I for leasing to specified Maori), and 2,475 acres were to be leased to the highest bidder.

The Maori owners of the Mohaka blocks had thus identified 2475 specific acres of land which they did not require for their own purposes, and were prepared to lease. If this land was placed under Part I of the 1907 Act, however, the ownership would be vested in trust in the Tairawhiti Land Board. Approximately 1237 acres would then be designated as land for sold at public auction to the highest bidder. Neither the land board nor the owners would have any choice in the matter.[28] Similarly, if the owners had wanted to sell all of this land to raise capital, they would not have been able to do so.[29] Stout and Ngata later commented concerning section 11 that:

> We are of opinion that the full effect of this provision was not clearly seen by the Legislature, else we feel sure it would not have been enacted into law, and we have no doubt that now we have pointed out the position the Government and the Legislature will both consent to an alteration of the existing law.[30]

While acknowledging that 'It is not our duty or function to enter upon any disputed political question', they then proceeded to point out at great length why the provision was discriminatory. Section 11, the commissioners clearly implied, amounted to confiscation of Maori lands.[31]

In describing the provisions of section 11 as an inadvertent 'mistake' by parliamentarians, Stout and Ngata were indulging in a polite fiction. Ngata better than anyone else knew that the objectionable provisions had been placed in the Act because the Government had succumbed to political pressure: he himself had toed the party line and voted for the measure he later condemned.[32] According to one historian, the Liberals were forced into this course of action by internal pressure. An election was imminent, and it was feared that the Government would lose the rural vote unless a substantial portion of the 'waste' Maori lands was made available for freehold tenure by European farmers. Barbara Gilmore concludes that:

> as the interests of the Maori landowners and the [European] farmers were not compatible, something had to be sacrificed. The half leasehold, half freehold provision of the 1907 Act was the sacrificial 'burnt offering'.

It should also be noted that many of the likely drawbacks of section 11 were pointed out in the course of debate on the Bill.[33]

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28. In this instance, though, for reasons unknown, all of the land in the Mohaka block was later placed under Part II in February of 1908 (see *New Zealand Gazette*, 18 February 1908, 1908, vol 1, p 620.
29. An eventuality which Stout and Ngata noted; AJHR, 1908, G-1F, p 1.
30. AJHR, 1908, G-1F, pp 1–2
31. AJHR, 1908, G-1F, p 4: 'many Europeans own unoccupied lands, and we think it has not been suggested that such lands should be confiscated by the State'.
32. See Gilmore, pp 64–65, and NZPD, 1907

The 1907 Act also extended the term of the commission to 1 January 1909. It appears that this was done in hopes that, if the commission looked at enough Maori land, its recommendations would eventually match the 50 percent sale–50 percent lease balance required by Parliament.[34] A subsequent amendment also enabled Maori Land Boards, if a 50–50 division of a particular block was deemed 'impracticable or inexpedient in the public interest or in the interests of the Maori owners', to request permission from the Governor to use a different formula. In such cases, however, the land board had to make adjustments in its dealings with other section 11 lands, so that in any given year half of them were made available for sale and half for lease.[35] And this was the last concession. The vesting provisions of the 1907 Act, as modified in 1908, were embodied in the Native Land Act of 1909. Until new vesting of this kind ceased on 15 December 1913, it remained compulsory for half of the Maori lands vested in the boards on the commission's recommendation to be set aside for sale at public auction.[36]

All things considered, the best strategy open to Maori landowners from late 1907 onwards was probably to cooperate with the commission – to attend hearings and make their wishes known. If owners did so, they had a good chance of influencing the commissioners' recommendations. As one historian puts it 'Many Maori communities were probably persuaded to accept the Commission as a lesser evil. They would preserve some at least of their lands if they cooperated, for to hold out might mean more draconian measures later'. Ngata reportedly told one meeting of landowners in Hawke's Bay that 'If you do not do as we wish, directly our backs are turned the Crown will seize all your land'.[37] Lands being occupied and utilised, or which might be required in the near future, could be placed under the protective provisions of Part II of the 1907 Act. It would appear that Stout and Ngata made every effort to comply with the owners' wishes in this regard. This would mean that some kind of limit could be imposed on amount of land exposed to possible sale under Part I of the 1907 Act. The fact remains, however, that Maori landowners could suffer the permanent alienation of a portion of their 'unused' lands without consenting to such sales (see Table I.6).

Between February of 1908, and January of 1910, more than half a million acres of Maori land were placed under the control of the Maori Land Boards under the 1907 Act – some two-thirds under Part I (which were vested in the boards) and the balance under the administrative provisions of Part II. Since little was done with this land by the boards before 31 March 1910, when they came under the virtually identical terms of Parts XIV and XVI of the Native Land Act 1909, their subsequent disposition is best discussed in the context of the latter Act (see below).

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33. Gilmore, pp 61–65. The quotation is from p 65. Herries commented in 1909 that at this time 'the freeholders and leaseholders were pretty much on the balance, so that the gentleman responsible for the Bill of 1907 put in this clause so as to get it through the House': NZPD, vol 148, 1909, p 1104 (Herries).
34. Statutes, 1907, no 62, s 52. See Gilmore, pp 60–61, and Butterworth, 'Maori Land Legislation', p 246.
35. Statutes, 1908, no 253, s 17. Ngata thought that the latter requirement made the whole amendment 'impracticable'; NZPD, 1908, p 1128.
36. Statutes, 1909, no 15, s 270. Under s 95 of 1913, no 58, new vesting was to end with the passage of the Act.
37. Butterworth, 'Maori Land Legislation' p 246

Table I.6: Lands vested under the Native Land Settlement Act 1907. The totals are based on a search of the *New Zealand Gazette* for 1906–13. The Maori Land District in which the blocks were located is not identified in the relevant proclamations.)

Year	Part 1	Part 2	Total	Percentage total
1908	3532	55,952	59,484	11.8
1909	312,566	131,537	444,103	88.0
1910	1000		1000	0.2
Total	317, 098	187,489	504,587	100.0
Percentage total	62.8	37.2	100	

6.1 CONCLUSIONS

Up to the end of 1908 the Stout–Ngata commission made recommendations which affected some 1,811,000 acres of Maori land. Some 1,563,740 acres of this was land recommended for general settlement (696,261 acres) or for Maori occupation (867,479 acres) under the provisions of Parts I and II of the 1907 Act.[38] Further recommendations were made in 1909 by Stout and his new fellow commissioner Jackson Palmer. Neither the exact amount of acreage involved, however, nor the nature of the recommendations is entirely clear.

Published reports seem to indicate that a small amount of land was recommended for Maori occupation by Stout and Palmer (Part II),[39] but other sources suggest that a large amount of additional land was recommended for general settlement. A confidential report prepared by the Native Minister for the Premier in April of 1909, for example, states that a total of 1,121,516 acres had been 'recommended by the Native Land Commission to be set apart and rendered available for purposes of general settlement'.[40] This is more than 400,000 acres larger than the December 1908 figure. summaries prepared by the Native Department between June and December of 1909 give a figure of 943,521 acres recommended for General Settlement by the Commission, which is greater than the December 1908 figure by more than 200,000 acres. (figures for Maori Occupation lands remained the same as in Deember of 1908, at 867,481 acres.)[41] These totals, however, included a good deal of land for which special conditions applied.

38. AJHR, 1909-I, G-1G, 'Native Lands and Native–Land Tenure: Final Report of Native Land Commission', 21 December 1908, p 5. Recommendations were actually made for 2,040,877 acres, but 229,877 of these in the 'special recommendation' category were subject in the first instance to other Acts.
39. See AJHR, 1909, G-1H
40. MA 16/1: Letter of 27 April 1909 from Carroll to 'Prime Minister', p 4
41. MA 16/1: 'Position as regards the Native Land Commission's recommendations as on . . .', reports dated 10 June, 11 October, and 7 December. Minor variations are due to my rounding-off of acreage fractions to whole numbers.

The latest of these reports, for example, shows that as of 7 December 1909, the 943,521 acres recommended for General Settlement consisted of 328,882 acres which had already been vested in Maori Land Boards under the terms of the 1907 Act, and 312,159 acres for which Orders in Council had yet to be issued. Another 302,480 acres were to be dealt with in other ways.[42] Of the 867,481 acres recommended for Maori Settlement, 228,154 had been covered by Orders in Council, 458,460 acres had not, and 180,867 acres which were being otherwise dealt with.[43] Had all of the recommendations been followed, then, some 641,041 acres would have been vested in the land boards under Part I of the 1907 Act, for 'General Settlement', and 686,614 acres would have been set apart for Maori occupation under Part II.

The vesting of lands in the Maori Land Boards is dealt with at length in a subsequent section. Suffice it here to note that board statistics indicate that the recommendations of the Stout–Ngata commission were not carried out in their entirety. As far as can be determined, a total of only 347,954 acres of Maori land were vested in land boards under Part I of the 1907 Act and its amendments,[44] leaving nearly 300,000 acres unaccounted for. Similarly, it appears that the amount of land placed under Part II by Order in Council actually fell after December of 1907. Even though 228,154 acres had reportedly been covered by Orders in Council, annual reports of the Department of Native Affairs in the period 1911 to 1927 indicate that the maximum amount of Part II land administered by the land boards at any given point was 214,146 acres in 1919, to which it had risen from a low point of 204,628 acres in 1911.[45] Even the maximum figure leaves in excess of 450,000 acres unaccounted-for. A comment made by W H Herries in 1908, that 'as an actual engine for settling the land this commission might just as well not have existed', may have been prophetic.[46]

It appears to the author that the Government ceased to implement the recommendations of the Stout–Ngata commission when the Native Land Act 1909 was passed, even though the provisions of the 1907 Act were embodied in the new legislation. Why this should have been the case – if in fact it was the case – is an question which will require further research to answer. At present the only conclusions that can be drawn are, first, that the Stout–Ngata commission seems to have had much less impact on Maori land tenure on the ground than a scrutiny of its reports might otherwise lead one to believe; and, second, that a thorough study of the commission's operations and their outcome of their recommendations is sorely needed.

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42. This induded lands subject to a timber agreement (135,000 acres), lands subject to leases (78,142 acres), lands which had been incorporated (69,338 acres), and 20,000 acres 'wrongly included by the Commission and since found to be sold'.
43. This included lands which had been or were in the process of being incorporated (some 153,747 acres), and lands which had been under negotiation for lease at the time of recommendation and had since been leased (27,120 acres).
44. See Table II.10. Part I of the 1907 Act was continued by Part 14 of the 1909 Act.
45. Part II of the 1907 Act was continued by Part 16 of the 1909 Act.
46. NZPD, 1908, p 1121 (Herries). He also complained that 'If all the Native Minister's wishes were carried out . . . the Native Land Boards are not equipped to carry out the provisions of last year's Act [1907]'.

CHAPTER 7

MAORI LAND BOARDS, 1905 TO 1908

Beginning in 1904 the Liberal government showed an increasing willingness to abandon the voluntary principle which had been a cornerstone of the system put in place in 1900. The ways and means by which Maori could be compelled to place their lands in the hands of the land councils and land boards proliferated from year to year. The trend reached a peak in 1907, when a corollary principle was also abandoned. For the first time, lands involuntarily vested in the land boards could be permanently alienated.

While these developments were taking place, significant institutional changes were also being wrought. The Maori Land Councils set up in 1900 had a strong Maori component, made up of both elected and appointed members. This ensured that, even though landowners would lose administrative control of lands which they decided to vest in the land councils, they would as electors be able to influence the operations of the controlling body in some extent. It could also be argued that the imposition of compulsory vesting for protective purposes (as adopted in 1904 to protect Maori land from loss through survey-lien mortgages or rates) was less objectionable when the land councils involved included elected Maori members in their ranks.

The Maori Land Settlement Act 1905 greatly expanded the use of compulsory vesting. It also saw the 'Maori Land Councils' supplanted by 'Maori Land Boards'. The change in name was indicative of the change in composition. A 'council', by one definition, is an assembly formed for the purpose of consultation.[1] The Maori Land Boards of 1905 were formed by the simple expedient of lopping off the elected component of the land councils.[2] Section 2 of the 1905 Act provided that the boards were to consist of one president and two members. Although 'at least' one of the members was to be Maori, he like the other two was to be appointed by the Crown. Maori landowners, in other words, would no longer have any control over the composition of the boards, other than the informal pressure which interests groups might be able to bring to bear over the appointments process.

In introducing the Bill in the House James Carroll asserted that the change in name from 'Maori Land Councils' to 'Maori Land Boards' was both necessary, to avoid further confusion with the Maori District Councils set up in 1900, and desirable, because of 'some prejudice in the public mind' against the land councils

1. *Winston Dictionary*
2. In the case of the Waikato Maori Land District in 1906, for example, the new Maori Land Board consisted of the president and the two Crown appointees (James Mackay and Mare Teretiu) from the old land council.

(nature unspecified). But the principal justification for dispensing with the elected members was alleged to be economic. This measure, Carroll stated, would:

> avoid the expense which an election entails, because the Maori members elected . . . have to be elected in the same manner as the Maori representatives are elected to this House, all the expense consequence thereon being saddled upon the land . . .[3]

Election costs, in fact, appear to have made up a relatively small proportion of expenditures on Maori Land Councils: as of 31 March 1903 they represented less than 20 percent of total administrative costs.[4] But the Native Minister also suggested that the expense was not worthwhile in any case. He questioned whether 'better men' could be found by election than by nomination. 'The Governor in Council', he claimed, 'would always be in a position to sufficiently discriminate as to their qualifications before selecting those whom he thinks fit, capable, and competent to be members of that Board'.[5]

Some Maori did not agree with this inherently-dubious assertion. A petition objecting to certain elements of the 1905 Bill, for example, signed by Te Wherowhero Tawhaio and 276 others, had earlier been sent to Parliament. Questioned by the Maori Affairs Committee about the idea of removing elected members, Pepene Eketone of Ngati Maniapoto had stated:

> What we [Maniapoto] want to have is this: we want to have Maori members in the [Land] Conncil, and we want to have the right to vote them to that position, and we want a man sent there to do what we expect of him, and if he fails to do so, we want to have the right to take him away and put some one else in his position . . .

His response to the idea of a wholly-appointed membership was that it would be 'the absolute taking-away of the Maori voice'.[6] Eketone considered Maori representation on the land councils, and voluntary vesting, to be the foundation of the system instituted in 1900.

The people he spoke for wanted substantial changes, but such alterations to the composition of the land councils were not among them. On the contrary, the petition called for a major increase in the Maori Land Councils' powers in relation to vested lands, and a continuation of elected representation was seen as essential for the success of the proposed revisions. 'The Government', Eketone stated:

> is the head of the [Land] Council, and it will appoint the people whom it considers fit to control affairs; and we, the Maoris, have a voice in selecting those whom we think are fit, and therefore, I say, the [Land] Council will work all right.[7]

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3. NZPD, vol 135, p 703
4. That is, some £593 out of £3065 spent up to that time on election expenses, salaries (for presidents, Members and staff) and travelling expenses. And the £593 includes £79 spent 'Taking plebiscite on boundary disputes': see AJHR, 1903, G-8. Total land council expenditures to 31 March 1905 were £8289 17s 10d (AJHR, 1905, G-8). Presumably the proportion spent on elections up to this date was similar to that shown by the 1903 figures.
5. NZPD, vol 135, p 703
6. AJHR, 1905, I-3B, p 6, paragraph 30–31
7. AJHR, 1905, I-3B, p 10, paragraph 20–24

An attempt was made by Hone Heke in committee to require that both of the Crown-appointed members be Maori. He was supported in the vote by the other Maori member of Parliament present (other than Carroll), but his amendment was soundly defeated.[8] The new Maori Land Boards, which, thanks to the compulsory provisions of the 1905 Act would exercise control over a great deal more vested land than their predecessors, also had a much lower level of Maori representation than the land councils. As Williams puts it, 'The pretence of the 1900 act that the Maoris were being granted a measure of self-government was all but dropped'.[9]

The seven existing Maori Land Councils were converted into Maori Land Boards during 1906. The relevant proclamations were dated as follows:

- Aotea 6 March 1906
- Maniapoto–Tuwharetoa 6 March 1906
- Tokerau 6 March 1906
- Ikaroa 5 July 1906
- Tai–Rawhiti 10 August 1906
- Waiariki 11 August 1906
- Waikato 20 September 1906[10]

The change-over, it should be noted, involved minimal alterations on the ground. Most of the presidents and Crown-appointed members of the land councils appear to have been re-appointed, and the Maori Land Boards themselves were deemed to be 'the successor in office of the Councils constituted for the same district under the provisions of the principal [1900] Act'.[11] The names and boundaries of the seven Maori Land Districts remained the same, and would remain unaltered for another five years (when the Maniapoto–Tuwharetoa and Waikato boards were amalgamated as the Waikato–Maniapoto board in 1910). It seems obvious from this that the Government had only one substantial objection to the existing land council system: the presence of elected representatives of the landowners in the decision-making process. No major changes in the way the basic system worked were deemed to be necessary at this time.

Other developments helped to widen the gulf between Maori Land Boards and Maori landowners. One of the most important ones was the reconstitution of the Native Department. Before his death in 1906, Premier Seddon had decided that there was a need for a single agency 'to deal with all matters affecting the Maoris, more especially as regards their lands'.[12] Formed in June of that year, the new Native Department controlled the Native Land Court, the Maori Councils, and the Maori Land Boards. The first secretary was a land court judge, H F Edgar, but he resigned in January of 1907, to be replaced by T W Fisher (a former member of the Aotea Land Council). Placing all of the Government agencies concerned with Maori land under the control of one authority had the inevitable effect of shifting the focus of decision-making further away from the individual boards in the

8. The vote was 48–14 against; NZPD, vol 135, p 846.
9. J A Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1900*, Auckland University Press–Oxford University Press, Auckland, 1969, p 127
10. See *New Zealand Gazette*, 1906, vol 1, p 745; vol 2, pp 1903, 2180, 2523
11. Statutes, 1905, no 44, s 3(1)
12. 'Native Matters', MA 16/1, p 1

direction of Wellington. In 1906, for example, the land boards were for the first time provided with a uniform set of guidelines for dealing with applications for approval of leases and various other procedures.[13] The growing role of the department can be seen in the steady growth of its budget and staff, both of which had increased by about 40 percent by 1909.[14]

The activities of the boards themselves expanded in both volume and range during this period, One reason for this was the removal of all restrictions on the leasing of Maori land. Under the 1900 Act, leases had to be approved by the Maori Land Councils. Titular or statutory restrictions on alienation, however, could only be removed or waived by the Governor at a council's request.[15] Section 16 of the 1905 Act eliminated a step from this cumbersome process by simply removing all 'restrictions, conditions or limitations' on the leasing of Maori lands, statutory or otherwise. The Maori Land Boards thereafter had full authority over the process, subject to the provisions of the Act. This meant that they had to ensure, among other things, that the proposed rent was adequate (not less than 5 percent per annum of the assessed capital value[16]), that the lessor had land or rental income sufficient for their maintenance, that the lease did not exceed 50 years in total, and that in general the lease was 'for the benefit of the Maori lessor' (s 18).

Stout and Ngata commented in 1907 that:

> The general removal of restrictions to enable leasing by direct negotiations . . . was availed of at once and to the fullest extent permitted by the position of the titles.[17]

This observation is fully borne out by the statistics. As noted earlier, the private leasing of some 139,441 acres of Maori land had been approved by the land councils and boards by late 1906.[18] By 29 October 1907, the total had increased to 410,334 acres in 966 separate leases.[19] By 31 March 1908 it would rise to 638,872 acres (1334 leases), and another 267,075 acres in 488 leases were added over the following year. At the end of the 1908 to 1909 fiscal year (31 March 1909), the amount of land privately leased by Maori owners with the consent of the councils and boards since 1900 amounted to 905,947 acres.[20] A departmental official commented in 1908 that:

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13. Supplement to *New Zealand Gazette*, 17 August 1906, no 70, pp 2203–2205. B Gilmore, 'Maori Land Policy and Administration during the Liberal Period, 1900–1912', MA thesis, Auckland, 1969, p 104 takes this to be evidence of increasing Government interest in the boards.
14. See G Butterworth and H Young, *Maori Affairs: A Department and the People who Made it*, Iwi Transition Agency–GP Books, Wellington, 1990, pp 63–65. The Maori land purchasing operations set in motion by the 1905 Act, and the account set up to pay for them, were under the control of the Native Minister, but the purchasing carried out by the Department of Lands (see AJHR, 1907, G-3A, p 1). Edgar resigned, according to Butterworth, because he was 'out of step with Government thinking'.
15. Statutes, 1900, no 55, s 24–25
16. As assessed under the Government Valuation of Land Act 1896.
17. 'Interim Report on Native Lands in the Wanganui District', AJHR, 1907, G-1A, p 14
18. Memorandum entitled 'Native Matters', in MA 16/1 (Native 2/5)
19. 'Return of Native Lands rendered available for Settlement purposes', Under-Secretary of Native Department, 29 October 1907, MA 16/1
20. 'Return of Native Lands rendered available for Settlement purposes (Up to 31st March, 1909)', appended to J Carroll's Letter to the Prime Minister of 27 April 1909, MA 16/1

> If you subtract the totals [for Maori Land Board approvals of leases and sales] for the two years during which this Department had control [1907–08] from the totals for the whole period [1900–08] you will notice that a larger area has been rendered available for both sale and mortgage during that time than was the case during the period from 1900 to 1906, when the Justice Department had control. This is I think a convincing argument against the charge that is sometimes laid at our door of retarding the settlement of Native lands.[21]

On the strength of these figures one might well conclude that section 16 of the 1905 Act did more than any other single piece of legislation during this period to open up Maori lands to utilization by Europeans.[22] The commissioners indeed conceded that 'large areas of hitherto unoccupied lands have thereby been brought under settlement'[23] – but they did so grudgingly, and went on to recommend that 'alienation by direct negotiation between the [Maori] owners and private individuals be prohibited'.[24] The train of thought which led them to this conclusion, though, was principally concerned with the problems of would-be European lessees rather than those of Maori lessors.

Stout and Ngata argued that 'free trade' in leasing created by the 1905 Act was actually an illusion, since people with experience in dealing with Maori tended to monopolise the market. 'It is possible', they noted:

> for an ordinarily resourceful man, who is persona grata with the Maoris, who knows where to look for the influence necessary to 'round up' the scattered owners of a block and obtain their indispensable individual signatures ... to negotiate successfully all the leases he may require, and even to set up a business as a medium for obtaining leases for the less fortunate, if bona fide, settlers not so well versed in the underground methods of dealing with Native lands ...[25]

Such individuals enjoyed a virtual monopoly on privately-negotiated leases and, it was claimed, were abusing this power to breach the spirit of the regulations limiting the area of Maori land which could be held by any one person.

In order to make Maori lands accessible to a wider range of would-be lessees, and limit such abuses, Stout and Ngata recommended that all sales and leases of Maori land be made at public auction, with limits being imposed on 'the persons who can become competitors according to the extent of their land-holdings at the time of sale'. Noting, however, that such a scheme would not work unless titles could be guaranteed to the highest bidders, they further proposed that all alienations be channelled through the Maori Land Boards, taking place 'only through the

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21. 'Memorandum' of 23 July 1908, MA 16/1
22. A view later expressed by Herries, when down-playing the accomplishments of the Stout–Ngata commission. He declared that 'clause 16 of the Act of 1905 is just and fair both to the Maori and the European', adding that 'I do not think there is any better way of getting land into cultivation, as far as leasing is concerned, than by the clause which was put in by the Native Affairs Committee in 1905 ... against the wishes of the Minister'. See NZPD, 1908, pp 1122–1123.
23. 'General Report on Lands already Dealt with and Covered by Interim Reports', AJHR, 1907, G-1c, p 11
24. Ibid, p 16, 'Recommendations', A2
25. AJHR, 1907, G-1c, pp 12–13. This section quoted from, and was largely based upon pp 14–15 of the *Whanganui Report*, which gave specific examples of extensive acquisitions by particular families.

Board as agent for the owners, or, in the case of lands vested in it, as registered owners of such lands'.[26]

The commissioners were 'of opinion that these [Maori Land] Boards must be used much more freely and on a greater scale in future if large areas of unoccupied Maori lands are to be opened to settlement'. Parliament took them at their word. The Native Land Settlement Act 1907, passed a short time afterwards, gave Maori Land Boards a central role in implementing the recommendations of the Native Lands and Native Land Tenure Commission. The following year, the Maori Land Laws Amendment Act 1908[27] imposed further powers and responsibilities upon the boards. Among other things, these institutions gained complete control of Native Townships, replacing commissioners which had been appointed under the Native Townships Act 1895 (s 2).[28] Carroll argued that 'the bringing into line under one administration two different sets of townships is a virtue, and avoids a duplication and overlapping of authority', and hinted that further powers would be given to the land boards in the future.[29] Two years later, in 1910, provision was made for all Native Township lands to be vested in the boards.[30]

The 1908 Amendment Act also enabled the Governor to delegate control over the leasing of lands under the Thermal Springs District Act 1908 to Maori Land Boards (s 15). Within a year, the Waiariki Maori Land Board had taken some 42,405 acres under its wing.[31] In a similar vein, section 23 made it possible for specified lands in the Urewera district which might be deemed unsuitable for occupation by the owners, to be vested in a Maori Land Board for leasing under the 1905 Act. The boards were also authorised to issue licences for cutting flax or timber on vested lands (s 27); to operate vested lands with ten or more owners as farms (s 2);[32] and to sit and act as a Commission of Inquiry in order to deal with any matter within their jurisdiction (s 9).[33]

The most significant provision of the 1908 Amendment Act involved an extension of the powers conferred on the land boards by the Maori Land Settlement Act 1905 with respect to the confirmation of leases. Carroll explained to the House that:

> At the present time we have a dual system in existence: some of the alienations have to be confirmed by the Native Land Court, and others can go before the Native Land Board [sic] for a recommendation in their favour, in which case the application goes to the Government and an Order in Council may be issued.[34]

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26. AJHR, 1907, G-1c, pp 13, 17
27. Statutes, 1908, no 253
28. Some boards were already involved with townships created since 1900: see above.
29. NZPD, 1908, p 1114
30. See Statutes, 1910, no 18
31. 'Return of Native Lands . . . to 11 Oct. 1909', p 2: MA 16/1. Orders in Council had yet to be issued for another 70,787 acres.
32. The Stout–Ngata commission recommended that some 64,596 acres of Maori land be so incorporated under Part II of the 1907 Act; see 'Position as regards the Native Land Commission's recommendations as on the 7th December, 1909', MA 16/1.
33. The authorisation for such inquiries, usually involving problems which had arisen with specific blocks, is often found in the nether clauses of 'washing up' legislation: see, for one example, the Native Land Amendment and Native Land Claims Adjustment Act 1915, no 63, s 20.

This was considered to be unacceptable. Section 7 of the Act made land boards responsible for the confirmation of all alienations of Maori land in the North Island – sales as well as leases – transferring to them all of the authority formerly enjoyed by the Native Land Court.[35] One member expressed reservations about this step, fearing that:

> we shall have the work piling up [for] the Maori Land Board [is] being asked to do very much more than it has time to do. It is already pretty full of work, and, if more is put on it, some new arrangement will have to be made in order to enable it to perform these functions . . .[36]

The change was, however, received with general approval, as an easy method of simplifying dealings in Maori land.

The five years from 1904 to 1908 brought major alterations to the scheme for Maori land administration which had been implemented in 1900. The partially-elected Maori Land Councils were transformed into wholly-appointed boards. Maori landowners lost the right to elected representation of these institutions. Compulsory vesting became a factor of steadily-increasing significance in the Maori Land Boards' operations. In 1905 provision was made for the compulsory vesting of under-utilized Maori lands in two land districts – although the boards were only empowered to lease such lands. In 1907 provision was made for the compulsory vesting of under-utilized Maori lands throughout the North Island – and in this instance part of the land concerned could be permanently alienated by the boards. Throughout this period the Maori Land Boards steadily accumulated additional powers over various categories of Maori land, and by the end of it had sole control over the approval of all alienations of Maori land in the North Island.

These changes had been made piecemeal, through a dozen different Acts. In 1909 the legislative underpinnings of the land boards were rebuilt in the form of a single, coherent piece of legislation. Nominally a simple consolidation, the Native Land Act 1909 was more than that. Certainly it marked the beginning of a period of legislative stability for Maori land administration, setting a place a basic system which would last for half a century.

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34. NZPD, 1908, p 1114
35. The court retained jurisdiction over alienations elsewhere, until 1914: see below.
36. NZPD, 1908, p 1137 (Field)

CHAPTER 8

TAIHOA? MAORI LAND ADMINISTRATION, 1900 TO 1908

The system in place at the end of 1908 for the administration of Maori freehold lands was a very different one from that established eight years earlier under The Maori Land Administration Act 1900. The representative Maori Land Councils had been transmuted into Crown-appointed Maori Land Boards. Much of the Maori freehold land which these bodies were responsible for in 1908 – approaching 500,000 acres by this point – had been vested in them by owners who had no choice in the matter, the original voluntary provisions of 1900 having been overridden after 1903 by a series of Acts requiring 'idle', unused and debt- or weed-ridden lands to be placed under the control of the boards. And the boards were empowered to sell some of these vested lands, whereas leasing had been the sole type of alienation allowed before 1907. In 1900 the land councils had been given a limited role in regulating the alienation of all Maori freehold lands. By 1908 their successor land boards wielded virtually sole authority over the leasing and sale of such lands.

The changes wrought had been both fundamental and far-reaching in every respect. What brought them about? The conventional picture places most of the onus for the abandonment of the original system on the Maori landowners who failed to vest their unused lands in the land councils so that they could be leased. Settler demands for access to land was so intense, it has been argued, that the Liberal government was gradually forced to implement a series of measures which enabled the lease and even purchase of Maori lands without the owners' consent. James Carroll, the first person of Maori descent to become Native Minister, is depicted as leading a rearguard action against land-hungry Pakeha settlers, falling back step after step in a calculated policy of delay and minimal concession – of 'Taihoa' ('by and by'), as contemporaries usually labelled it. This strategy is generally seen as a qualified success. Alan Ward, for example, concludes that:

> Carroll had fought hard for the preservation of Maori land. In one sense he failed: the combined forces on both sides of Parliament demanding the purchase of Maori land were too great for him. Yet he had for a time stemmed the rush . . .[1]

Most other students of the period have drawn similar conclusions.[2]

A good deal can be said in favour of this interpretation of Maori land administration developments during the period in question. There is no question

1. 'James Carroll', DNZB, vol 2, p 81

whatsoever that Carroll was determined to preserve sufficient land for Maori by any means at his disposal, or that he vigorously opposed the permanent alienation of Maori land unless the owners were willing and able to part with it. Nor is there any doubt that many European legislators and their constituents were just as determined to see all the unused, under-used and misused parts of the Maori landed estate made full use of for agricultural production (preferably by industrious Pakeha settlers). None the less, this interpretation tends to overlook a central element of Carroll's policy.

In the late 1890s, Maori were united in wanting the Crown to stop its wholesale purchase of Maori land under the cover of its pre-emptive right. The Crown was prepared to comply, but insisted as a quid pro quo that continued access to Maori land by settlers be made possible. Many Europeans, and more than a few Maori, would have preferred to see this take the form of a 'free market' in land. Under such a regime owners would have been able to lease or sell their holdings without restrictions of any kind, and particularly without the restrictions of a Crown pre-emptive right over sales. It would appear that a majority of Maori were not prepared to go that far, but were willing to see their unused lands made available for leasing. This being the case, they also saw the sense of accepting an administrative system which could simplify and expedite leasing and assist and protect the lessors – provided that representatives of the owners were assigned a significant part in the decision-making of such institutions. But at this point consensus broke down. Some wanted landowners to be compelled to hand over their unused lands for leasing; others insisted that this should be a voluntary step. In the end, after a prolonged disputation, the latter faction won out in 1900.

James Carroll found himself on the losing side in this debate. It would appear that the Native Minister none the less did his best to make the land council experiment work (although a thorough study of the Maori Land Administration Department of 1901 to 1906 would greatly improve our understanding of what was going on during this period). For various reasons, however, during the first few years of operation the Government had limited success in persuading Maori landowners to vest their holdings in the Maori Land Councils, and the councils encountered many difficulties in making vested land available for leasing. The land councils' other accomplishments were largely ignored in the uproar which led to the reforms of 1904 to 1908.

The key elements of this reformation were:

- 1904–06: provisions for the involuntary vesting of certain types of Maori land in the Maori Land Boards, for leasing only;
- 1905: the elimination of all elected representatives of landowners from the new boards;
- 1905: limited resumption of Crown purchasing;

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2. See for example R J Martin, 'Aspects of Maori Affairs in the Liberal Period', MA thesis, Auckland, 1956, p 135. Brooking, 'Liberal Maori Land Policy', p 97 describes taihoa as 'an heroic holding operation on the part of Carroll, Ngata, Heke, the Kingitanga, the Kotahitanga and other Maori leaders and resistance movements'.

- 1907: the establishment of a commission of inquiry to carry out a major survey of Maori lands in the North Island, in order to ascertain which were unused or under-used, and which were required for Maori occupation;
- 1907: provisions for the involuntary vesting in the boards of Maori land identified by the Stout–Ngata commission, for both leasing and sale; and
- 1905–08:an extension of the powers of the boards to give them control over all private leases and sales involving Maori freehold lands.

It would appear that all of these steps, save for the third (the resumption of Crown purchase) and, in part, the fifth (compulsory vesting for sale), were initiated by the Native Minister himself. And both of these exceptions were trade-offs made for the purpose of getting other steps passed. In other words, the record in the area of Maori land administration after 1903 does not seem to show Carroll on the defensive, dragging his feet. On the contrary, it looks much more like the summary of a series of actions initiated by the Native Minister in pursuit of a specific goal. If that was in fact the case, what might the goal have been?

The answer, I would suggest, can be found in the clear resemblance between the land administration elements of the 'Native Land Board' set-up proposed by Rees and Carroll in 1891, and those of the much-revised Maori Land Board system as it stood at the end of 1908. It is of course difficult to compare a rough set of proposals with a working institution, but the only striking difference between the two was the nature of Maori representation. Under the 1891 scheme board members would have been elected by 'tribal committees': in 1908 they were all appointed by the Crown. On the other hand, both systems provided for compulsory vesting of unused lands in the boards for leasing or sale, and in both the boards held control over a wide range of transactions affecting Maori land. The 1908 Maori Land Board system, in other words, looks very much like the 1900 land council system reshaped as far as possible to resemble the 1891 Rees–Carroll plan.

In the 1890s James Carroll advocated a land administration system which would require all owners to make their unused lands available for actual farmers.[3] (It is important to note here, however, that he was also a firm and consistent advocate of state assistance to Maori farmers for the development of their own lands, which would have reduced the amount unused by its owners.[4]) In the first decade of the 1900s, under his supervision, such a system was put in place. Delay was indeed part of the Native Minister's strategy, but it was employed for specific purposes: Carroll wanted to compel Maori landowners to either make use of their lands or allow others to do so. In aiming to maximise New Zealand's agricultural production during these boom years, the Native Minister was very much in tune with the thinking of his European colleagues in Parliament. He was also in tune with many

3. He noted in his dissenting opinion on Crown pre-emption that many Maori were now turning to sheep-farming and stock-raising, and 'they fully recognise that it would be wise for them to dispose of such areas of their surplus lands as they are not likely to require for themselves, and from the disposal of such lands to obtain the necessary funds for clearing, fencing, and stocking the land retained for their own profitable occupation . . .', report, AJHR, 1891, G-1, p xxviii.
4. 'Parliament [must] . . . devise means for encouraging and assisting the Natives to become useful settlers. This can be done if they are afforded facilities for rendering productive the lands they already possess . . .', report, AJHR, 1891, G-1, p xxx

of his Liberal colleagues in condoning the use of coercive measures to deal with the Maori land question when the necessity arose. The 1900 Maori Lands Administration legislation in fact stands out as an anomaly in the record of Liberal Maori Land policy, when set against what had come before and what was to follow.

PART II

'Facilitating Settlement to a Large Extent'

CHAPTER 9

THE NATIVE LAND ACT 1909

All of the alterations made to the Maori land administration system after 1904 were embodied in the Native Land Act passed in December of 1909. On the face of it, this Act was principally a consolidation of the land administration legislation passed during the previous decade, from the Maori Lands Administration Act 1900 onwards. At some point in the process, however, a change of direction took place. Since 1900 the preferred method of dealing with the problem of 'idle' Maori land had been to vest it – whether voluntarily or by compulsion – in Maori Land Councils and boards. These institutions had been designed to act for the owners (in one capacity or other) to expedite the leasing of such lands to European farmers. The Crown had resumed purchasing Maori land in 1905, and in 1907 some vested lands had been earmarked for sale, but neither of these measures constituted a significant deviation from the basic policy.

In 1909 the experiment of vesting lands in the Maori Land Boards to make them more accessible to settlers came more or less to an end. By the time the Act came into force in 1910, the boards held almost three-quarters of a million acres in fee-simple under the various categories of vesting which derived from the 1900 Act and its amendments, the 1907 Act and special-purpose legislation. The administration of these lands was, and would continue to be one of the boards' principal concerns, but the acreage added to their holdings of vested lands after 1910 was small. With the 1909 Act the sale and leasing of Maori lands by their owners, under the supervision of the Maori Land Boards, became the preferred solution to the problem of 'idle' Maori lands. This legislation put in place new systems which simplified and expedited the alienation of both vested and non-vested Maori lands, and over the next two decades the Maori Land Boards oversaw the sale of more than 2.3 million acres. This was a far cry indeed from the role envisaged for the Maori Land Councils during the debates which led to the 1900 Act.

9.1 'SUCH AN AMOUNT OF CONTRADICTION'

During the latter years of the nineteenth century New Zealand's colonial parliamentarians produced legislation relating to Maori lands at a prodigious rate. A recent review of the statutory record shows that from 1865 to 1890, something like 360 Acts affecting Maori land to a greater or lesser extent were passed by the central government and provinces – an average of more than 10 per year.[1] The Native Land Law Commission observed in 1891 that:

> In one year – 1888 – there were eight Acts passed, and in 1889 nine, especially dealing with Maori lands and Courts, besides others partially touching them; and, again, others were introduced but thrown out or abandoned.

The result of such proceedings was described as 'a network of incongruous legislation . . . evoked piecemeal, out of which it is impossible to produce a certain law'. 'In the history of Native-land legislation and administration since 1873', Rees and Carroll concluded, 'there is no redeeming feature save the inoperative Native Land Administration Act of 1886. It is a long period of unsatisfactory legislation'.[2] The commissioners recommended radical surgery to repair the damage, but their advice was largely ignored. New legislation continued to appear in wholesale quantities. Between 1891 to 1908, another 199 Acts bearing upon Maori lands were added by the New Zealand Parliament (110 of them between 1899 and 1909).

An effort to consolidate this legislation was reportedly attempted by the Statutes Compilation Commission, which was chaired by Sir Robert Stout, but the task was found to be:

> quite beyond their powers, apparently because there was such an amount of contradiction, such a tangle, that consolidation in the proper sense of the term was impossible.[3]

The Native Affairs Department memorandum which in 1906 identified the need for an 'inventory' of Maori lands and foreshadowed the appointment of the Royal Commission on Native Lands and Native-Land Tenure, also noted that with respect to Maori land legislation that 'a consolidating measure is needed, introducing improvements while retaining such provisions as have been found useful and workable'.[4] In the event Stout and Ngata were not specifically instructed to deal with this problem.[5] None the less the two men were 'impressed from the first with the necessity of . . . consolidation'.[6]

By December of 1908 the commissioners had in fact done part of the work required, but reported with regret 'that the time at our disposal – namely, to the end of this year – will not suffice to finish this important undertaking'.[7] One of the main reasons given was that the task went well beyond scissors-and-paste. 'In our opinion', Stout and Ngata commented:

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1. See the database version of *The Maori Land Legislation Manual*, Crown Forestry Rental Trust, Wellington, 1995, 2nd ed. Totals given here are my own calculations.
2. Report, AJHR, 1891, G-1, pp xi–xiii
3. NZPD, vol 148, p 1273 (Findlay). See also p 1100 (Carroll). They were presumably referring to the 'Reprint of Statutes Act 1895' commission, chaired by Stout, which reported annually from 1903 to 1908: see E Robertson et al (comps), *New Zealand Royal Commissions, Commissions and Committees of Inquiry 1864–1981: a checklist*, Wellington, 1982
4. Undated Memorandum [c 1906] on 'Native Matters': National Archives MA 16/1 (Native 2/5.
5. Or so they said in 1908. However, part 4 of their commission could easily be construed as an instruction to do so: see AJHR, 1907, G-1, p ii. The commissioners' first general report (1907, G-1c, pp 1–7) shows that from the beginning they took great interest in the legislative situation.
6. 'Final Report of 21 December 1908', AJHR, 1909, G-1G, p 8
7. Ibid

> the Native Land Acts cannot be consolidated in the proper sense. There are so many conflicting provisions, so many sections worded in a general way, yet passed for temporary and special purposes, that consolidation, properly so called, would be impossible .... What is required is an Act or a number of Acts repealing existing general enactments and re-enacting same with necessary amendments.

Simply drafting such new legislation would be difficult enough, but as well, they warned:

> It will be found that at each step in the construction of the uew measure or measures, questions of policy await the decision of the Government and of Parliament.

The commissioners realised, in other words, that any serious effort to consolidate Maori land legislation would invariably lead to something whose whole was larger than the sum of its parts, and which would inevitably require decisions on matters of policy.

How, exactly, the Native Land Bill of 1909 was actually put together is not as yet entirely clear. In January of 1909 the Royal Commission on Native Lands and Native-Land Tenure was reconstituted, with Jackson Palmer (the chief judge of the Native Land Court) replacing Ngata.[8] Ngata was in the same month appointed as the Native Minister's Parliamentary Under-Secretary. According to Butterworth, his first task in the new position would be 'to assist Carroll in changing the laws'.[9] At or about this time the Counsel to the Law Drafting Office, John Salmond, set to work on a new Bill.[10]

A recent biography of Salmond gives with the impression that the 1909 Act was largely his own work. The author quotes Sir John Findlay's concession, upon introduced the Bill into the Legislative Council later in the year, that Salmond:

> had very valuable assistance indeed from the Hon Mr Ngata, who has devoted nights and days to assistance in the direction I have indicated.

He also notes that Salmond 'also attended' two conferences of Native Land Court judges in 1909.[11] There was a good deal more to it than this.

It would appear that Salmond began work on the Bill early in 1909. Before putting pen to paper, according to one Parliamentary admirer, he:

> had . . . to master first the principles and the details of not less than a hundred statutes – not only those in existence, and they were very numerous, but a very great number

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8. See AJHR, 1909, G-1H. Jackson Palmer was a lawyer and sometime politician who had been appointed to the Native Land Court in 1904, and became chief judge in 1906. See G H Scholefield, *A Dictionary of New Zealand Biography*, Department of Internal Affairs, Wellington, 1940, vol 2, p 146. Dates are taken from the list of 'Judges of the Native/Maori Land Court to 1966' in the National Archives', Maori Land Court Inventory.
9. G Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', NZLJ, August 1985', p 246.
10. See Alex Frame, *Salmond: Southern Jurist*, Victoria University Press, Wellington, 1995, pp 113–114. Salmond had been counsel to the office since 1907. He was later Solicitor-General and chief justice.
11. Frame, p 112

> that had been repealed – in order that he might understand . . . all the different features and peculiarities of this Native-land problem.[12]

Presumably he was able to draw upon the work of the Statutes Compilation Commission, and that of the commission on Native Lands and Native-Land Tenure. It would also be reasonable to suggest that much of Ngata's 'very valuable assistance' was rendered at this stage, when fundamental decisions had to be made concerning the format and contents of the proposed Bill. Carroll later noted that:

> the greater portion of this Bill . . . [is] a consolidation, but in the process of consolidating and amending it was found necessary by the Counsel of the Law Drafting Office to recast the language of the repealed statutes, to alter the arrangement considerably, so that it is impossible to reveal at a glance what is new and what merely re-enacts existing law.[13]

This difficult exercise clearly reflected Stout and Ngata's earlier opinion that it would be impossible to consolidate the existing body of Maori land legislation 'in the proper sense'. It was found to be both necessary and advisable to re-write the lot. As W H Herries rightly observed in the House:

> this is not a consolidation Act in the sense of a consolidation of the statutes. This is practically a new Bill, expressing what the Draftsman and those he has consulted think is the law affecting the Native race at present in force in New Zealand.[14]

The authorisation to adopt this strategy obviously came down to Salmond from Carroll through Ngata.

The Law Drafting Office had produced a preliminary Bill by September of 1909, if not before. In that month the Native Minister invited the judges of the Native Land Court and the Presidents of the Maori Land Boards to Wellington for a conference.[15] For three weeks those in attendance 'exhaustively scrutinised and criticized the measure as it first left the hands of the law Draughtsman'. Soon afterwards a second conference was held to consider the revised draft.[16] This presumably led to further revisions before the Bill was tabled in the House, where it was subjected to the scrutiny of the Native Affairs Committee.[17]

Sir John Findlay later commented that:

> I take leave to think that the combination of the Hon Mr Ngata, the Hon Mr Carroll, these Native Land Court judges, the Presidents of the Native Land Boards, and the Counsel to the Law Drafting Office . . . is a combination whose work this Council will accept on authority as far as it is justifiable to accept any work on authority. It is, in large measure, a work of experts.[18]

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12. NZPD, vol 148, p 1273 (Findlay)
13. Ibid, p 1100 (Carroll); as Findlay succinctly put it (NZPD, vol 148, p 1273), 'there is no slavish paste-and-scissors performance in the Bill'.
14. NZPD, vol 148, p 1103 (Herries)
15. Ibid, p 1100 (Carroll). Carroll refers only to the judges, noting that some of them were also presidents, but Findlay p 1273 states explicitly that 'all' of the presidents were also invited.
16. Ibid, p 1100 (Carroll), and p 1273 (Findlay)
17. Ibid, p 1106 (Herries)

James Carroll had argued along similar lines when introducing the Bill to the House. The Native Minister complimented Salmond his excellent work, and noted that 'from the original draft down to this copy of the Bill the measure has been thoroughly considered, reconsidered, and overhauled from every standpoint'.[19] He had been echoed by the principal spokesman for the Opposition, who joined Carroll in giving 'a word of hearty praise to the Counsel to the Law Drafting Office and the Law Draftsman for the way in which they have accomplished this stupendous work'.[20] Herries observed that:

> The Bill has undergone the utmost scrutiny by people who know what they are talking about – by the Jndges of the Native Land Court and other experts outside the House. It has also undergone the scrutiny of the Native Affairs Committee, and any imperfections that might have existed in the Bill would probably have been unearthed in the course of the scrutiny.

Properly administered, he believed, the proposed legislation would be 'of great benefit to the country'.[21] With such bipartisan support the Bill passed through the House and the Legislative Council without delay or significant debate.[22] It received Royal assent on 24 December 1909, and would came into effect on 31 March 1910.

A recent history of the New Zealand legal system describes the Native Land Act 1909 as 'a triumph of legislative codification and clarification' which 'consolidated and clarified the statutory framework of Maori land law, providing the main framework for the later consolidations of 1931, 1953, and 1993'.[23] John Salmond clearly made a very important contribution in this respect. Nonetheless, he had a good deal of help, and the key decisions which had shaped the legislation were made elsewhere. As Carroll acknowledged when introducing the Bill in the House on 15 December:

> For the policy of the measure, of course, the Government alone is responsible, and where departures have been made from the principles of past legislation the Government assumes full responsibility.[24]

These 'departures', while relatively few in number, say a great deal about the policy which Carroll was seeking to advance with the 1909 Act.

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18. Ibid, p 1273 (Findlay). He subsequently compared the Native Land Bill to the Supreme Court Act of 1882 and its attached 'Code', asking that the work of experts be passed 'without any unreasonable debate' (p 1280).
19. Ibid, p 1100 (Carroll)
20. Ibid, p 1103 (Herries)
21. Ibid, p 1106 (Herries)
22. See Butterworth, p 248, who suggests that the Bill pushed through by Carroll against the Prime Minister's wishes.
23. P Spiller, et al, *A New Zealand Legal History*, Brooker's, Wellington, 1995, p 159
24. NZPD, vol 148, p 1100 (Carroll)

9.2 THE ACT

As far as the Maori Land Boards were concerned, 'the policy of the measure' which was laid before the House in December of 1909 was to consolidate and enhance the powers which the boards had come to exercise over the alienation, administration and settlement of Maori lands as a result of the changes which had been made during the period 1904 to 1908. The 'Maori District Land Boards' were, as Carroll put it, to remain the 'dominant factors' with respect to 'the alienation, administration and settlement of Native lands' in the North Island.[25]

The composition of the boards, as modified in 1905, was retained. Each one was to consist of an appointed President (a European) and two appointed members. At least one of the latter had to be a Maori (s 64). The seven existing Maori Land Boards – Tokerau, Waikato, Waiariki, Tairawhiti, Ikaroa, Aotea, and Maniapoto–Tuwharetoa – with their existing presidents and members, were to continue for the time being (s 62). In June of 1910, however, an Order in Council would be issued which re-defined the boundaries of the Maori Land Districts in the North Island, and made major changes.[26] The Maniapoto–Tuwharetoa District was abolished. A large portion of its territory was grafted onto the Waikato District, which became the 'Waikato–Maniapoto' District, and the balance was inherited by the Aotea and Waiariki Districts. This left six Maori Land Districts in the North Island, each of which was administered by a Maori Land Board. Four years later a seventh unit was formed to cover all the parts of New Zealand which previously had not been included in a Maori Land District. This 'South Island Maori Land District' encompassed the 'Middle' (South) and Stewart Island plus the Chathams and all offshore islands not appended to one of the other Districts.[27] These new territorial divisions remained in effect, with minor alterations, until the boards disappeared altogether in 1952.

The various Acts through which Maori freehold lands had been vested in the land boards were incorporated in the 1909 Act within Parts XIV, XV, and XVI. According to the Native Minister these portions of the Bill served to 'consolidate the policy of the Government from 1900 up to the completion of the Native Land Commission, and saves all that work'. 'No material alterations', he claimed, had been made to this body of legislation.[28]

Part XV of the Act dealt with lands vested in the Maori Land Councils and Boards under the Maori Lands Administration Act 1900 and its various amendments from 1901 to 1906.[29] Some of these lands had been vested voluntarily and some compulsorily, but all had been vested for leasing only: under the original

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25. Ibid, p 1101 (Carroll). The Native Land Court would exercise control elsewhere. As noted in Part I, the powers given to the land councils in 1900 to determine the title to customary lands were not re-enacted in 1909, the overlap with the jurisdiction being deemed unsatisfactory.
26. *New Zealand Gazette*, 13 June 1910, no 58, pp 1713–1714
27. See *New Zealand Gazette*, 27 March 1914, vol 2, no 29, pp 1211–1212, 'Native Land Court Districts and Maori Land Districts'. Kapiti Island, for example, was named as part of the Aotea Maori Land District, and White Island as part of Waiariki.
28. NZPD, vol 148, p 1102 (Carroll)
29. Part XV, s 287–289. Lands vested in a board under s 95 of the Rating Act 1908 were also included, and provisions for vesting lands infested with noxious weeds were revised.

legislation the lands in question could not be permanently alienated by the Maori Land Boards. This protection continued under the 1909 Act. Although all lands vested under Parts XIV and XV were to be held under the same type of trust,[30] a clear distinction was made as to the kind of alienation allowable. Lands vested under Part XV could not be permanently alienated (s 291).[31] The special provision made in 1905, though, whereby 'unused' Maori lands in the Tokerau and Tairawhiti Maori Land Districts could be compulsorily vested in these land boards, was discarded. 'In future', Carroll told the House, 'the Government will depend on the initiative of the assembled owners to bring further areas under these Boards for settlement by the general public'.[32]

Part XIV of the 1909 Act dealt with lands which had been vested in the Maori Land Boards under Part I of the Native Land Settlement Act 1907, as a result of recommendations made by the Stout–Ngata commission. The 1907 Act had required that half of the lands so vested were to be made available for sale, and half for leasing. A 1908 amendment allowed the boards a certain latitude in varying these proportions for individual blocks, as long as the prescribed ratio was maintained for the whole of a boards' Part I lands on an annual basis.[33] Salmond commented in his explanatory memorandum that:

> No material alterations have been made with respect to this class of land. It is to be disposed of by public auction or tender by way of lease and sale in equal proportions.[34]

As Stout and Ngata had pointed out at the time, there was a distinct possibility that Part I of the 1907 Act might discriminate against some Maori landowners by forcing unwanted sales. An opportunity to eliminate this feature in 1909 was not taken. Presumably the political costs of attempting to do so were considered to be too high.

Lands reserved for 'Native occupation' under Part II of the Native Land Settlement Act 1907 (also as a result of recommendations made by the Stout–Ngata commission) came under Part XVI of the 1909 Act. This was administered by the Boards as agents for the owners, who could not themselves alienate it. The land could be leased for a total of up to 50 years. Carroll commented that 'The machinery clauses have been amended and improved, but the principle is not

30. See Part XIV, s 237 and Part XV, s 290. One question connected with this provision may bear further examination. When lands were voluntarily vested under s 28 of the 1900 Act the trust so created was to consist of 'such terms as to leasing, cutting up, managing, improving, and raising money upon the same as may be set forth in writing between the owners and the Council'. Section 287, Part XV of the 1909 Act, however, cancelled 'any trusts existing in respect of this land' and substituted 'the trusts imposed by this Part of this Act'. It would appear that voluntary agreements between the owners and the boards were thereby unilaterally eliminated by the Crown.
31. But see chapter 10 and Table II.11
32. NZPD, vol 148, pp 1102–1103 (Carroll)
33. See Statutes, 1907, no 62, s 52, and Statutes, 1908, no 253, s 17. That is, 50 percent of all of a board's Part I alienations within any given fiscal year (by acreage) had to be sales, and the other 50 percent leased.
34. Salmond, 'Native Land Bill 1909 Memorandum: Notes on the History of Native-Land Legislation'. This is Salmond's original explanatory memorandum, which was made available to MPs when the Bill was introduced. It is reproduced in the Crown Forestry Rental Trust's *Maori Land Legislation Manual*.

altered, except in one important particular'. This involved a provision enabling the owners of the land to have it 'taken out' of Part XVI. He hastened to add, however, that there was:

> ample protection throughout the Bill against the improvidence of the average Maori. The experience of the past shows that, though the Maori has made great strides towards civilisation, and is in many respects quite able to fulfil the ordinary duties of citizenship, in providing for the future he is grossly wanting.

Among other things, when lands were alienated the Maori Land Boards were 'compelled to see that he [the vendor] does not part with all his Native land, though . . . this condition may be relaxed in certain cases'.[35]

The principal omissions in this consolidation, as far as the Maori Land Boards were concerned, were lands which came within their orbit as a result of special-purpose legislation. Neither the legislation affecting Thermal Springs Districts nor that concerning Native Townships – both of which imposed responsibilities on the Maori Land Boards – was incorporated in the new Act.[36] There were, Carroll noted, 'good and special reasons' for their omission. He did not explain what they were, but promised that these matters would be dealt with in the next session of Parliament.[37]

The most significant changes brought about by the 1909 Act related to the alienation of Maori land. A deft mixture of statutory consolidation and innovation paved the way for the sale and lease of more than four million acres of Maori freehold land over the next 20 years. As noted earlier, in 1905 all restrictions on leasing had been replaced by a uniform set of statutory restrictions administered by the Maori Land Boards.[38] The 1908 Amendment Act made land boards solely responsible for the confirmation of all alienations of Maori freehold land in the North Island. The 1909 Act went one step further with a sweeping provision which invalidated all existing restrictions on the alienation of Maori freehold land, whether imposed by 'any Crown grant, certificate of title, order of the Native Land Court, or other instrument of title, or by any Act'. The stated intention and effect of section 207 was that:

> a Native may alienate or dispose of any land or any interest therein in the same manner as a European, and Native land or any interest therein may be alienated or disposed of in the same manner as if it was European land.[39]

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35. NZPD, vol 148, pp 1102–1103 (Carroll). Under s 425 the Governor, acting on a recommendation of a Maori Land Board, could confirm alienations of land which caused the owner to become landless if the latter was 'able to maintain himself by his own means or labour'.
36. Nor were the various Native Reserves Acts, or the East Coast Native Trust Lands Act. See Salmond memorandum, 'Extent of Application of this Bill'.
37. NZPD, vol 148, p 1103 (Carroll). An earlier statement by Ward indicates that there simply had not been time to deal with these aspects of Maori land legislation: see 'Native Lands', AJHR, 1909, B-6, pp xxi. Among the legislation passed in 1910 was the Native Townships Act 1910, the Rating Amendment Act 1910, and the Thermal Springs Districts Act 1910, all of which contained provisions affecting the powers of the boards.
38. Section 16 of the 1905 Act. See Part I, above.
39. Section 207

When presenting the Bill to the Legislative Council, Findlay observed that 'Restrictions cover our Native-land titles like a cobweb', impeding alienation at every turn by creating uncertainty. The new legislation, he stated, would put an end to this. A prospective lessee or purchaser now had only to:

> find the land, and, instead of searching through from twenty to forty Acts and having to weigh what the special effect of what some words is [sic], you take it that the title is clear and can be alienated unless you can find a restriction in the Bill of 1909.[40]

As this remark suggests, the old restrictions were not so much eliminated as replaced by a standard set of statutory restrictions.[41]

These were laid down in the Act in section 220, which stipulated that in order for any alienation of Maori freehold land to be valid:

(a) the instrument of alienation had to be properly executed;
(b) the alienation could not be 'contrary to equity or good faith or to the interests of the Natives alienating';
(c) no Native could be made landless ('within the meaning of this Act'[42]) by the alienation;
(d) the payment had to be 'adequate';[43]
(e) in the case of a sale the purchase money had to have been 'either paid or sufficiently secured';
(f) the person obtaining the interest had to be able to do so under Part XII of the Act (relating to limitations on area);
(g) the alienation could not result in any breach of any trust; and
(h) it could not be 'otherwise prohibited by law'.

The Maori Land Boards were responsible for ensuring that these rules were complied with. Section 217 provided that 'No alienation of Native land by a Native' in the North Island 'shall have any force or effect until and unless it has been confirmed by a Maori Land Board'. The land boards were not empowered to confirm any alienation unless 'first satisfied' that the criteria laid down in section 220 had been met.[44]

In essence, the 1905 system for the regulation of leasing by the land boards was extended in 1909 to cover all alienations of Maori land, including sales. Given that large areas of hitherto unavailable land had been opened up for use by Europeans as a direct result of eliminating restrictions on leasing in 1905 (see above, Part I), it

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40. NZPD, 1909, p 1276 (Findlay)
41. This change, it should be noted, also applied to the 'papakainga' lands created under the 1900 Act. The requirement to identify a specific piece of land which an individual Maori needed 'for his or her maintenance and support and to grow food upon' was abandoned. Instead, at the time of a purchase the Maori Land Boards had to be satisfied that the sale would not render the vendor 'landless' (see below).
42. Section 2 defined a 'landless Native' whose 'total beneficial interests in Native freehold land . . . are insufficient for his adequate maintenance'.
43. Section 223 provided that 'adequacy' was to be estimated 'by reference' to a valuation carried out under the terms of the Valuation of Land Act 1908.
44. Herries commented that 'while you are taking off restrictions, the conditions imposed on alienation make almost greater restrictions than those that are taken off'. Specifically, he claimed, 'it is almost impossible in certain cases to prove that the Native has other land . . .' NZPD, 1909, p 1105 (Herries).

must be assumed that a similar effect on sale and leasing was anticipated from the new system. And indeed, many other changes were made to streamline the process of alienation. The most important of these were found in Part XVIII. James Carroll noted that:

> Where the owners exceed ten the Bill proposes a new method of dealing with the land, which is practically a resuscitation of the old runanga system, under which from time immemorial the Maori communities transacted their business. [45]

As he described it, the purpose of Part XVIII was 'to enable the majority of owners in communal blocks to draft their lands into the various compartments of the Bill'.[46]

What the Native Minister meant was that the owners were empowered to do certain specific things within the framework of the Act. The 'Assembled Owners' could:

1) Vest the land in the [Maori Land] Board for sale or lease:
2) Agree to incorporation by the Native Land Court:
3) Carry into effect any proposed alienation – eg, a sale or lease to a particular individual:
4) Sell the land to the Crown.[47]

No other measures were possible. A procedure for putting up resolutions, calling meetings and voting were set down by the Act. All meetings had to be called by the relevant Maori Land Board, and chaired by the president of the board or his representative. A resolution was deemed to be carried if the owners who voted in favour of it (in person or by proxy) owned 'a larger aggregate share of the land' than those who voted against it (s 343).[48] Such resolutions, however, had to be confirmed by the Maori Land Board before they took effect, having due regard 'to the public interest and to the interests of the owners' (s 348). Owners could thus vote to 'draft their lands into a different compartment of the Act', but the final decision on such matters lay with the Crown-appointed Maori Land Boards. 'Self-management', a recent commentator has noted, 'clearly had its limits'.[49]

The 1909 Act greatly simplified the private purchase or lease of Maori lands. Where the land in question had fewer than 10 owners, the prospective purchaser or

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45. Spiller et al, comment p 161 that 'Returning control of alienation to an owners' meeting can be seen as an attempt, to a degree at least, of reversing the policy of individualization and of returning control to Maori collective bodies, the collectivity here being, however, not any of the natural units of Maori society but the accidental and artificial one of block owners . . .'
46. NZPD, vol 148, p 1102 (Carroll)
47. Quoting from Salmond's summary in his memorandum of s 346.
48. According to Spiller et al, p 161 offers to sell could be accepted subject to modifications, which 'in practice . . . meant that the offer could be accepted subject to having the interests of dissentient non-sellers cut out'. Part XVIII, however, does not seem to contain such a provision. It did, however, allow owners objecting to a resolution to file a 'memorial of dissent' with the board, and the board was empowered to postpone consideration of a passed resolution 'in order to afford to the owners who have not consented to the resolution an opportunity of applying to the Native Land Court for a partition of their shares': see s 344(2) and s 348.
49. Spiller et al, p 159

lessee could negotiate an agreement directly with the owners, then take it to the relevant board for approval. Where a block had more than 10 owners, the formula laid down in Part XVIII could be used. The process of alienation was thus reduced to a clearly-defined set of procedures, in the operation of which the Maori Land Boards provided safeguards for both parties. In the cases of purchases by the Crown the procedures involved were even more straightforward.[50]

Where a piece of land had more than 10 owners, the Crown had to carry out its purchasing by way of Part XVIII and the assembled-owners process, and resolutions to sell the land had to be approved in the normal way by the relevant Maori Land Board (s 368).[51] Where the land had fewer than 10 owners, though, the Crown could purchase directly from the owners 'as if the land was European land' (s 369 (1)). The transaction did not have to be confirmed by a Maori Land Board (or by the Native Land Court, outside of the North Island), and once the instrument of alienation was properly registered the Crown's title could not be 'questioned or invalidated on the ground of any error, irregularity, or defect in the mode of execution thereof' (s 369 (2)). The Crown could also purchase partial interests where blocks had less than 10 owners (s 371), and could buy vested lands direct from land boards (s 366) and incorporated lands direct from their owners (Part XVII, s 330). In these cases its operations were not subject to the restrictions imposed by section 220[52] – although the Crown imposed a similar set of restrictions upon itself in Part XIX.[53]

The Crown also gave itself one major advantage over other purchasers. Under section 363, whenever negotiations for a given piece of land were either 'contemplated or in progress', the Governor could be requested to prohibit for one year 'all alienations of that lands other than alienations in favour of the Crown'. As Richard Boast points out:

> This may seem innocuous enough until it is grasped that 'alienation' as far as the statute was concerned meant a range of land dispositions not ordinarily thought of as alienations – in fact any 'transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust or other disposition'.[54]

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50. Herries suggested in the House in 1913 that 'The pakeha purchaser under the 1909 Act . . . in fact . . . was given greater advantages than the Crown. The Crown under that Act could only purchase by a meeting of assembled owners. [whereas] The pakeha if he got the precedent consent of the [Maori Land] Board could purchase the individual interest of every Native, or purchase by meetings of assembled owners': NZPD, 1913, vol 167, p 385. He was referring to the rather convoluted terms of s 209 of the 1909 Act. Such provisions for the purchase of individual interests, however, were deleted under 1912, no 34, s 8, and so were only effect for a relatively short time. I have seen no evidence to suggest that much use was made of them.
51. Section 370 stated explicitly that in such cases individual owners could not sell their interests to the Crown except through the Part XVIII process.
52. The first section of Part XIX (covering 'Purchases of Native Land by the Crown') specified that 'Save so far as otherwise expressly provided in this Act, none of the restrictions, prohibitions, conditions or requirements imposed by this Act upon the alienation of Native land or the acquisition of interests therein shall apply to the alienation of such land, or the acquisition of such interests, by the Crown' (s 360).
53. This specified that the Crown could not purchase Maori land for less than the assessed value (s 372), and could not purchase land unless the Native Land Purchase Board was 'satisfied that no Native will become landless within the meaning of this Act by reason of that purchase' (s 373). Procedures to ensure the proper payment of purchase-money by the Crown were also laid down (s 376).

'Once such a proclamation was in force', he concludes, 'there was virtually nothing the owners could do with their land'. This amounted to a selective re-introduction of the Crown's pre-emptive right in a manner likely to be highly inconvenient (to say the least) for owners who did not wish to sell their land.

The 1909 Act clearly placed the Crown in an advantageous position for purchasing Maori land. The effect of these provisions was greatly magnified by the adoption of a new system for carrying out such purchases. In 1905, as a result of the same pressures which had led to the compulsory vesting of 'unused' Maori lands in two Maori Land Districts, the Crown had resumed purchasing Maori lands in the other five. The Maori Land Settlement Act 1905 contained new safeguards for vendors, hut for the most part these sales represented a continuation of the purchase system employed in the 1890s. Stout and Ngata recommended in 1907 that it be discontinued.[55] The aforementioned Native Land Purchase Board was the focal point of the scheme created by the 1909 Act to replace it. The Native Land Purchase Board had sole responsibility for the purchase of Maori land by the Crown. Made up of the Native Minister, the Under-Secretary for Crown Lands, the Under-Secretary of the Native Department and the Valuer-General, it was authorised:

> to undertake, control, and carry out all negotiations for the purchase of Native land by the Crown and the performance and completion of all contracts of purchase so entered into by the Crown.[56]

To support the purchase and settlement of Maori land, the Minister of Finance was empowered to borrow up to £500,000 per year, which went into a 'Native Land Settlement Account'. (In the event, the amount actually spent per year on land purchase would work out at about half this figure: the average annual expenditure up to 31 March 1922, for example, was £246,000).[57] The Native Land Purchase Board could draw upon these funds to purchase Maori land, to survey it in preparation for settlement, or to make loans to Maori Land Boards to assist them in preparing lands under their control for settlement.[58]

A well-organised, well-funded Crown purchase operation, making full use of a Maori Land Board system wielding extensive powers over Maori freehold lands, was placed in an excellent position to make serious inroads on the stock of land remaining in Maori hands a decade after the passage of the Maori Land Administration Act of 1900. And the Government's intention was to do exactly that. 'It is proposed', Prime Minister Ward stated in November of 1909 with respect to the forthcoming Native Lands Bill, 'to purchase from the Natives as large an area as possible'.[59]

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54. Spiller et al, p 161
55. AJHR, 1907, G-1c, p 16. Ngata commented in 1913 that the purchases in 1906–07 had been 'carried on . . . on the temporary resumption of the old system': NZPD, 1913, p 402 (Ngata).
56. Part XIX, s 362–363
57. See AJHR, 1922, G-9, p 2
58. See Statutes, 1909, no 15, Part XIX, s 377, and Part XXIII, and T W Fisher, 'The Native Land Act 1909', in *New Zealand Official Year-Book 1910*, Wellington, Government Printer, 1910, p 715.
59. 'Financial Statement', AJHR, 1910, B-6, p xxii

9.3 WALKING A TIGHTROPE?

The Native Land Act 1909 was drawn up, and pushed through Parliament, under James Carroll's direct supervision. The new Act retained most of the safeguards relating to Maori land which had been put in place during the first decade of the century, and added a few new ones. The sale of land, in particular, was hedged in with restrictions which sought to ensure (among other things) that Maori vendors knew what was in the contracts they were signing, that they received an 'adequate' price for their land, and that they were not left destitute by the transaction. Carroll himself declared that 'ample protection' had been provided 'against the improvidence of the average Maori'. 'I am satisfied', he stated:

> that the settlement of Native lands will be facilitated and furthered by these proposals, and that the interests of the Native owners will be well conserved.[60]

None the less, it was an Act which more than anything else facilitated further sales of Maori land. The provisions for Crown purchasing alone ensured this, but the those for private purchasing were also made simpler and easier.

Graham Butterworth has commented that:

> So far as alienations were concerned the [1909] act walked a tightrope between Carroll and Ngata's desire to hold onto the land, and pressure from Maoris to sell and the desire of the Government to satisfy pakeha demands by a flow of cheap Maori land.[61]

It is certainly true that compromises were inevitable when it came to drawing up the 1909 Act. It is open to question, though, whether Carroll and Ngata had any particular objection at this point in time to the sale of a portion of the land remaining in Maori hands (much of it unused) which was not already protected from permanent alienation under the Act. Ngata, for example, when criticising the Reform government's amendments to the Native Land Act in 1913, commented that:

> If the proposals of the Native Minister had been concentrated upon the acknowledgedly large remnant of surplus Native land, we on this side of the House could not have legitimately objected . . .[62]

The lands protected from sale in 1909 included those vested in the Maori Land Boards under the 1900 Act and its amendments (now under Part XV) and half of the lands vested in the boards under Part I of the 1907 Act (Part XIV), plus all of those placed under the protection of the boards by virtue of Part II of the 1907 Act (Part XVI). These vested and 'administered' lands together amounted to almost one million acres by 1910. As well, further lands would be protected from sale by the requirement – imposed upon the Crown as well as private purchases – that no Maori be made landless by a sale.

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60. NZPD, vol 148, p 1103 (Carroll)
61. Butterworth, p 247
62. NZPD, 1913, p 400 (Ngata)

CHAPTER 10

VESTED LANDS, 1900 TO 1930

At this juncture in the development of the Maori Land Boards, with the 1909 Act in place, it is both necessary and desirable to examine the lands which had already been, and would subsequently be vested in the boards in fee simple. Pre-1911 vesting has been touched upon in Part I. The following section takes a more-systematic look at how much vested land actually held by the Maori Land Boards at various times, in which categories, and what became of it in the key period of 1911 to 1930. Sales of vested lands are necessarily dealt with as part of the process of reconstructing the holdings of the boards over this period. Sales and leases of vested lands, however, are also dealt with in the following section, which examines all of the various types of alienations which took place under the control of the boards.

This analysis has posed numerous problems for the author. Although a good deal of statistical information about vested lands is available, there are many gaps and anomalies in the data available for this study. Not least of the problems involved in reconstruction is that it is sometimes difficult to tell exactly what the numbers available actually represent – what, in other words, was being counted by the Native Department's functionaries. It will be necessary to address this problem at several points in the following discussion.

The most important and useful set of data is contained in the statistical series embodied in the published annual reports relating to Native and Maori Affairs (G-9). Beginning for the 1911 to 1912 fiscal year, this provides a wealth of statistical detail concerning the boards' operations.[1] Until the end of the 1928 to 1929 fiscal year, tabular data was printed each year under the following headings:

- *Areas of Native Land Vested in and Administered by Maori Land Boards:* Presents data by statutory category as per The Native Land Act, 1909 (Part XIV, XV, XVI and 'under Special Enactment') for each Maori Land Board, showing total acreage at the beginning and end of the fiscal year (31 March), and the amonnts of land newly vested and/or de-vested during the year.
- *Vested Lands:* How Disposed of: Presents data by statutory category (as above, with separate sections for sale and lease in each category) for each Maori Land Board, showing cumulative alienations at the beginning and end of the fiscal year, and the number and total acreage of alienations during the year.

1. The first extensive statistical information was given in the 1910–1911 report (AJHR, 1911, G-9), but the format was changed the following year to that described below. All of the data in this serial is categorised according to the six boards remaining after Maniapoto–Tuwharetoa was disbanded in June 1910 (see above), plus the South Island Board after its creation in 1914.

- *Native Freehold Land:* How Disposed of: Presents data by method of disposal (confirmations of private alienations by Maori Land Board; alienations by assembled owners under Part XVIII) for each Board, showing cumulative alienations at the beginning and end of the fiscal year, and the number and total acreage of alienations during the year.
- *Vested Lands under the Native Townships Act:* Presents data by method of disposal (leases and sales) for each Maori Land Board, showing cumulative alienations at the beginning and end of the fiscal year, and the number and total acreage of alienations during the year.
- *Surveys requisitioned by Maori Land Boards under Section 396, Native Land Act 1909:* Presents cumulative and annual data by Maori Land Board.
- *South Island Alienations:* Beginning with the 1913 to 1914 report (AJHR, 1914, G-9), shows cumulative alienations (leases, sales and mortgages) at the beginning and end of the fiscal year, and the number and acreage of alienations during the year.
- *Summary: Twelve Months' Operations:* Showing alienations (Lease, Sale, Mortgage) by each Maori Land Board, with 'Summary of Totals' and (beginning with the 1914 to 1915 report, AJHR, 1915, G-9), North Island–South Island breakdowns.[2]

This invaluable series covers the main period of Maori Land Board activity with respect to alienations, and particularly with respect to permanent alienations of vested lands by sale under Part XIV of the Native Land Act 1909.

10.1 THE SITUATION ON 31 MARCH 1910

As previously noted, between the start of 1902 and the end of 1909 some 396,366 acres of Maori land were vested in Maori Land Councils and boards under the terms of the 1900 Act and its several amendments (see Table I.1). Most of that vested before 1906 was handed over voluntarily, but thereafter compulsion was the principal mechanism involved. All of this land came under Part XV of the 1909 Act, when the latter came into effect on 31 March 1910. As we have also seen, by this point at least 504,587 acres of land had also been placed under the 1907 Act (see Table I.6). Of this, 317,098 acres went under Part I, which entailed vesting them in Maori Land Boards. The other 187,489 acres were placed under Part II of the 1907 Act, which gave the land boards administrative control but did not confer a fee-simple title. On 31 March 1910, both categories became subject to the 1909 Act – under Parts XIV and XVI, respectively. Also held by the Maori Land Boards

2. Although the amount of statistical information printed was cut back in the 1927–28 and 1928–29 reports, in which the sections dealing with vested lands (total holdings and disposals) were eliminated. Beginning with the 1929–30 report, only a single summary 'Operations' table giving the acreage of lands leased, sold and mortgaged during the previous year was given. This table was itself eliminated from the 1936–37 report, although what amounts to the same information is given in the 'Native Land Courts: (b) Alienations' table which first appeared that year, and continued to under various titles thereafter. This of course reflected the transfer of authority over confirmation of alienations from the boards to the court during this period.

was more than 46,000 acres of land vested in them under 'special enactment or trust' (the most common description used). It is not entirely clear, for want of a precise contemporary explanation, what categories of land were included here. The bulk of the 'Specials', however, appear to have been made up of Thermal District Springs Act lands placed under the control of the boards, with most of the balance being Native Township lands.[3]

According to one source, only 653 acres of vested land had been sold by the Boards up to 1 April 1910, although some 261,537 acres of it had been leased (Table II.1).[4]

Table II.1: Sale and leasing of vested lands to 31 March 1911. Source: 'Table B – Maori Land Boards. Operations of Maori Land Boards for period ending the 31st March, 1911, showing Area dealt with prior to the 1st April, 1910', AJHR, 1911, G-9, p 4.

Category	Acres sold to 1 April 1910	Acres sold between 1 April 1910 and 31 March 1911	Total
Part XIV	103	4665	4768
Part XV	550	440	990
Special	0	2	2
Total	653	5107	5760

Category	Acres leased to 1 April 1910	Acres leased between 1 April 1910 and 31 March 1911	Total
Part XIV	1894	7500	9394
Part XV	257,360	10,443	267,803
Special	2283	5138	7421
Total	261,537	23,081	284,618

The huge disparity between sales and leasing is, of course, accounted for by the fact that none of the lands vested under the 1900 Act and its amendments (moved under Part XV of the 1909 Act) could be sold by the boards. Of lands which could be sold

3. I suggest this because as of 31 March 1911 some 42,970 acres of the 46,242 acres of vested lands in the 'Special' category were located in the Waiariki Maori Land District (in and around Rotorua). The usage may have been adopted from that of the Stout–Ngata commission (see AJHR, 1909, I-G-1G, p 5).
4. The latter figure apparently represents the total amount under lease at this time, rather than the gross total of acreage leased since 1900. A report dated 19 July 1910, which states that some 245,444 acres of land were currently being leased by the Maori Land Boards in 920 leases tends to confirm this interpretation, even though the totals are only an approximate match ('Operations of Native Land Act: Maori Land Boards', AJHR, 1910, B-6, p xii).

– a portion of those under Part I of the 1907 Act (moved under Part XIV of the 1909 Act) – most had been in land board hands for less then a year.

Over the following 12 months (1 April 1910 to 31 March 1911), another 5107 acres of vested lands were sold, and leases were issued for 23,081 acres more. As noted previously, however, it appears that there was a hiatus in new vestings during the 1910 to 1911 fiscal year. None dating from this period were proclaimed in the *New Zealand Gazette*, and none are referred to in any of the relevant Departmental reports. Presumably new vesting was not considered desirable while the Maori Land Boards were adapting to the demands made upon them by the 1909 Act. In any case, this makes it possible to provide an approximate set of figures for the total amount of land vested in the boards as of 1 April 1910, by deducting the aforementioned sales from the known totals of vested lands at 31 March 1911 (Table II.2).

Table II.2: Lands vested in Maori Land Boards, 1901–11. The totals for 31 March 1911 are from AJHR, 1912-II, G-9, p 4 (with addition corrected). The totals for 31 March 1910 are derived by adding known sale acreages for 1910-11 (Table II.1) to the appropriate category of the 31 March 1911 totals.

Date	Part XIV	Part XV	Special	Total
At 31/3/1910	332,954	396,122	46,244	775,320
At 31/3/1911	328,289	395,693	46,242	770,224

At the time the 1909 Act came into effect, then, some 775,320 acres of Maori land in the North Island had apparently been vested in the seven Maori Land Boards then in existence. This represented about one-tenth of the 7,137,205 acres of land in the North Island which (according to the Crown's calculations) remained in Maori ownership at this time.[5]

10.2 VESTED LANDS, 1911

The volume of statistical information available concerning lands vested in the Maori Land Boards increases enormously from 31 March 1911, when the 1911 to 1929 AJHR serial referred to earlier begins. The statistical tables provided by the 1911 to 1912 annual report of the Native Department show holdings of vested lands at this point to be as follows (Table II.3).

Two qualifications need to be made at this point. The first concerns the Part XV data, where there are substantial differences between the figures for individual

5. 10.9 percent, to be unnecessarily precise. See 'Statement showing the Position of Native Lands in the North Island', AJHR, 1911, G-6, p 3. This statistical report is dated 11 October 1911.

Maori Land Boards given in the 'official' summary of 1902 to 1909 vesting, and in the 1911 annual report (see Table II.4).

Table II.3: Area of vested lands, by Maori Land Board, as of 31 March 1911. Adapted from 'Table B – Maori Land Boards: Areas of Native Land Vested in and Administered by Maori Land Boards', in AJHR, 1912-II, G-9, p 4 (Part XV addition corrected). Similar figures for the three types of vesting are given in 'Table B – Maori Land Boards: Operations . . . for the Period ending 31st March 1911', in AJHR, 1911, G-9, p 4, which does not break the figures down by boards. The Part XV total there is slightly different from the incorrectly added one in the 1911 to 1912 report.

Maori Land Board	Part XIV	Part XV	Special	Total	Percentage total
Ikaroa	16,304	1742	260	18,306	2.38
Aotea	0	193,689	1359	195,048	25.32
Tairawhiti	2823	54,337	3	57,163	7.42
Waiariki	30,683	3577	42,970	77,230	10.03
Waikato–Man	203,530	0	1650	205,180	26.64
Tokerau	74,949	142,348	0	217,297	28.21
Total	328,289	395,693	46,242	770,224	100.00
Percentage total	42.62	51.37	6.00	100.00	

Table II.4: Comparison of Part XV vesting totals. Column 1 from AJHR, 1910, G-10 (see Table I.1); Column 2 from AJHR, 1911–12, G-9 (see Table II.3).

Board	Acres vested 1902–09	Acres vested at 31 March 1911
Waikato–Man	67,892	0
Aotea	126,848	193,689
Waiariki	3517	3577
Tairawhiti	54,318	54,337
Ikaroa	1445	1742
Tokerau	142,346	142,348
Totals	396,366	395,693

As can be seen, although the totals are very similar there are major discrepancies between the amounts of land vested in the Aotea and Waikato–Maniapoto boards from 1902 to 1909, and the amounts actually held in 1911. The most likely explanation would seem to be that when the Waikato and Maniapoto–Tuwharetoa Maori Land Boards were merged in 1910, the resulting boundary alterations moved some 67,000-odd acres of Part XV lands within the jurisdiction of the Aotea Maori Land Board.[6]

The second problem concerns the figure for Part XIV vestings. There is a large discrepancy between the total given above (328,289 acres) and those for vestings under Part I of the 1907 Act up to 31 March 1910 which were discussed earlier (317,098 acres). Given that all of the reports available insist that some 328,000 acres of Maori land were vested in the boards under Part XIV in 1911,[7] there would appear to be two possible explanations. The first is that certain proclamations of land under the 1907 Act were not published in the *New Zealand Gazette* for some reason. The second, and more likely explanation is that proclamations covering some 15,000 acres of land are not listed in the *Gazette* indexes for 1908 to 1909.[8]

These minor difficulties aside, it is possible for the first time to get a clear idea of the amount and composition of the Maori Land Boards' holdings. In terms of volume, it is apparent there were two different categories of Maori Land Board in 1911. The first included Ikaroa, Tairawhiti, and Waiariki, which held relatively small amounts of vested land; the second, which included Aotea, Waikato–Maniapoto, and Tokerau, had significant holdings in the neighbourhood of 200,000 acres each. The three boards in the second group together held 80.2 percent of all vested lands (617,525 acres). The level of variation was such that the Maori Land Board with the fewest vested lands – Ikaroa – held less than one-tenth of the amount vested in any single one of the larger boards.

In terms of the composition of their vested-land holdings, on the other hand, there is not much to chose between the various Maori Land Boards – which is to say that they are all quite different. Without exception, a single type of vested land dominated each of the boards' holdings (see Table II.5):

Table II.5: Composition of holdings of vested lands, 1911

Board	Main holding	Percentage total holdings	Percentage of type
Waikato–Maniapoto	Part XIV	99.2	62
Aotea	Part XV	99.3	49

6. It should be noted here that the totals for Part XV vestings for 1906 to 1909 derived from a search of the *Gazettes* correspond very closely with the figures for 1900 Act vestings for the same period given in AJHR, 1910, G-10. It is thus very likely that the vesting/holdings discrepancy is an administrative hiccup.
7. See AJHR, 1911, G-10A (328,187 acres at 18 October 1911) and AJHR, 1912, II, G-9 (328,289 acres at 31 March 1911), et al.
8. The author considered it above and beyond the call of duty to scrutinise every page of the *Gazettes* themselves in order to provide a definite answer to this question.

Table II.5: Composition of holdings of vested lands, 1911

Board	Main holding	Percentage total holdings	Percentage of type
Waiariki	Special	55.6	92.4
Tairawhiti	Part XV	95.1	13.7
Ikaroa	Part XIV	87.1	5.0
Tokerau	Part XV	65.5	36.0

In every case a single type of vested land comprised more than half of each board's holdings: in four it approached or exceeded 90 percent of the board's holdings. In three cases, as well, a single board held more than half of total amount of vested land in a particular category which had been vested in the Maori Land Boards, as summarised in Table II.6.

10.3 VESTED LANDS, 1911 TO 1927: VESTINGS

From the data published in the AJHRs for the period 1911 and 1912 to 1926 and 1927 it is possible to ascertain how much vested land was held by the Maori Land Boards at any given time. This, at least, is the impression given by the annual reports (Table II.6).

The difficulty with these figures is that they are contradicted by other data from the same set of tables in the same annual reports. When the Native Department's own figures for new vestings, transfers, reversions, and sales are analysed, using the 31 March 1911 vesting totals as a starting point, the results bear scant resemblance to the 'official' figures.

Table II.6: Lands vested in Maori Land Boards, by statutory category, at given dates. Source: annual reports, AJHR, G-9, 1911–12 to 1927–28, 'Table B – Maori Land Boards. Areas of Native Land Vested in and Administered by Maori Land Boards'. No total figure for lands vested is given in the annual reports: the one used here is simply a sum of the category totals.

Date	Part XIV	Part XV	Special	Total
At 31 March 1911	328,289	395,682	46.241	770,212
At 31 March 1912	323,370	407,402	26,220	756,992
At 31 March 1913	326,190	407,403	26,222	759,815

Table II.6: Lands vested in Maori Land Boards, by statutory category, at given dates. Source: annual reports, AJHR, G-9, 1911–12 to 1927–28, 'Table B – Maori Land Boards. Areas of Native Land Vested in and Administered by Maori Land Boards'. No total figure for lands vested is given in the annual reports: the one used here is simply a sum of the category totals.

Date	Part XIV	Part XV	Special	Total
At 31 March 1914	329,644	407,402	26,222	763,268
At 31 March 1915	329,644	350,095	69,275	749,014
At 31 March 1916	329,644	350,095	69,275	749,014
At 31 March 1917	324,772	350,094	69,759	744,625
At 31 March 1918	303,864	350,094	69,759	723,717
At 31 March 1919	301,652	349,538	69,759	720,949
At 31 March 1920	301,598	348,973	69,759	720,330
At 31 March 1921	300,722	348,797	69,759	719,278
At 31 March 1922	300,713	329,793	69,759	700,265
At 31 March 1923	300,713	329,793	69,759	700,265
At 31 March 1924	300,212	328,896	69,759	698,867
At 31 March 1925	292,699	328,896	69,759	691,354
At 31 March 1926	288,852	326,209	69,759	684,820
At 31 March 1927	284,778	316,801	69,759	671,338

The difficulty with these figures is that they are contradicted by other data from the same set of tables in the same annual reports. When the Native Department's own figures for new vestings, transfers, reversions and sales are analysed, using the 31 March 1911 vesting totals as a starting point, the results bear scant resemblance to the 'official' figures.

10.4 NEW VESTINGS, 1911 TO 1927

Table II.7 shows all of the acreage known to have been vested in the land boards after 31 March 1911.

Table II.7: New vesting in Maori Land Boards by statutory category, 1911–27. From annual reports, AJHR, G-9, 1911–12 to 1927–28, 'Table B – Maori Land Boards. Areas of Native Land Vested in and Administered by Maori Land Boards'. A total figure for lands vested is not given in the Annual Reports: the one used here is simply a sum of the category totals. Note that 8429 acres listed as vested under Part XIV were vested as a result of resolutions passed by assembled owners under Part XVIII in 1911–1912 to 1913–1914.

Date	Part XIV	Part XV	Special	Total
1911–12	7054	11,721	1319	20,094
1912–13	2819	0	2	2821
1913–14	4474	0	0	4474
1914–15	0	0	57,308	57,308
1915–16	0	0	0	0
1916–17	0	0	484	484
1917–18	0	0	1	1
1918–19	0	0	0	0
1919–20	0	0	0	0
1920–21	0	0	0	0
1921–22	0	0	0	0
1922–23	0	0	0	0
1923–24	0	0	0	0
1924–25	0	0	0	0
1925–26	0	0	0	0
1926–27	0	0	0	0
Total	14,347	11,721	59,114	85,182

The Part XIV figures agree reasonably well in total, but not in timing, with new Part XIV vestings proclaimed in the *New Zealand Gazette*.

Legislation	1910–11	1911–12	1912–13	1913–14	Total
1909 XIV	0	9699	800	4474	14,973
1909 XV	0	735	0		735
Total	0	10,434	800	4474	15,708

Where Part XV lands are concerned, the annual report for 1911 to 1912 confirms that 775 acres were vested in the Aotea (197 acres) and Waikato–Maniapoto boards (538 acres) during that year, but also shows a further 10,975 acres being vested in the Waiariki board under Part XV, for a total of 11,710 acres of new vestings.[9] In another section, however, 21,340 acres of Waiariki vestings are shown as being converted from 'Special' into Part XV lands. While a *Gazette* notice may not have been considered necessary for the change in status, this does nothing to explain where the other 10,365 acres went. The vesting of 57,308 acres of 'Special' land in Tokerau in 1914 to 1915 involved a similar process, in that this amount of Part XV land was moved to the 'Special' category. Or so one assumes: the report in question simply adds and subtracts the same total in the Tokerau section of the two entries.

10.5 TOTAL VESTINGS

Subject to these caveats, it can be asserted with reasonable confidence that a grand total of some 861,155 acres of Maori land were vested in the Maori Land Boards between the passage of the Maori Land Administration Act 1900 and 31 March 1927 (Table II.8).

Table II.8: Total of lands vested, 1900–27

Date	Part XIV	Part XV	Special	Total
Vested land sold prior to 1 April 1910	653	0	0	653
Vested lands at 31 March 1910	332,954	396,122	46,244	775,320

9. Although the subtotal for the Part XV section shows a transfer of 11,721 acres.

Table II.8: Total of lands vested, 1900–27

Date	Part XIV	Part XV	Special	Total
Vested 1 April 1911 to 31 March 1927	14,347	11,721	59,114	85,182
Total	347,954	407,843	105,358	861,155

10.6 VESTED LANDS, 1911 TO 1927: DISPOSALS

During the period in question, the amount of Maori land vested in the boards was reduced by reversion of fee-simple title to the owners, by de-vesting for other purposes or reasons, and by sales. According to the 'official' annual series (Table II.6), the net loss in the amount of vested lands held by the Maori Land Boards was 98,874 acres between 31 March 1911, and 1 April 1927.[10]

10.6.1 Reversion to Owners

The Native Land Amendment Act 1912[11] first made provision for owners to regain the title to lands which had been vested in trust in the Maori Land Boards. According to the Native Department's annual reports, some 89,642 acres of vested land under Part XIV and Part XV reverted to its owners during this period (Table II.9).

Table II.9: Reversions of vested lands to owners, 1911–27. The reversion of 11,973 acres of Part XIV lands in 1911–12 may have been carried out by some means other than the 1912 Act, but further information on this point has not yet come to light.

Date	Part XIV	Part XV	Total
1911–12	11,973	0	11,973
1912–13	0	0	0
1913–14	0	0	0
1914–15	0	0	0
1915–16	0	0	0
1916–17	4872	0	4872
1917–18	20,907	0	20,907
1918–19	2213	557	2770

10. That is, 770,212 acres (31 March 1911) minus 671,338 acres (31 March 1927).
11. Statutes, 1912, no 34, s 18

Table II.9: Reversions of vested lands to owners, 1911–27. The reversion of 11,973 acres of Part XIV lands in 1911–12 may have been carried out by some means other than the 1912 Act, but further information on this point has not yet come to light.

Date	Part XIV	Part XV	Total
1919–20	54	565	619
1920–21	876	176	1052
1921–22	9	19,004	19013
1922–23	0	0	0
1923–24	501	897	1398
1924–25	7512	0	7412
1925–26	3847	2688	6535
1926–27	3583	9408	12,991
Total	56,347	33,295	89,642

This represented some 10.4 percent of the 861,155 acres of Maori lands which apparently were vested in the boards in the period 1900 to 1927.

10.6.2 Other de-vesting

Some mention has already been made of cases in which quantities of land appear in or disappear from the tables in the annual reports without explanation. For the sake of consistency, if nothing else, these must for present purposes (and in the absence of better information) be treated as cases of vesting or de-vesting. Where the latter is concerned, it would appear that some 93,924 acres of vested land were de-vested in 1911 to 1927 in order to change their status, or for some unknown administrative purpose. A breakdown is given in Table II.10.

Table II.10: Other de-vesting, 1910–27

Date	Part XIV	Part XV	Special	Total
1911–12			21,340	21,340
1912–13				0
1913–14	1020			1020
1914–15		57,308	14,256	71,564
Total	1020	57,308	35,596	93,924

In one of these four cases the land in question was transferred to another category of vesting, when 57,308 acres of vested land in Tokerau was evidently re-classified as 'Special' (1914 to 1915). In another instance an annotation reads 'Awarded to Crown on partition' (1913 to 1914). Presumably these lands were erroneously vested in the Waikato–Maniapoto Board under Part XIV, and granted to the Crown following a Native Land Court investigation. In both of the other cases, however – both involving the Waiariki Board – acreage simply disappears from the annual reports without explanations. Some 10,365 acres apparently went missing in 1911 to 1912 when a large quantity of 'Special' land was transferred to Part XV, and 14,256 acres of Waiariki 'Special' land vanished from the accounts between the 1913to 1914 and 1914 to 1915 reports.[12]

10.6.3 Sales of Vested Land

Sales were the principal method by which the amount of Maori land vested in the Maori Land Boards was reduced during the period 1910 to 1927. The annual reports provide the figures in Table II.11.

Table II.11: Sales of vested lands, 1910–27

Date	Part XIV	Part XV	Special	Total
1910–11	4556	400	2	4958
1911–12	31,919	223	80	32,222
1912–13	25,076	0	103	25,179
1913–14	13,644	0	9	30,911
1914–15	16,443	0	3	16,446
1915–16	958	5	25	988
1916–17	20,146	5	2	20,153
1917–18	1450	0	0	1450
1918–19	4733	0	0	4733
1919–20	0	0	0	0
1920–21	2396	0	0	2396
1921–22	5908	0	1	5909
1922–23	0	0	1	1
1923–24	49	0	0	49

12. That is, the 1913–14 Annual Report, p 4, credits the Waiariki board with 21,630 acres of 'Special' vested land 'As at 31st March, 1914'. The 1914–15 report, p 4 credits it with only 7374 acres of 'Special' land at the same date.

Table II.11: Sales of vested lands, 1910–27

Date	Part XIV	Part XV	Special	Total
1924–25	0	0	2	2
1925–26	0	0	0	0
1926–27	1318		0	1318
Total	128,596	17,891	228	146,715

Not surprisingly, the bulk of these sales were Part XIV lands, but the amounts involved are less than might have been expected. The 128,596 acres represented only 37 percent of the total of 347,954 acres of Maori land which are known to have been vested in the boards under Part I of the 1907 Act and Part XIV of the 1909 Act in the period 1908 to 1927. It would thus appear that 50:50 ratio of sale and lease stipulated by the 1907 Act, and re-stated by the 1909 Act (s 239) either was not or could not be executed in practice. Another explanation, however, may be possible. If the 56,347 acres of Part XIV land re-vested in their owners are removed from the calculation, then the sales represent 44.2 percent of the 291,607 acres of Part XIV land which remained in the hands of the boards. This percentage is much closer to the statutory requirement.

More surprising is the sale of such a large amount of land vested under Part XV. The lands vested in the Maori Land Councils and boards under the 1900 Act and its amendments could not be sold, and the same stipulation was incorporated in the 1909 Act. Section 291(1) clearly stated that, although Part XV lands were held by the boards 'on the same trusts' as lands vested under Part XIV, they could not be sold under the authority of Part XIV. The only exception was sales under section 278, but these were limited to parcels of less than five acres for specific purposes.

These restrictions notwithstanding, the annual reports clearly identify some 17,891 acres of Part XV lands as having been sold by the boards in the period 1910 to 1914. Neither the number of transactions involved in, nor the location of the 400 acres disposed of in 1910 to 1911 can at present be ascertained, but it may possibly be significant that all four of transactions which led to the sale of 17,491 acres of Part XV lands in 1911 to 1912 and 1913 to 1914 took place in the Tairawhiti Maori Land District. This represented some 32.2 percent of the Part XV lands reportedly vested in the Tairawhiti board as of 31 March 1911. Overall, though, barely 4.4 percent of the 407,843 acres known to have been vested under Part XV in the study-period seem to have been sold by the Maori Land Boards. The proportion of 'Special' lands sold was even smaller, the 228 acres amounting to only 0.2 percent of total known vestings (105,358 acres). These probably represented, for the most part, sales of Native Township lands.

10.6.4 Actual holdings of vested lands

According to the figures given in the annual report serial for 'Native Lands vested in and administered by Maori Land Boards', the net change in the amount of vested lands held by the boards between 1 April 1911 and 31 March 1927 was a reduction of 98,874 acres (12.8 percent of the initial total).[13]

Table II.12: Changes in the amount of vested lands

Date	Part XIV	Part XV	Special	Total
At 31 March 1911	328,289	395,682	46,241	770,212
At 31 March 1927	284,778	316,801	69,759	671,338
Change	–43,511	–78,881	+23,518	–98,874

According to these same annual reports, however, the 85,182 acres of land vested in the boards during this period were offset by a total of 325,323 acres lost by reversion to the original owners, by other de-vesting and by sale, for a net loss of 240,141 acres (Table II.13).

Table II.13: Summary of vesting and de-vesting, 1911–27. The sales figures are taken from Table II.11, with the totals for 1910–11 sales deducted.

Category	Part XIV	Part XV	Special	Total
New vesting	14,347	11,721	59,114	85,182
Total vested (A)	14,347	11,721	59,114	85,182
Reversions	56,347	33,295	0	89,642
Other de-vesting	1020	57,308	35,596	93,924
Sales	124,040	17,491	226	141,757
Total de-vested (B)	181,407	108,094	35,822	325,323
Difference (B–A)	167,060	96,373	-23,292	240,141

It is impossible to reconcile these figures as they stand. A year-by-year analysis of the data, using the totals for lands vested as of 31 March 1911 as a starting-point,

13. Derived from Table II.6.

and calculating vestings, de-vestings and sales on an annual basis, produces the figures in Table II.14.

Table II.14: Actual acreage of vested lands, 1911–27

Date	Part XIV	Part XV	Special	Total acres	Change (from previous year)
At 31 March 1911	328,398	395,722	46,242	770,362	
At 31 March 1912	291,560	407,220	26,141	724,921	–45,441
At 31 March 1913	269,303	407,220	26,040	702,563	–22,358
At 31 March 1914	259,113	389,962	26,031	675,106	–27,457
At 31 March 1915	242,670	332,654	69,080	644,404	–30,702
At 31 March 1916	241,712	332,649	69,055	643,416	–988
At 31 March 1917	216,694	332,644	69,537	618,875	–24,541
At 31 March 1918	194,337	332,644	69,538	596,519	–22,356
At 31 March 1919	187,391	332,087	69,538	589,016	–7503
At 31 March 1920	187,337	331,522	69,538	588,397	–619
At 31 March 1921	184,065	331,346	69,538	584,949	–3448
At 31 March 1922	178,148	312,342	69,537	560,027	–24,922
At 31 March 1923	178,148	312,342	69,536	560,026	–1
At 31 March 1924	177,598	311,445	69,536	558,579	–1447
At 31 March 1925	170,086	311,445	69,534	551,065	–7514
At 31 March 1926	166,239	308,757	69,534	544,530	–6535

Table II.14: Actual acreage of vested lands, 1911–27

Date	Part XIV	Part XV	Special	Total acres	Change (from previous year)
At 31 March 1927	161,338	299,349	69,534	530,221	–14,309
Change (1 April 1911 to 31 March 1927)	–167,060	–96,373	+23,292	–240,141	–240,141

I would suggest that these calculations provide a much more accurate reflection of the Maori Land Boards' annual holdings of vested lands during the period in question than the 'official' figures. It shows that the total amount of vested land in Maori Land Board hands by the terminal date was in the neighbourhood of 530,000 acres, rather than the 671,000-odd acres indicated in the annual report for 1926 to 1927.

An examination of annual entries indicates that the only elements which the Native Department took account of in compiling its own annual totals were new vestings and reversions of title to owners. The former were added, and the latter subtracted from the previous year's total. Calculations were also affected – inadvertently or otherwise – by the miscellaneous changes which I have placed in the 'other de-vesting' category:

New vesting: +85,182
Reversions: –89,642
Other: –93,924
Total: –98,384

It is unlikely to be a coincidence that the sum of these three elements comes within a few hundred acres of 98,874 acres – the 'official' figure for the net loss in the amount of vested lands held the boards over the period under study.

Why this should have been the case is not readily apparent. Given that the principal omission from the 'official' calculations was Part XIV sales, and that the 'official' figures purported to cover 'Native Land vested in and administered by Maori Land Boards' one might reasonably suspect that the land alienated in this manner somehow remained within the administrative domain of the boards. And, in fact, Part XIV lands could not be purchased outright by buyers: a minimum five-year term was imposed to ensure that certain occupation and cultivation requirements were met. Buyers could not receive the fee-simple title for their purchase before then.[14] Part XIV sales thus did not necessarily involve an immediate transfer of title. The full sale price, however, had to be paid within a maximum of 10 years after the purchase was made. As the following table shows,

even if every purchaser waited the full 10 years before transferring title – which seems most unlikely – a minimum of 112,742 acres of Part XIV sales (92.8 percent) should have been 'struck off the books' of the Maori Land Boards by 31 March 1927, and listed as 'de-vested' lands (Table II.15).

Table II.15: Completions of Part XIV sales, to end of 1927

Date	Part XIV sales	Total Part XIV sales	Percentage total sales	End of five-year term	End of 10-year term
1910–11	4556	4556	3.54		
1911–12	31,919	36,475	28.36		
1912–13	25,076	61,551	47.86		
1913–14	13,644	75,195	58.47		
1914–15	16,443	91,638	71.26		
1915–166	958	92,596	72.01	4556	
1916–17	20,146	112,742	87.67	36,475	
1917–18	1450	114,192	88.80	61,551	
1918–19	4733	118,925	92.48	75,195	
1919–20	0	118,925	92.48	91,638	
1920–21	2396	121,321	94.34	92,596	4556
1921–22	5908	127,229	98,94	112,742	36,475
1922–23	0	127,229	98.94	114,192	61,551
1923–24	49	127,278	98.98	118,925	75,195
1924–25	0	127,278	98.98	118,925	91,638
1925–26	0	127,278	98.98	121,321	92,596
1926–27	1318	128,596	100	127,229	112,742

An alternative explanation is that the Crown was incredibly lax in enforcing its own purchase regulations, and the most buyers were exceedingly reluctant to complete their purchases. This also seems improbable.

An unfortunate side-effect of these peculiar accounting practices is that the official figures for the total amount of land vested in the individual Maori Land Boards for any given year after 1911 (Table II.6) do not accurately reflect the true situation at the time. Re-calculating all of these totals was beyond the scope of this

14. See 'Regulations relating to Maori Land Boards under the Native Land Act, 1909', *New Zealand Gazette*, 13 June 1910, no 58, pp 1717–1731; especially 'Third Schedule: Contract of Sale under the Native Land Act, 1909: Part XIV'

project, but the following provides a rough estimate of the individual Maori Land Boards' holdings of vested land at 31 March 1926. The 'Actual Total at 31 March 1926 (Approx)' in Table II.16 has been calculated by deducting the acreage of vested land sold between 31 March 1911 and 31 March 1926 from the 'official' total for land board holdings of vested lands at 31 March 1926 (the last year when these figures are provided).[15] Note that the resulting total is very close to that calculated above for actual vesting as at 31 March 1926 (544,530 acres): see Table II.14.

Table II.16: Area of vested lands, by Maori Land Board, as at 31 March 1926 (approximate)

Maori Land Board	Total at 31 March 1911 (AJHR)	Percentage total 1911	Total at 31 March 1926 (AJHR)	Vested land sales 1911–26	Actual total at 31 March 1926 (approx)	Percentage total 1926
Ikaroa	18,306	2.4	18,748	13,839	4909	0.9
Aotea	195,048	25.3	191,219	6791	184,428	33.9
Tairawhiti	57,163	7.4	58,135	17,529	40,606	7.5
Waiariki	77,230	10.0	34,882	1330	33,552	6.2
Waikato–Maniapoto	205,180	26.6	194,348	82,478	111,870	20.6
Tokerau	217,297	28.2	187,488	18,516	168,972	31
Total	770,224	100	684,820	140,483	544,337	100

Sales, as can be seen, had made substantial inroads into the amount of vested land held by several boards: Ikaroa and Waikato–Maniapoto, with the highest proportions of Part XIV vestings in 1911 (see Table II.5), naturally experienced the largest reductions.

10.7 CONCLUSIONS

The published statistical information relating to the vested lands held by the Maori Land Boards is not, unfortunately, complete. Further research is required to fill several gaps, and also to explain anomalies in the published record. In particular, it would be useful to look more closely at the reported sales of Part XV lands, and to explain why Part XIV sales were not (apparently) incorporated in the published totals of lands vested in the Maori Land Boards. The information available is

15. Note that the resulting total is very close to that calculated above for actual vesting as at 31 March 1926 (544,530 acres): see Table II.14.

sufficient to give a good sense of the scale and complexity of the boards' responsibilities as a trustee for Maori landowners.

It is also sufficient to demonstrate that the lands vested in the Maori Land Boards were, in absolute terms, a steadily-shrinking resource during the 1910s and 1920s. In 1910 the Maori Land Boards held some 775,320 acres of vested lands. By 1927 this had fallen by nearly one-third, to some to 530,221 acres, due in the main to Part XIV sales and the reversion of title to owners. These losses were not offset by significant amounts of new vesting. Relative to the total amount of land in Maori hands, the proportion of vested lands remained surprisingly constant – but only because so much Maori freehold land was permanently alienated during this period. In 1910 Maori owned 7,137,205 acres of land in the North Island: vested lands made up some 10.9 percent of them. In 1927 figure Maori owned 4,153,796 acres, of which vested lands made up about 12.8 percent.[16] In short, the decline in boards' holdings of vested lands kept exact pace with the decline in Maori holdings as a whole. Or to put it another way, the proportion of vested lands lost was not much different from that of Maori lands in general. This being the case, one must conclude that under the 1909 system the 'protection' affording by vesting turned out to be only marginally better than none at all.

16. See above for 1910, and AJHR, 1927, G-9, p 2 for the 1927 figure. It should be noted, however, that the 1927 calculation may be based in part on the inflated 'official' figure for vested lands (discussed above). Like all official statistics relating to Maori land in this era it is best treated as indicative rather than accurate.

CHAPTER 11

ALIENATION THROUGH THE MAORI LAND BOARDS, 1910 TO 1933

The sharp decline in the amount of land held by Maori between 1910 and 1930 was due in large measure to the efficient system of alienation presided over the Maori Land Boards. In addition to their responsibilities for vested lands, under the 1909 Act the Maori Land Boards were required to act as agents for the owners of lands placed under Part XVI and for 'assembled owners' taking action under Part XVIII. All other alienations of Maori freehold lands, save for certain purchasing by the Crown, also had to be approved by the boards.[1] Taken together, the seven Maori Land Boards in operation would oversee the sale of more than 115,000 acres of Maori freehold and vested land, on average, and the leasing of more than 91,000 acres, on average, for each and every fiscal year from 1910 to 1911 through to 1929 to 1930.

11.1 SALES AND LEASES OF VESTED LANDS

Sales, as noted previously, were the principal method by which the amount of Maori land vested in the Maori Land Boards was reduced during the period 1910 to 1927. In all, 128,596 acres of Part XIV lands were permanently alienated, together with some 17,891 acres of Part XV and 228 acres of 'Special' lands. The bulk of these transfers had taken place by the end of the 1917 to 1918 fiscal year, within a decade of the passage of the 1907 Act (see Table II.11). The rate of sale thereafter was very low, averaging less than 1600 acres per year during the balance of the period for which data is available (see Table II.17).

Table II.17: Rate of sales of vested lands, 1910–27

Date	Total	Percentage total sales	Cumulative percentage
1910–11	4958	3.38	3.38
1911–12	32,222	21.96	25.34
1912–13	25,179	17.16	42.5

1. And by the Native Land Court outside of the North Island until 1914.

Table II.17: Rate of sales of vested lands, 1910–27

Date	Total	Percentage total sales	Cumulative percentage
1913–14	30,911	21.07	63.57
1914–15	16,446	11.21	74.78
1915–16	988	0.67	75.46
1916–17	20,153	13.74	89.19
1917–18	1450	0.99	90.18
1918–19	4733	3.23	93.41
1919–20	0	0	93.41
1920–21	2396	1.63	95.04
1921–22	5909	4.03	99.07
1922–23	1	0	99.07
1923–24	49	0.03	99.1
1924–25	2	0	99.1
1925–26	0	0	99.1
1926–27	1318	0.9	100
Total	146,715	100	100

Half of the lands vested in the boards under Part I of the 1907 Act and Part XIV of the 1909 Act were earmarked for sale. For the other half of these lands, plus the rest of those vested in the boards, leases were the sole permissible form of alienation.[2] When the 1909 Act came into operation in 1910, 261,537 acres of vested land were reportedly under lease (see Table II.1). This represented some 33.7 percent of the 775,320 acres of land vested in the boards at this point in time. When the 165,000-odd acres nominally earmarked for sale under Part XIV are deducted,[3] roughly 350,000 acres of vested land were available for new leasing at the beginning of 1910.

The figures in Table II.18 show that during the period 1910 to 1917, the boards were as busy leasing vested land as they were selling it. New leases covering 115,637 acres had been issued by 1918. The total had risen to 180,107 acres a decade later.

2. With minor exceptions mainly relating to townships, and to Part XV lands as discussed previously.
3. That is, half of the 332,954 acres vested under Part XIV as of 31 March 1910.

Large as this it is, however, it should be noted that the total acreage of new leasing to the end of 1918 represents only one-third of the vested lands which had been available for leasing in 1911. At the beginning of the post-War slump, the balance – more than 200,000 acres of vested land – remained as 'idle' as it had been when the land boards had taken it over.[4] It would appear that the situation did not change to any significant extent during the 1920s.

Table II.18: Leases of vested lands, 1910–28. Source: Annual reports 1910 and 1911–1927 and 1928.

Year	Part XIV	Part XV	Special	Total	Cumulative
1910–11	7500	10,442	5138	23,080	23,080
1911–12	19,546	33,758	212	53,516	76,596
1912–13	6487	6398	370	13,255	89,851
1913–14	6457	3467	0	9924	99,775
1914–15	2066	2908	336	5310	105,085
1915–16	0	20	0	20	105,105
1916–17	0	10,514	18	10,532	115,637
1917–18	0	0	0	0	115,637
1918–19	455	465	0	920	116,557
1920–21	90	538	0	628	117,185
1921–22	2068	201	0	2269	119,454
1922–23	19	0	0	19	122,129
1923–24	10	0	0	10	122,139
1924–25	2080	18	0	2098	124,237
1925–26	2736	0	0	2736	126,973
1926–27	2807	0	0	2807	129,780
1927–28	50,305	0	22	50,327	180,107
Total	105,182	68,829	6096	180,107	180,107

4. Figures in 'Land Still Held by Maori Owners in the North Island' in the 1919–20 annual report, p 2, substantiate the necessarily crude estimates given here. It includes in the 'Unoccupied' category some 210,648 acres 'Vested in Maori Land Boards and undisposed of' (that is, neither sold nor leased).

11.2 OTHER BUSINESS

Neither the steady decline through sales of the amount of lands actually vested in the Maori Land Boards, nor flagging interest in the leasing of those which remained in hand, was reflected in a reduction in the volume of work which the boards were called upon to carry out. For one thing, the 1907 Act had required them to act as agents for the leasing of lands 'set apart for occupation of Maoris' under Part II (later Part XVI of the 1909 Act). For another, Part XVIII of the 1909 Act had required the boards to act as agents for the 'Assembled Owners', executing resolutions to do with various forms of alienation and transfer of land. Finally, as noted earlier the period 1905 to 1908 had seen a steady extension in the land boards' supervisory powers over the alienation of Maori land. This culminated in the provisions of section 7 of the Maori Land Laws Amendment Act 1908[5] and Part XIII of the 1909 Act,[6] which made the boards responsible for the confirmation of most such alienations of Maori land in the North Island.

11.2.1 Agents of owners: Part XVI lands

Part XVI lands were those which under Part II of the 1907 Act had been set aside for the use and occupation of their owners. The land boards were designated as the agents of the owners for the purpose of granting leases. The Stout–Ngata commission recommended that some 867,481 acres of Maori land be so designated, but by 1911 a total of only 204,628 acres had been brought under this section of the 1909 Act. Most of the additions made over the following two decades were the result of transfers initiated by Assembled Owners under Part XVIII (Table II.19).[7]

Part XVI lands could only be leased to one of the beneficial owners of the land, or to another Maori where the board concluded that none of the owners was ready, willing or able to become a tenant under the terms proposed by the board. It would appear that, in the event, relatively little of 214,722 acres which had been placed under Part XVI between 1907 and 1927 was ever leased. The 26,508 acres in question amounted to only 12.3 percent of the total (Table II.20).

It is difficult to understand why such a large proportion of the lands specifically identified by Stout and Ngata as being needed for actual occupation by the owners were not taken up for this purpose through the land boards. Perhaps owners preferred to reach agreement among themselves over the use of such lands, rather than become entangled with bureaucratic paperwork. Or perhaps the quality of the lands was such as to deter potential lessees. This is another question relating to the effects of the Stout–Ngata commission which requires further investigation.[8]

5. Statutes, 1908, no 253
6. Sections 217–226
7. See annual reports 1911–12 and 1912–13. The mechanism by which the 1918–1919 addition was made is not explained in that report.
8. Ngata himself later acknowledged that 'Except in a few cases', the Part XVI system 'did not meet with much success' (although it 'served its purpose in advancing thought regarding the settlement of Maoris upon land'). AJHR, 1931, G-10, p iii.

Table II.19: Part XVI lands administered by Maori Land Boards. Source: annual reports, 1910–11 and 1926–27, 'Table B'. The figures are those given in the reports, without correction. A new calculation using 31 March 1911 figure as a starting point produces slightly different totals. The entries in the 'deleted' column marked with an asterisk (*) represent sales – rather mysteriously, since sales of Part XVI lands were not permitted. Note that in the annual reports Part XVI lands were dealt with alongside vested lands using the same tables and categories, even though they were not actually vested in the boards. When officials provided totals of lands 'vested in and administered by Boards' they were usually including Part XVI lands, whereas totals 'vested in Boards' were confined to Part XIV, Part XVI, and Special lands. For a rare report which makes this distinction clear – at least in so far as both figures are given side by side – see AJHR, 1921-II, G-9, p 1.

Date	Total administered	Added	Deleted
At 31 March 1911	204,628		744*
At 31 March 1912	209,341	4713	44*
At 31 March 1913	214,375	5034	
At 31 March 1914	214,375		
At 31 March 1915	214,375		
At 31 March 1916	214,375		
At 31 March 1917	213,798		577
At 31 March 1918	213,798		
At 31 March 1919	214,146	347	
At 31 March 1920	214,053		93
At 31 March 1921	214,053		
At 31 March 1922	214045		
At 31 March 1923	212,964		1081
At 31 March 1924	212,964		
At 31 March 1925	212,309		655
At 31 March 1926	211,502		807
At 31 March 1927	211,178		324
Total		10,094	4325

Table II.20: Part XVI leases, 1910–27

Year	Leased	Cumulative
1910–11	8038	8038
1911–12	3913	11,951
1912–13	1639	13,590
1913–14	3891	17,481
1914–15	4051	21,532
1915–16	1835	23,367
1916–17	729	24,096
1917–18	862	24,958
1918–19	104	25,062
1919–20	393	25,455
1920–21	638	26,093
1921–22	119	26,212
1922–23	91	26,303
1923–24	0	26,303
1924–25	205	26,508
1925–26	0	26,508
1926–27	0	26,508
Total	26,508	26,508

11.2.2 Agents of Assembled Owners: Part XVIII Lands

The Maori Land Boards were responsible in a comparable way for Part XVIII lands. The mechanics of the process were discussed in the section on the 1909 Act but, in essence, 'Assembled Owners' could pass resolutions accepting or rejecting offers from the Crown or private individuals to purchase or lease land. Resolutions accepting such offers had then to be reported to the relevant Maori Land Board, which was empowered to confirm or disallow them. When a resolution to sell or lease was confirmed, the boards then became 'the agent of the owners for the time being to execute . . . an instrument of alienation'.[9] Sales and leases approved by the

9. Statutes, 1909, no 15, s 356(6)

Maori Land Boards in the period 1910 to 1930 are summarised in Tables II.21 and II.22.

The Maori Land Boards carried out their duties under Part XVIII, it would seem, with great energy and efficiency: this, at least, seems a reasonable conclusion to draw from the rate at which Maori lands were sold and leased in the two decades following the invention of the 'assembled owners' mechanism. During the first five years in which the 1909 Act was in operation, an average of more than 150,000 acres was alienated each year. During the next five years it remained above 100,000 acres per year. By the end of the 1919 to 1920 fiscal year, a total of 810,645 acres of land had been sold and 454,740 leased by means of Part XVIII transactions approved by Maori Land Boards. Both the rate and volume of such alienations fell away during the 1920s. None the less, a further 160,541 acres of Maori land had been permanently alienated by the end of the decade and another 81,606 acres leased. Altogether almost a million acres of land was sold under the provisions of Part XVIII, and more than half a million acres were leased during the 20 years for which detailed records are available.

Table II.21: Sales and leases under Part XVIII, 1910 to 1930

Date	Private sales	Crown sales	Total sales	Cumulative sales	Leases	Cumulative leases	Total alienation	Cumulative total
1910–11	71,826	14,921	86,747	86,747	27,095	27,095	113,842	113,842
1911–12	36,149	101,975	138,124	224,871	95,338	122,433	233,462	347,304
1912–13	63,714	2096	65,810	290,681	93,322	215,755	159,132	506,436
1913–14	43,401	50,418	93,819	384,500	42,855	258,610	136,674	643,110
1914–15	55,475	36,976	92,451	476,951	20,468	279,078	112,919	756,029
1915–16	45,166	21,141	69,307	546,258	32,807	311,885	102,114	858,143
1916–17	47,395	3115	50,510	596,768	37,381	349,266	87,891	946,034
1917–18	36,476	28,021	64,497	661,265	82,348	431,614	146,845	1,092,879
1918–19	39,558	56,741	96,299	757,564	13,899	445,513	110,198	1,203,077
1919–20	21,358	22,723	44,081	801,645	9227	454,740	53,308	1,256,385
1920–21	25,697	9702	35,399	837,044	13,093	467,833	48,492	1,304,877
1921–22	14,236	0	14,236	851,280	12,215	480,048	26,451	1,331,328
1922–23	15,767	416	16,183	867,463	5349	485,397	21,532	1,352,860
1923–24	14,435	4814	19,249	886,712	5589	490,986	24,838	1,377,698
1924–25	18,007	1066	19,073	905,785	1569	492,555	20,642	1,398,340
1925–26	7045	1273	8318	914,103	3607	496,162	11,925	1,410,265

Table II.21: Sales and leases under Part XVIII, 1910 to 1930

Date	Private sales	Crown sales	Total sales	Cumulative sales	Leases	Cumulative leases	Total alienation	Cumulative total
1926–27	9097	197	9294	923,397	2034	498,196	11,328	1,421,593
1927–28	23,090	1332	24,422	947,819	4033	502,229	28,455	1,450,048
1928–29	3489	46	3535	951,354	21,622	523,851	25,157	1,475,205
1929–30	10,692	140	10,832	962,186	12,495	536,346	23,327	1,498,532
Total	602,073	360,113	962,186	962,186	536,346	536,346	1,498,532	1,498,532

Table II.22: Part XVIII sales and leases – average alienations per year

Period	Sales: average per year	Leases: average per year	Average alienations per year
1910–15	95,390	55,816	151,206
1915–20	64,939	35,132	100,071
1920–25	20,828	7563	28,391
1925–30	11,280	8758	20,038

11.2.3 Confirmations: leases and sales

When a block of land had more than 10 owners, alienations could only be made through Part XVIII. Lands with fewer owners, however, could be leased or sold by direct negotiation with the Crown or private interests. When private persons were involved, all such transactions had to be confirmed by the Maori Land Board concerned, which was required to ensure that certain minimum conditions were met in relation to price, payment, and the security of the vendors.[10] Acting in this capacity, the Maori Land Boards oversaw the alienation of even more land than passed before it through Part XVIII resolutions (Tables II.23, II.24).

10. See above (1909 Act, s 217). As noted earlier, when the Crown purchased Maori freehold lands owned by fewer than persons, or from incorporated owners, confirmation by the Maori Land Boards or the Native Land Court was not required. See 1909 Act, s 367 and s 369, and R Willan, 'Maori Land Sales 1900–1930', CFRT, Wellington, March 1996, pp 28–30.

Table II.23: Confirmed sales and leases, 1910–30. Source: annual reports. Land board involvement with confirmation ceased in 1932, when the Native Land Court took over. Published totals after 1929–30, however, give a single total for 'private dealings' which does not differentiate between Part XVIII transactions and confirmations.

Year	Confirmed sales				Confirmed leases			
	North Island	South Island	Total	Cumulative	North Island	South Island	Total	Cumulative
1910–11	78,346	11,628	89,974	89,974	116,498	5087	121,585	121,585
1911–12	122,869	0	122,869	212,843	183,316	0	183,316	304,901
1912–13	119,564	0	119,564	332,407	133,346	0	133,346	438,247
1913–14	106,555	2835	109,390	441,797	76,854	3058	79,912	518,159
1914–15	105,546	1208	106,754	548,551	57,127	4653	61,780	579,939
1915–16	71,499	1167	72,666	621,217	65,061	1973	67,034	646,973
1916–17	86,492	3496	89,988	711,205	50,502	4420	54,922	701,895
1917–18	75,561	7198	82,759	793,964	50,987	884	51,871	753,766
1918–19	52,468	546	53,014	846,978	28,543	1536	30,079	783,845
1919–20	77,760	4189	81,949	928,927	28,686	1333	30,019	813,864
1920–21	63,419	2480	65899	994,826	25,553	1631	27,184	841,048
1921–22	33,020	1850	34,870	1,029,696	29,719	6205	35,924	876,972
1922–23	24,125	960	25,085	1,054,781	13,424	2613	16,037	893,009
1923–24	17,239	0	17,239	1,072,020	18,137	0	18,137	911,146
1924–25	14,744	1087	15,831	1,087,851	20,754	4404	25,158	936,304
1925–26	16,801	2245	19,046	1,106,897	21,895	2176	24,071	960,375
1926–27	12,514	1069	13,583	1,120,480	14,089	1201	15,290	975,665
1927–28	29,499	2591	32,090	1,152,570	32,456	4931	37,387	1,013,052
1928–29	14,278	0	14,278	1,166,848	33,179	0	33,179	1,046,231
1929–30	29,248	0	29,248	1,196,096	34,273	0	34,273	1,080,504
Total	1,151,547	44,549	1,196,096	1,196,096	1,034,399	46,105	1,080,504	1,080,504

Table II.24: Averages of sales and leases confirmed per year

Period	Confirmed sales	Confirmed leases	Total
1910–15	109,710	115,988	225,698
1915–20	76,075	46,785	122,860
1920–25	31,785	24,488	56,273
1925–30	21,649	28,840	50,489

As can be seen, during the first five years in which the 1909 Act was in operation, an average of more than 225,000 acres was alienated each year through the 'confirmation' mechanism, and during the next five more than 120,000 acres per year. By the end of the 1919 to 1920 fiscal year, private sales involving a total of 928,927 acres of land had been confirmed by the boards along with private leases involving a total of 813,864 acres. The rate and volume of such alienations fell during the 1920s, but to a lesser extent than with Part XVIII transactions. Another 267,169 acres of Maori land had been sold with the Maori Land Boards' blessing by the end of the decade and another 266,640 acres had been privately leased. In all, nearly 1.2 million acres of Maori land was sold by this means within two decades, and a similar amount was leased.

11.3 CONCLUSIONS: ALIENATIONS

Writing in 1910, the Under-Secretary of Native Affairs saw 'the widening of the avenue and facilitating the alienation and settlement of Native lands [sic]' as the 'main feature' of the Native Land Act, 1909.[11] Those who shared this vision would not have been disappointed. In the following 20 years, more than four million acres of Maori land, vested and freehold, was sold or leased under the auspices of the Maori Land Boards by means of the efficient machinery refurbished by or initiated under the 1909 Act (Tables II.25, II.26).

From the 1930 to 1931 fiscal year onwards, the annual reports of the Native Department cease to distinguish between different modes of sale and lease, giving a single total in each category for Maori Land Board 'operations' to do with alienations. Another 70,514 acres of land were sold, and another 106,194 acres leased by way of the boards before their responsibilities for confirming alienations of Maori land were taken over by the Native Land Court under the Native Land Amendment Act 1932 (Table II.28).[12]

Most of these transactions were private sales and leases confirmed by the boards, or alienations under Part XVIII.

11. Judge T W Fisher, 'The Native Land Act 1909', Part III, s 1, in *The New Zealand Official Year-Book 1910*, Government Printer, Wellington, 1910, p 714
12. Statutes, 1932, no 25, s 2

Of the 4,305,376 acres sold and leased by the end of 1933, more than half (55.2 percent) were permanently alienated by sale (see Table II.28). The 2,375,717 acres of Maori freehold land sold by their owners with the approval of the Maori Land Boards, or by the boards acting as agents of the owners, between 1910 and 1933 represented at least one-third of the seven million-odd acres of land owned by Maori in the North Island when the 1909 Act came into effect. The avenue for alienation had indeed been widened enormously.

Table II.25: Maori lands sold by and through Maori Land Boards, 1910–30

Year	Vested lands	Part XVIII	Confirmations	Total sold	Cumulative
1910–11	4958	86,747	89,974	181,679	181,679
1911–12	32,222	138,124	122,869	293,215	474,894
1912–13	25,179	65,810	119,564	210,553	685,447
1913–14	30,911	93,819	109,390	234,120	919,567
1914–15	16,446	92,451	106,754	215,651	1,135,218
1915–16	988	69,307	72,666	142,961	1,278,179
1916–17	20,153	50,510	89,988	160,651	1,438,830
1917–18	1450	64,497	82,759	148,706	1,587,536
1918–19	4733	96,299	53,014	154,046	1,741,582
1919–20	0	44,081	81,949	126,030	1,867,612
1920–21	2396	35,399	65,899	103,694	1,971,306
1921–22	5909	14,236	34,870	55,015	2,026,321
1922–23	1	16,183	25,085	41,269	2,067,590
1923–24	49	19,249	17,239	36,537	2,104,127
1924–25	2	19,073	15,831	34,906	2,139,033
1925–26	0	8318	19,046	27,364	2,166,397
1926–27	1318	9294	13,583	24,195	2,190,592
1927–28	206	24,422	32,090	56,718	2,247,310
1928–29	—	3535	14,278	17,813	2,265,123
1929–30	—	10,832	29,248	40,080	2,305,203
Total	146,921	962,186	1,196,096	2,305,203	2,305,203

Table II.26: Maori lands leased by and through Maori Land Boards, 1910–30

Year	Vested lands	Part XVI	Part XVIII	Confirmed	Total leased	Cumulative
1910–11	23,080	8038	27,095	121,585	179,798	179,798
1911–12	53,516	3913	95,338	183,316	336,083	515,881
1912–13	13,255	1639	93,322	133,326	241,562	757,443
1913–14	9924	3891	42,855	79,912	136,582	894,025
1914–15	5310	4051	20,468	61,780	91,609	985,634
1915–16	20	1835	32,807	67,034	101,696	1,087,330
1916–17	10,532	729	37,381	54,922	103,564	1,190,894
1917–18	0	862	82,348	51,871	135,081	1,325,975
1918–19	920	104	13,899	30,079	45,002	1,370,977
1919–20	628	393	9227	30,019	40,267	1,411,244
1920–21	2269	638	13,093	27,184	43,184	1,454,428
1921–22	2656	119	12,215	35,924	50,914	1,505,342
1922–23	19	91	5349	16,037	21,496	1,526,838
1923–24	10	0	5589	18,137	23,736	1,550,574
1924–25	2098	205	1569	25,158	29,030	1,579,604
1925–26	2736	0	3607	24,071	30,414	1,610,018
1926–27	2807	0	2034	15,290	20,131	1,630,149
1927–28	50,327	0	4033	37,387	91,747	1,721,896
1928–29	—	—	21,622	33,179	54,801	1,776,697
1929–30	—	—	12,495	34,273	46,768	1,823,465
Total	180,107	26,508	536,346	1,080,504	1,823,465	

Table II.27: Total sales and leases through Maori Land Boards, 1930–33

Year	Sales	Leases	Total
1930–31	55,170	43,718	98,888
1931–32	10,645	27,838	38,483
1932–33	4699	34,638	39,337
Total	70,514	106,194	176,708

Table II.28: Total sales and leases through Maori Land Boards, 1910–33

Year	Sales	Leases	Total
1910–30	2,305,203	1,823,4651	4,128,668
1930–33	70,514	106,194	176,708
Total	2,375,717	1,929,659	4,305,376

CHAPTER 12

'PRACTICALLY FREE TRADE AGAIN'

In the course of the debate on the 1909 Bill, William Herries complained that:

> not an acre of that land which was recommended for settlement by the [Native Lands] Commission has yet been settled by Europeans, although the Commission reported three years ago [sic] and the 1907 Act was drafted and passed to carry out their recommendations.

He attributed this to the fact that the Maori Land Boards had not been given sufficient resources to prepare the Part I lands in question for settlement, and called for them to be 'fully manned and ready to cope with the great amount of business that will accrue to them when the Bill becomes law'.[1] Herries may of course have feared that the boards would not have sufficient resources to ensure that all of the protective measures built into the 1909 Act were fully implemented. In context, though, it is more likely that the primary concern of Reform's spokesman on Native Affairs was that no stone was left unturned in making as much Maori freehold land as possible available for settlement.

The Maori Land Boards seem not, in fact, to have been 'fully manned and ready to cope' when the Act took effect in 1910. At least one board had serious problems acquiring enough clerical help,[2] and all of them experienced delays due to a shortage of surveyors.[3] But these sort of difficulties aside, the transition to the new regime appears to have been a relatively smooth one. The fact that Ngata was placed in charge of the process may well have helped.[4] By June of 1910 most of the requisite administrative preparations had been made, and on the 10 June, six Maori Land Districts and boards were proclaimed (including the new 'Waikato–Maniapoto' board), together with a new set of regulations to govern their operations.[5]

The Native Department was exceedingly anxious not to be seen as a barrier to the full implementation of the Act. In its annual report for 1910 and 1911, the Under-Secretary commented nervously on the shortage of surveyors, which made it

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1. NZPD, 1909, vol 148, p 1105 (Herries). See also his criticisms of the commission in 1908, NZPD, p 1121.
2. See J L Hutton, 'The Operation of the Waikato–Maniapoto District Land Board', CFRT, Wellington, May 1996, pp 13–14
3. See especially T W Fisher's long explanation and commentary in 'Surveys', AJHR, 1913, G-9, p 3. This suggests that the problem was in part at least of the Government's own making.
4. According to G V Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', NZLJ, August 1985, p 248
5. *New Zealand Gazette*, 13 June 1910, no 58, pp 1713–1714, 1717–1721

'impossible' for the Maori Land Boards 'to comply with the provisions of the statutes and place the lands on the market', but asserted that they were:

> now doing very good work, and facilitating settlement to a large extent, especially when one considers the advantages obtainable through the provisions of assembled owners' meetings.

The statistics presented, T W Fisher hoped, would:

> satisfy the pessimists that the Native Department is doing all it possibly can towards the settlement of Native lands. The Act of 1909 is, no doubt, the contributing factor; and when all its provisions are more universally known, and the parties concerned take the necessary initial steps, the cry of 'unoccupied Native lands' will be a thing of the past.

'At the present rate of progress', he predicted, 'it may be assumed that after eight years there will be little, if any, Native land that is not revenue-producing'.[6]

In the following year's report, Fisher admitted that 'The settlement of Native land still appears to be a vexed question', but then proceeded to show that more than one million acres of Maori land had been alienated since 31 March 1910, 'of which 509,873 acres have actually passed from the hands of the Native owners by way of transfer of the fee-simple'.[7] It was 'obvious', he claimed. 'that, under the 1909 Act, alienation of Native land has made far heavier strides than in previous years'.[8] Not coincidentally, perhaps, the 1911 to 1912 annual report was the first to present a full set of Maori Land Board statistics. Pessimists could see for themselves that very large quantities of land were being sold and leased.

The following year the Under-Secretary was able to report that total alienations had risen to 1,483,048 acres since the implementation of the Act, of which 723,122 acres had been sold. Fisher attributed this in part to the ease with which the Crown could purchase land using Part XVIII. 'All negotiations for the purchase of Native land', he pointed out:

> have to be carried out in accordance with the Act, and the price is to be not less than the value ascertained by certificate from the Valuer-General; therefore all that is necessary is for the Natives to approach the President of the District Maori Land Board, or the Land Purchase Department [sic] direct, when the matter would be explained to them, and if they were agreeable to sell at the Government valuation they could execute a transfer and receive the purchase money.[9]

Using this streamlined procedure, the Crown alone acquired 101,975 acres of Maori land in 1911 to 1912 (see Table II.21). The Under-Secretary was well aware of the possible long-term consequences of such intensive purchasing by the Crown, commenting that:

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6. AJHR, 1911, G-9, pp 1–3
7. This figure includes Crown purchases which did not require confirmation by the Maori Land Boards, and so are not included in the figures given in Table II.26.
8. 'General Summary', AJHR,1912-II, G-9, pp 2–3
9. AJHR, 1913, G-9, p 2

> it will be only a question of a few more years when the Maoris (who some seventy years ago owned all the land) will, as a result of the activity displayed by alienations affected during the past three years . . . be left with a limited area for occupation.

Despite this, he was willing to recommend that one of the few significant restraints on Crown purchasing under the 1909 Act be removed. Because some motions to sell under Part XVIII were allegedly being 'defeated by a not fully representative meeting [of assembled owners]', the Under-Secretary proposed that the Crown be allowed to purchase individual interests where blocks had more than 10 owners.[10]

By the time the 1911 to 1912 report was written, New Zealand had a new Government and Fisher had a new Minister. When Massey's Reform government took power late in 1912, W H Herries entered Cabinet. As noted earlier, the new Native Minister had supported the passage of the 1909 Act through the House. Herries found its provision for 'practically free trade' to be congenial, although he expressed regret that the legislation did not go 'a step further' in opening up Maori land for settlement.[11] And he did not, in fact, make wholesale changes to the 1909 legislation when he acquired the power to do so, although the Maori Land Boards experienced more modification than most parts of the system.

The member for the Bay of Plenty had signalled his intentions towards the Maori Land Boards before taking office. In 1908, for example, when the boards had been given the responsibility for approving all alienations, Herries had commented that:

> Now everything will be done by the Maori Land Board. Here, I think, the Minister might go still further . . . At present we have this administration by which lands are vested in Boards. I do not believe in it, but as we have it we have to put up with it and try to make it as good as possible.

To this end he outlined a revised system of land administration, based on the existing Maori Land Districts, recommending that:

> in each of those districts there should be stationed a permanent Judge of the Native Land Court, who should also be President of the Maori Land Board. I believe there would thus be considerable savings in expense, and that far better work would be done if there was one highly paid and highly qualified official . . . you would [thus] combine the Native Land Court and the Maori Land Board, and you could afford to properly equip and staff the Board.[12]

The Liberals, however, preferred to retain the separation between the boards and the Maori Land Court.

Herries had also expressed concern in 1909 that the boards did not have sufficient resources to open up the lands already under their control for settlement (see above). One aspect of this problem was tackled in the first session of Parliament under Reform. The Native Land Amendment Act 1912 contained a provision related to lands vested in the Boards under Parts XIV and XV. Where boards had

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10. AJHR, 1913, G-9, pp 2–3
11. NZPD, 1909, p 1103 (Herries)
12. NZPD, 1908, p 1121 (Herries)

done nothing with a particular piece of land (as evidenced by the fact that it had not been alienated, and had no charges on it), the owners could apply to the Governor in Council to have it re-vested in the equitable owners.[13]

Greater changes awaited in 1913, with another Native Land Amendment Act. After praising the 1909 Act at length (and his own 1912 Amendment Act providing for re-vesting) Herries told the House that:

> When I took office it was felt that the [Maori Land] Boards were not strong enough, and there was a general desire that they should be abolished and that the whole question of the purchase of Native land and the confirmations of dealings should be vested in the Native Land Court.

This course of action, however, had not been adopted, because the Minister 'found that I could not exactly do that without entirely recasting the 1909 Act'. Accordingly, he explained:

> What I have done in this Bill is this: I have practically made the Native Land Court and the Maori Land Board the same. The North Island is to be divided into Native-land districts, and in each of these districts there will be a Judge and a Registrar. The Judge will constitute the Court, and the Judge and the Registrar will constitute the Maori Land Board: practically the Maori Land Board will be the Judge himself . . . We are practically amalgamating the Courts and the Boards; but we will maintain the term 'Boards', under which the Judge can sit either as a Court or as a Board.[14]

Since 1905, all members of Maori Land Boards had been appointed by the Crown, but at least one was required to be a Maori. Not only was this special provision abolished in 1913, but the process of appointing members thereafter largely became a function of ordinary Public Service procedures. If any Maori became a member of a Maori Land Board, it would be a consequence of personal achievement rather than institutional design.

This change came under vigorous attack in the ensuing debates. James Carroll, in particular, made a strong protest against 'the excision from the Board of any Native representation'. The Maori Land Boards, he pointed out, were not dealing with European or Crown land: 'Surely', he argued:

> it is a universal principle, recognized by all civilized races, that there should be representation on any Board dealing with the interests and property of those concerned – representation of those concerned . . . In all other cases, too innumerable to mention, there is Maori representation where their interests are concerned. But in this case why is the Maori member taken off?

The former Native Minister suggested that answer was:

> Because he [the Maori member] was a check, perhaps, against unfair dealing; because he was a discretionary unit that might examine and study transactions between Maoris and Europeans that came before the Board for confirmation.[15]

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13. Statutes, 1912, no 34
14. NZPD, 1913, p 385 (Herries). See 1913, no 58, s 21–42.

Government members of Parliament took exception to Carroll's 'strong language', but were unable to make an effective response, other than to bluster that it was an insult to suggest that Native Land Court judges could not be relied on to ensure fair dealing.[16]

But in the end the Maori members were removed from the boards. This meant that the owners of the lands which had been vested in the Maori Land Councils and land boards no longer had any vestige of direct involvement in decision-making with respect to these lands. Those who had voluntarily vested their lands, in particular, would have been justified in complaining that radical changes had been made by the Crown without appropriate consultation.[17] It also meant that a single individual held complete judicial and administrative control over the Maori lands in each district. This concentration of powers came in for considerable criticism during the 1930s.

The 1913 Amendment Act made a number of other changes to the 1909 legislation, most of which tended to facilitate the availability of Maori lands for alienation in one way or other. The 1912 provisions for re-vesting lands in owners were modified (s 96–106), and the terminal date for new vesting land in the boards under Part XIV was set at 31 March 1914 (s 5). The presidents of boards were required to report each year to the Native Minister on Maori freehold lands in their districts 'not actually used' by the owners, which could 'conveniently' be partitioned. Provision was made for the Crown to proceed, on the strength of these recommendations, with compulsory partitions.[18] Herries also adopted Fisher's suggestion that the Crown be allowed to purchase individual interests under Part XVIII, but took the idea a step further. Section 109 enabled the Crown to acquire any interest in Maori lands, including Maori freehold land, Native reserves vested in the Public Trustee, and lands vested in the Maori Land Boards themselves – and including undivided shares in blocks owned by more than 10 people, even if a Crown offer to purchase under Part XVIII had previously been rejected by the assembled owners.[19]

Section 109 was by far the most contentious part of the 1913 Amendment Act, and constituted its most significant deviation from the policy which lay behind the 1909 Act. Ngata attacked the Bill as an expression of 'the greed of the pakeha, eloquent and aggressive', insofar as section 109 might allow the Crown buy Maori lands held in trust which were currently being leased. This measure, he asserted, had heen devised:

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15. NZPD, 1913, vol 167, p 837 (Carroll)
16. See, for example, Reed's comments about Carroll's suggestion: NZPD, 1913, vol 167, p 839.
17. Some owners did so to the Royal Commission which examined the leasing of vested lands by the boards 40 years later: see 'Report of Royal Commission appointed to Inquire into and Report upon Matters and Questions relating to certain Leases of Maori Lands vested in Maori Land Boards', AJHR, 1951, G-5, p 19. Referring specifically to the Aotea district, the commissioners described the elimination of Maori representation in 1913 as 'a departure from one of the conditions which existed at the time of the voluntary vesting of the lands by the Maoris'.
18. See s 44–62
19. See s 109 and Spiller et al, *A New Zealand Legal History*, Brooker's, Wellington, 1995, p 162

> not primarily to obtain the waste lands of the Natives, but in order to get the lands that are now in the occupation of European tenants under Maori landlords so dealt with that the tenants will be able to secure the freehold of the land if they so desire.

(Ngata, as noted earlier, could find no grounds to object to measures which concentrated on 'the acknowledgedly large remnant of surplus Native land'.[20]) James Carroll took a very similar tack, berating the Government for proposing legislation which would give it 'the power to purchase Native interests in . . . trust lands hitherto held inviolate'. He asked:

> why is the Government doing it? Is it to benefit the general public? Is it to make ordinary Crown lands to be cut up and sold to the general public, so as to promote close settlement and develop settlement?

The answer to the last two questions, he declared, was negative: such purchasing would 'only benefit . . . the European tenants' of such lands by enabling leases to be converted into freeholds.[21]

Given Reform's general preference for freehold over leasehold tenure, there was probably a degree of substance to these charges, but further research would be needed to ascertain what effect this legislation actually had. Ngata, at least, suspected that its aims were more political than anything else. 'This Bill', he commented:

> was devised by the Native Minister to mark a departure from the Act of 1909 and from the policy of his [Liberal] predecessors. The honourable gentleman had to do something. I know that in his heart of hearts he believes that by a slight amendment of the Act of 1909 all that should be done to accelerate the settlement of Native lands can be done.[22]

The Native Minister himself stated in 1913:

> As long as I can get the land from the Natives without compulsion I think I shall be advancing the cause of settlement. What I want to do is give the Native himself a chance of cultivating his own land. I want to allow him to sell his own useless land, and use the money in order to buy ploughs and horses to enable him to cultivate his own land that is cultivable. That is the policy of this Bill.[23]

But the system was already designed to expedite the sale of Maori land, and so was already capable of doing almost all that he and his party wanted it to do. Major modifications would have been superfluous – and even dangerous. The fact that Herries shied away from disbanding the Maori Land Boards altogether for fear that a change of this magnitude might disrupt the 1909 system, says a good deal about the character of the original legislation and the system which it put in place.

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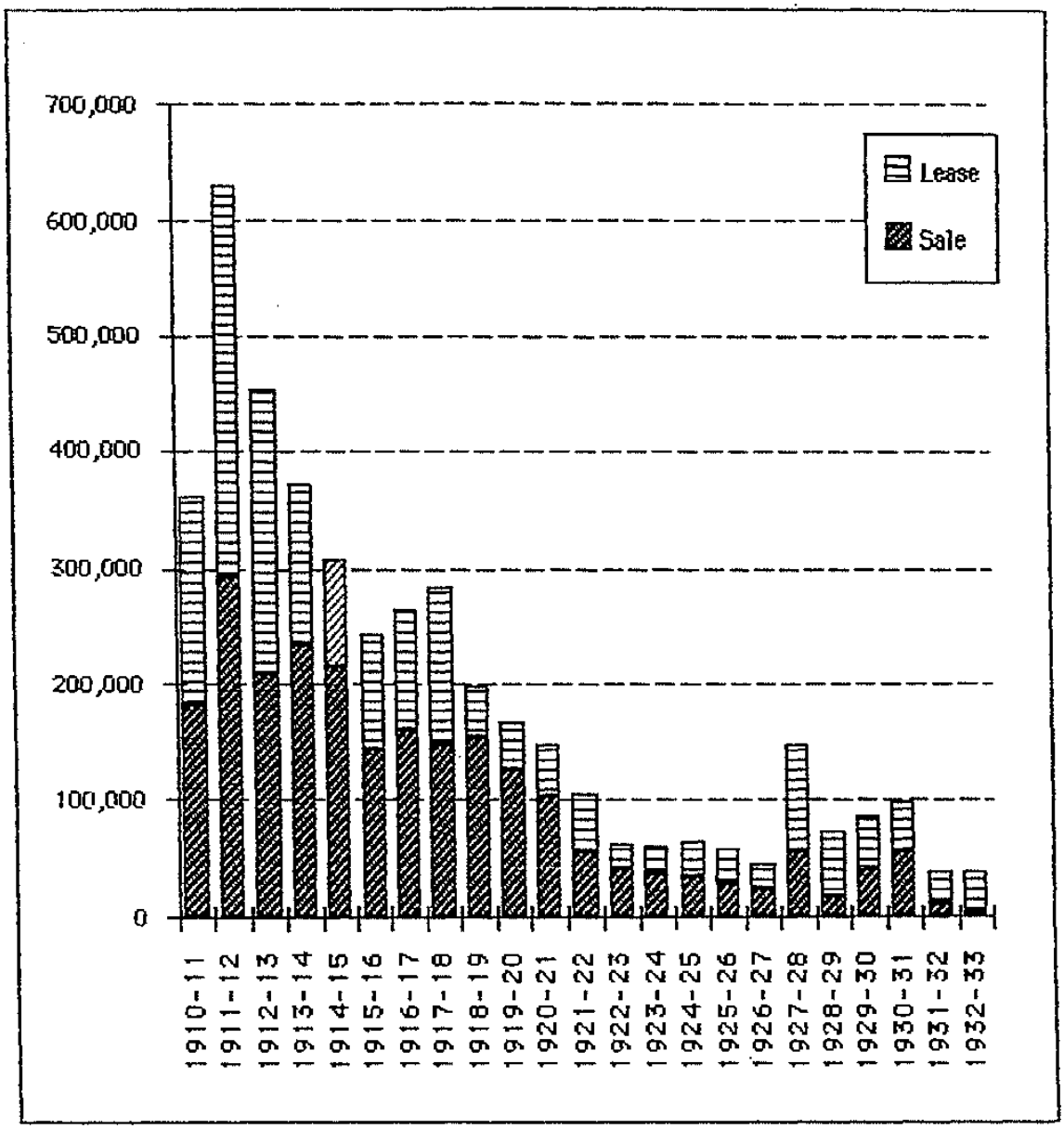
20. NZPD, 1913, p 400 (Ngata)
21. NZPD, 1913, vol 167, pp 838–839 (Carroll)
22. Ibid, p 400 (Ngata)
23. Ibid, p 388 (Herries)

The 1913 Amendment Act had no obvious impact on the nature or rate of the Maori Land Boards' business, one way or the other. As Chart II.1 illustrates, transactions appear to have been processed at similar levels before and after it was passed. Total sales made through the boards actually peaked in 1911 to 1912 (293,215 acres), but exceeded 200,000 acres per year until 1914 to 1915, and exceeded 100,000 acres per year thereafter until 1920 to 1921. Total leasing also peaked in 1911 to 1912 (336,083 acres), but with one exception remained above 100,000 acres per year until 1917 to 1918. It was not until the last year of the Great War that total alienations fell below 100,000 acres.

Chart II.1: Acreage of Maori Lands Sold and Leased through Maori Land Boards, 1910 to 1933. Based on data presented in Tables II.25–27.



The boards did what can only be described as a 'land office business' during the 1910s, despite chronic staff shortages in 1914 to 1918 due to the demands of military service and the ravages of the influenza epidemic at the end of the war.[24] The 1920s were a different matter. The sharp decline in the volume of alienations at the beginning of the decade was due in part to the post-War recession.[25] The contracting supply of Maori lands worth settling upon, however, was also a significant factor. In 1920 C B Jordan. the Under-Secretary of the Native Department, carried out an inventory of 'Land still held by Maori Owners in the North Island'.[26] He found that, deducting lands purchased by the Crown and 'Alienated by sale through the Maori Land Boards',[27] Maori on 31 March 1920 were left only 4,787,686 acres of land out of the 7,137,205 which they had owned on 31 March, 1911 – some 67.1 percent. (Although Jordan did not attempt the calculation, this total represented perhaps three-fifths of the land which Maori had controlled in 1900, when the Maori Land Administration Act had been passed.)

Of the 4.8 million acres remaining, some 3.5 million was defined as 'profitably occupied'. The total included 2,810,637 acres which had been 'Leased through Maori Land Boards',[28] 319,771 leased by other means, and an estimated 380,000 acres occupied by Maori owners. Some 1,277,278 acres of Maori-owned land were therefore defined as 'unoccupied' (including some 210,648 acres 'Vested in Maori Land Boards and undisposed of').[29] Jordan calculated:

> If to this area of unoccupied land is added the 380,000 acres estimated to be occupied by Maori owners, you have a total area of 1,657,278 acres available for the use of the Maoris. But of this it is estimated that about 550,000 acres are within the pumice area, and to this probably another 200,000 acres, which includes mountain-tops, springs, sand-dunes, &c, and land unfit for settlement, should be added. This leaves an area of 907,278 acres that may be considered suitable for settlement.

Given Seddon's estimate 20 years and two million acres of sales earlier, that Maori had harely a million acres left which was 'fit for settlement',[30] Jordan's standards for determining 'suitability for settlement' cannot have been very high.

In any case, he suggested that an area of 907,278 acres:

> cannot be regarded as an excessive area for the use of the 47,000 Maoris comprising the population of the North Island and their descendants. It is roughly 19 acres per

24. See AJHR, 1919, G-9, p 2. The president and registrar of the Waiariki board died in the course of a land court hearing in Whakatane during the epidemic.
25. See AJHR, 1922, G-9, p 1. 'the financial stringency has affected the Native race equally with the Europeans. Many dealing for Native lands by private persons had to be abandoned or postponed, since the proposed alienees were unable to arrange satisfactory finance.'
26. AJHR, 1920, G-9, pp 2–3
27. 1,009,949 and 1,339,570 acres, respectively. The board figure presumably excluded Crown purchases through the boards. Given that total sales through the boards totalled 1,685,933 acres in 1911–20, these apparently amounted to some 346,363 acres during this period.
28. This total would have included Part XVIII and confirmed leases.
29. The 200,000-odd acres of Part XVI lands which the boards had not been able to lease by this point in time were presumably included in Jordan's 634,773 acres of 'other unoccupied lands', although some may have been classified as occupied by owners.
30. NZPD, 1899, vol 110, p 744 (Seddon): see Part I, above.

> head. Instead, therefore, of there being a large area of Native land available for general settlement, it would seem that there is barely sufficient for the requirements of the Natives themselves.

It must be noted here that this finding was based on the assumption that the three million-odd acres of Maori land leased to Europeans in 1920 would 'never return to the occupation of the Native owners'. None the less, it is difficult to fault Jordan's conclusion:

> that the Maoris have disposed of nearly all the lands that they can dispose of without leaving the bulk of them landless, and later, probably, to become a charge on the State.

He was not the first to voice such concerns, by any means.

The 1898 petition to the Queen had called for 'legislation prohibiting for ever the sale of our surviving lands to the Crown and private persons'. More recently – and moderately – Ngata, had warned Herries during the 1913 debates on the Native Land Amendment Act that:

> the time has come when we must say 'let us consider the Maoris in each district, and see whether in the past we have not rendered them almost homeless – whether the time has not arrived to reserve blocks to them absolutely and make these areas inalienable.'[31]

The impact which Jordan's warning made on the Native Department can best be judged by the fact that almost a decade would pass before purchases of Maori lands by the Crown for general settlement came to an end.[32] Another 508,106 acres of Maori land were purchased through the Maori Land Boards by the Crown and private purchasers over the following 13 years, before their powers of approval over alienations was taken away in 1932.

In theory, fears that Maori would be rendered landless by selling land were without foundation, due to the many safeguards built into the 1909 Act by its authors. In order to approve an alienation of any kind, the Maori Land Boards were required under section 220(c) of Part XIII to first be 'satisfied' that no Maori would, as a result of the transaction in question, 'become landless within the meaning of this Act'. In cases where the Crown was able to buy without reference to a Maori Land Board the Native Land Purchase Board was not, under section 373 of Part XIX, allowed to complete a sale unless 'satisfied' that 'no Native will become landless within the meaning of this Act by reason of that purchase'. The Act defined a 'Landless Native' as one whose total beneficial interests in Native

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31. NZPD, 1913, vol 167, p 402 (Ngata). He also warned that 'I speak with an experience of what took place in the years from 1893 to 1897. I say that what was done in those years will be repeated, if not exceeded, by what the Native-land-purchase agents will do under this Bill'.
32. In the late 1920s Gordon Coates gradually cut off the amount of money available 'until land purchasing ceased to be a significant activity of the Department' (Butterworth and Young, *Maori Affairs: A Department and the People Who Made It*, Iwi Transition Agency–GP Books, 1990, p 72). Maori land continued to be acquired for various purposes, but never again in large quantities for conversion into forms for European settlers. Coincidentally (perhaps) Jordan himself was retired the following year when the department was restructured. See AJHR, 1922, G-9, p 1

freehold land were 'insufficient for his adequate maintenance'. The Maori Land Boards were also required by section 220(b) to 'satisfy' themselves that the alienation was not 'contrary to equity or good faith or to the interests of the Natives alienating'.

The question, of course, is whether the Maori Land Boards (and the Native Land Purchase Board) observed the letter and spirit of the Act under which they operated. The sheer volume of land which was sold after 1910, and the sheer speed at which it passed out of Maori ownership, are sufficient to raise doubts as to whether sales were fully investigated to ensure that the criteria set by the Act were fully met. The only study of Maori Land Boards procedures available at the present time does little to dispel such doubts. In his recent survey of the workings of the Waikato–Maniapoto board, J L Hutton found, to begin with, that it 'only rarely refused to confirm the alienation by sale or by lease of Maori land'.[33] Most cases moved swiftly through the board's 'stream-lined administrative process', in the course of which:

> there was very little, if any, examination of the *reasons* behind the sale of specific blocks of Maori land. For example, the Board only rarely inquired into questions such as poverty, debts, failed farming ventures, migration, difficulties of title, lack of capital for development, and disputes. [Emphasis in original.]

'Yet without such an examination,' Hutton observes, 'it is difficult to see how the Board could have properly gauged whether or not the sale was not "contrary to equity or good faith, or to the interests of the Natives alienating".'

It appears that the board did consistently check to see if the Maori disposing of land owned other land elsewhere. In fact, the author notes, this appeared to be the only measure of validation which the board applied. But even then, he found that:

> no questions were asked as to the quality of these other lands, whether they were straddled with debts, liens or the like, or whether they could sustain agriculture. Furthermore, it appears that the Board was prepared to confirm the purchase of land from elderly Maori (even, it seems, if this meant that they were rendered landless), without considering the possibility that potential successors to these interests were being made landless.

(Had the position had not been eliminated in 1913, a Maori member of the Waikato–Maniapoto board would perhaps have asked such questions, and forced a closer scrutiny of these transactions.)

No evidence is available at present to demonstrate that all seven of the Maori Land Boards adopted the same cursory approach as the Waikato–Maniapoto board. None the less, there are grounds for suggesting that the statutory provisions made in 1909 to prevent Maori from being rendered landless wards of the State may not have been properly enforced by the Maori Land Boards during the 22 years when they were responsible for doing so. If a narrow definition of 'landlessness' suited the rubber-stamp approach of boards under pressure to 'advance the cause of settlement' (to use Herries' phrase), it had little to recommend in terms of any

33. Hutton, pp 16–17

wider consideration of 'the interests of the Natives alienating'. It is very difficult, almost a century later, to see how the wider interests of Maori were served by a land administration system which facilitated the permanent alienation of more than two million acres of their land within 20 years.

CHAPTER 13

THE DEVELOPMENT OF MAORI LANDS

Before 1932, the principal business of the Maori Land Boards was the alienation of Maori land. It would be quite misleading to suggest otherwise. But change was in the wind during the 1920s, in Maori affairs as elsewhere. For the first time, serious consideration began to be given by Government to the idea of assisting Maori to develop their remaining lands. Although the boards did not lead the way in finding solutions, they played a significant supporting role under the direction of Gordon Coates and Apirana Ngata.

Maori leaders had argued for many years that their people should he provided with the same kind of assistance as European settlers in developing land for agricultural use. In 1891, for example, in his dissenting appendix to the Native Land Laws Commission's main report, James Carroll pointed out that Maori had 'a strong desire . . . to become useful settlers, and contribute to the productive wealth of the country'. 'But is it not a somewhat melancholy reflection,' Carroll asked:

> that, during all the years the New Zealand Parliament has been legislating upon Native-land matters, no single bona fide attempt has been made to induce the Natives to become thoroughly useful settlers in the true sense of the word? . . . Parliament will add one more to its many blunders in administering Native affairs if, in its shortsightedness, it omits to devise means for encouraging and assisting the Natives to become useful settlers. This can be done if they are afforded facilities for rendering productive the lands they already possess.

'If similar Parliamentary neglect again asserts itself,' he concluded, 'the day may be nearer at hand than many expect when the Legislature will find itself face to face with the difficulty embodied in the question, "What will we do with our Maoris?".'[1]

But the best that Parliament could manage in this direction over the next 30 years – even with Carroll himself at the helm of Native affairs for 13 of them – was to expedite the alienation of unused Maori lands, so that capital for the development of the rest could (in theory) be generated. Alternative possibilities were occasionally considered. In 1906, for example, Ward stated that the Government's policy was, first, 'To set aside a sufficiency of Native lands for the maintenance of the Natives', and then 'To as far as possible give the Natives a 'start' to farm these lands and to guide them in making the land productive'.[2] The following year Stout

1. AJHR, 1891, G-1, pp xxix–xxx. Carroll also objected to a resumption of its pre-emptive right by the Crown, and called for the investigation of Maori grievances. With respect to land development, the Under-Secretary of the Native Department in 1931 described Carroll's words as 'pregnant with truth', and stated that 'This is the policy that is now being followed out': AJHR, 1931, G-9, p 2.

and Ngata recommended that Maori be provided with agricultural education to assist them in making the best use of their own land, and proposed that 'communal' training farms be established under the direction of the Maori Land Boards.[3] Little, if anything, came of such initiatives. As Ngata later put it, until the 1920s 'the attempts to assist Maoris to farm their lands were sporadic and hesitating . . . No appreciable advance was made in the legislation whereby Maori farmers could be financially assisted between 1909 and 1920'.[4]

Access to affordable capital for agricultural development was a major problem for Maori farmers and would-be farmers. As the Native Department's annual report delicately put it in 1928, 'The ordinary business requisite of safeguarding investments makes the procuration of advances for Maori purposes very uncertain'.[5] Land board records of mortgage confirmations reflect this. Under Part XIII of the 1909 Act mortgage agreements – like the various other kinds of alienations – had to be confirmed by a Maori Land Board. The only exception was mortgages in favour of a 'State Loan Department' which could, but did not have to be placed before a board for confirmation.[6] (The data in the annual reports thus may include some mortgages held by the Crown, as well as the private ones.) Between 1 April 1911 and 31 March 1928, the boards confirmed a total of only 631 mortgages involving some 224,371 acres of Maori land. The volume could hardly be described as large, amounting, on average, to only 37 mortgages encompassing an average of barely 13,000 acres per year over the period in question, for the whole of the country (Table II.29).[7]

Table II.32: Mortgages confirmed by Maori Land Boards, 1911–1928

Year	Number	Total acreage	Cumulative acreage	Average acres per mortgage
1911–12	27	7729	7729	286.26
1912–13	32	10,957	18,686	342.41
1913–14	21	4151	22,837	197.67
1914–15	35	7971	30,808	227.74
1915–16	28	5592	36,400	199.71
1916–17	46	21,707	58,107	471.89
1917–18	46	26,835	84,942	583.37
1918–19	35	5270	90,212	150.57

2. 'Financial Statement', 28 August 1906, AJHR, 1906-II, pp xiii–xiv
3. AJHR, 1907, G-1c, p 22
4. AJHR, 1931, G-10, p iii
5. AJHR, 1928, G-9, p 2
6. See s 230–231. State Loan Departments were defined in s 2 as including the Public Trust Office, the New Zealand State-guaranteed Advances Office (Advances to Settlers branch), and the Government Insurance Office. Until 1912, mortgages on incorporated lands had to in favour of State Loan Departments.

Table II.32: Mortgages confirmed by Maori Land Boards, 1911–1928

Year	Number	Total acreage	Cumulative acreage	Average acres per mortgage
1919–20	28	7332	97,544	261.86
1920–21	70	17,191	114,735	245.59
1921–22	36	6040	120,775	167.78
1922–23	21	3660	124,435	174.29
1923–24	21	1717	126,152	81.76
1924–25	42	50,663	176,815	1,206.26
1925–26	32	31,782	208,597	993.19
1926–27	29	6663	215,260	229.76
1927–28	82	9111	224,371	111.11
Total	631	224,371	224,371	355.58

One possible solution to this problem was to provide Maori landowners with access to surplus funds generated in the process of Maori land administration. These were substantial. In 1920, the Public Trustee held liquid assets in Maori accounts worth more than £250,000, while the various Maori Land Boards had deposits and investments worth almost £600,000, the bulk of which were held by the Public Trustee.[8] These were comprised of surpluses and undisbursed moneys from the income which the boards received from purchases, rents, royalties, fees, interest, and sundry other payments. In 1924 to 1925, for example, the seven land boards made a total surplus of £154,134. In the same year the balance sheets showed total assets of £816,090, including £663,051 of investments of which £486,198 were held by the Native Trustee.[9] As Chart II.2 illustrates, the boards' total assets hovered around £800,000 throughout the 1920s and 30s. Deposits with the Native Trustee declined during the 1920s from some £500,000 to around £200,000, stabilising at that level thereafter.

As a result of certain shortcomings in the Public Trustee's performance, a 'Native Trustee' was created in 1920 to take over most of his duties relating to Native Reserves and estates. Section 21(c) of the Native Trustee Act 1920 provided that the Native Trust Board could invest:

> in advances secured by the mortgage of any freehold or leasehold interest in any Native freehold land in respect of which a partition order has been made, or in any

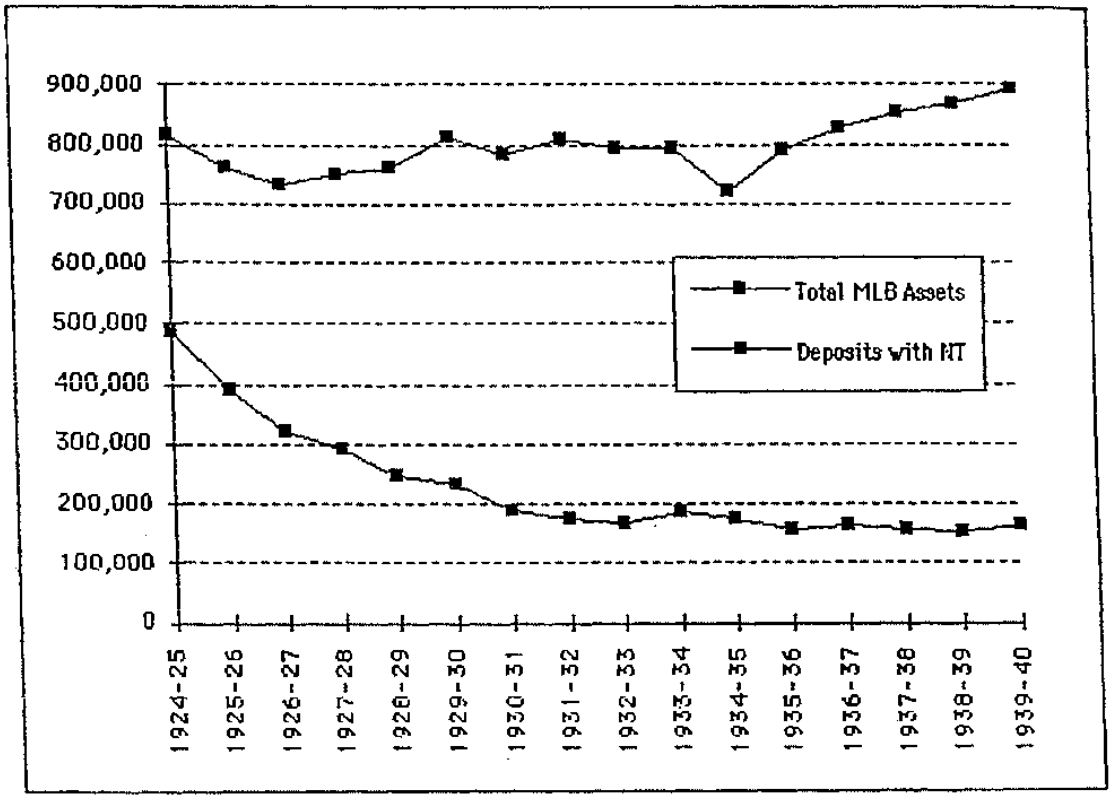
7. Another 45 mortgages encompassing a total of 4009 acres had been confirmed before 1 April 1911.
8. See AJHR, 1931, G-10, pp iii–iv. Land boards were empowered to invest their funds with the Public Trustee under s 78 of the 1909 Act. The Public Trustee handed over more than £800,000 in cash and securities to the Native Trustee when the transfer of assets was made in 1921.
9. 'Native Department – District Maori Land Boards. Combined and Separate Receipts and Payments Statements for the Year ended 31st March, 1925', AJHR, B-1, 1926, Pt IV, pp 46–51.

> Native land vested in or administered by any Maori Land Board, or in any Native freehold land vested in the incorporated owners thereof, to an amount not exceeding in any case three-fifths of the estimated value of the security . . .

From 1921, when the Native Trustee commenced operations, Maori Land Board funds invested with him were thus available for loans to Maori landowners. The following year, the land boards themselves were empowered by section 19 of the Native Land Amendment and Native Land Claims Adjustment Act 1922 to 'advance moneys upon mortgage either for itself or on behalf of Natives'.

It would appear that the land boards advanced more than £250,000 on mortgages up to the end of 1930. The bulk of it came out of funds held in trust for owners – 'Trust Mortgages' – while a smaller portion came from the boards' own funds –

Chart II.2: Maori Land Boards Assets and Annual Deposits with Native Trustee, 1924–40. Data from AJHR, B-1, Pt IV, 1926–41. Detailed statistics prior to 1924 are not available. The 'Deposit' figure is the sum on deposit with the Native Trustee at the end of each fiscal year.



'Board Mortgages' (Table II.30). These investments represented almost one-third of total board assets by the end of the 1930s.

Table II.33: Mortgage lending by Maori Land Boards, 1924–30. Source: AJHR, B-1, Pt IV, 1926–31. The meaning of the distinction made in the assets section of the balance-sheets between 'Trust' and 'Board' mortgages is quite clear in the context of the legislation. Board investments in mortgages appear to have fallen off substantially after 1930, but changes in the categories used make it difficult to be certain.

Year	'Trust mortgages'	'Board mortgages'	Totals
1924–25	133,248	10,962	144,210
1925–26	130,504	17,077	147,581
1926–27	142,994	24,259	167,253
1927–28	193,741	22,865	216,606
1928–29	228,011	26,784	254,795
1929–30	236,142	26,377	262,519

By 1924, 'a large portion' of funds held by the trustee were reportedly being advanced to Maori 'for the purpose of facilitating the improvement of their lands, and encouraging them to undertake pastoral and agricultural pursuits'.[12] How much of the money invested by the boards with the Native Trustee was used for mortgage lending is not known. The decline in land board deposits during the late 1920s, however, may have been attributable in part to boards withdrawing funds from the Trustee to make loans themselves.[13] According to Ngata, because the enabling legislation did not limit the boards to loans to Maori, 'considerable advances' were initially made to Europeans leasing Maori lands. As time went on, however, the lands boards 'gradually confined their advances to individual Maori farmers or to management committees of incorporated blocks'.[14]

The problem with mortgage as a mechanism for promoting the development of Maori land was that in many cases it simply could not be used. Unless the title to the land in question was complete, according to conventional definition, the property did not offer adequate security. Consolidation was being pioneered during the 1920s as a means of dealing such difficulties, but it was a slow and expensive process at a time when immediate results were desired. At this stage, however, it was realised that the sweeping powers over alienation which had given to the Maori Land Boards in 1909 offered such a solution. Because no alienation of Maori

12. AJHR, 1924, G-9, p 1
13. AJHR, 1931, G-10, p iv
14. Ibid, p v. In this 1931 report the Native Minister included a table showing that on 31 March 1931 the Maori Land Boards had £182,299 in loans outstanding on 399 mortgages (AJHR, 1931, G-10). The balance sheets for 1930–31, however, shows the boards as having a total of £241,867 invested in mortgages and unspecified but apparently related 'charges' (AJHR, 1931, B-1, [Pt IV], p 120). The £59,568 difference may have represented advances made to Europeans.

freehold land could proceed without board approval, the boards could fully protect any and all investments which they might make in Maori lands, regardless of the state of their titles.[15] The upshot was section 8 of the Native Land Amendment and Native Land Claims Adjustment Act 1926.[16] This statute empowered the Maori Land Boards, with the approval of the Native Minister, to advance money from their own funds 'For the farming, improvement, or settlement of any Native freehold land' and related purposes. The loan would be secured by a charge upon the land. Some £45,000 had been so invested by the Maori Land Boards by 1928, increasing to about £80,000 the following year.[17]

From loaning money for Maori land development regardless of the state of the title, it was a relatively short step to direct involvement in such activities. Section 3 of the Native Land Amendment and Native Land Claims Adjustment Act 1928 empowered Maori Land Boards, with the consent of a majority of the owners, to 'cultivate, use, and manage' any Maori-owned lands. They could:

> carry on any agricultural or pastoral business or any other business or occupation connected with land and the produce thereof ou behalf of and for the benefit of the owners or such Natives as may be interested in the business carried on.

The boards were given extensive powers of management for this purpose. They were also authorised to advance money from their own funds, borrow it on the security of crops, stock and other chattels, or to mortgage the land being developed for the purpose of carrying out the business. All funds advanced by the boards themselves were to be secured by a charge upon the land.[18] It is not entirely clear how many 'businesses' were entered into by land boards under the 1928 Act, although at least two – both in the Waikato–Maniapoto district – were underway by 1931.[19] This legislation may simply have been overtaken by events.

The measures outlined above made it possible to loan back to Maori the money which had been accumulated by the Maori Land Boards (and the Native Trustee) in the course of administering Maori lands, or otherwise give them access to it. But by the end of the 1920s, with a worldwide depression underway, the need for capital far exceeded the capacity of these institutions to supply it. The problem may well

15. The Crown, as noted earlier, could purchase without board approval, but presumably could be relied upon not to ignore charges upon the land properly registered under s 8 of the 1926 Act (below).
16. Statutes, 1926, no 64
17. AJHR, 1928, G-9, p 2 and 1929, G-9, p 2
18. Statutes, 1928, no 49, s 3. Any Maori land could be brought under this section of the Act by order of the Native Land Court (13A).
19. The Waipipi and Kaihau Development Schemes: see AJHR, 1931, G-10, p xvi. This report stated that the Taheke and Te Kuiti Base Farm schemes were also being financed by Maori Land Boards, but also indicated (rather confusing) that they were operated under s 23 of the 1929 Act – which related only to State-funded schemes. The explanation is that although the Taheke scheme was officially brought under s 23 on 14 January 1931, it was funded by the Waiariki board until 1933 (see AJHR, 1931, G-10, p 12, and 1934, G-10, p 24). Te Kuiti was a somewhat anomalous case. It was European land acquired by the Waikato–Maniapoto board as the result of the owners defaulting on a board loan on other property. Its use as a base farm for local schemes was funded by the board until 1932 (see AJHR, 1932, G-10, p 21, and 1935, G-10, p 9). Waipipi became a State scheme in 1932 and Kaihau in 1937 (see AJHR, 1934, G-10, p 11 and 1937, G-10, p 16) See also AJHR, 1934, G-11, pp 9–24 for a detailed critical examination of land board involvement in development work up to that time.

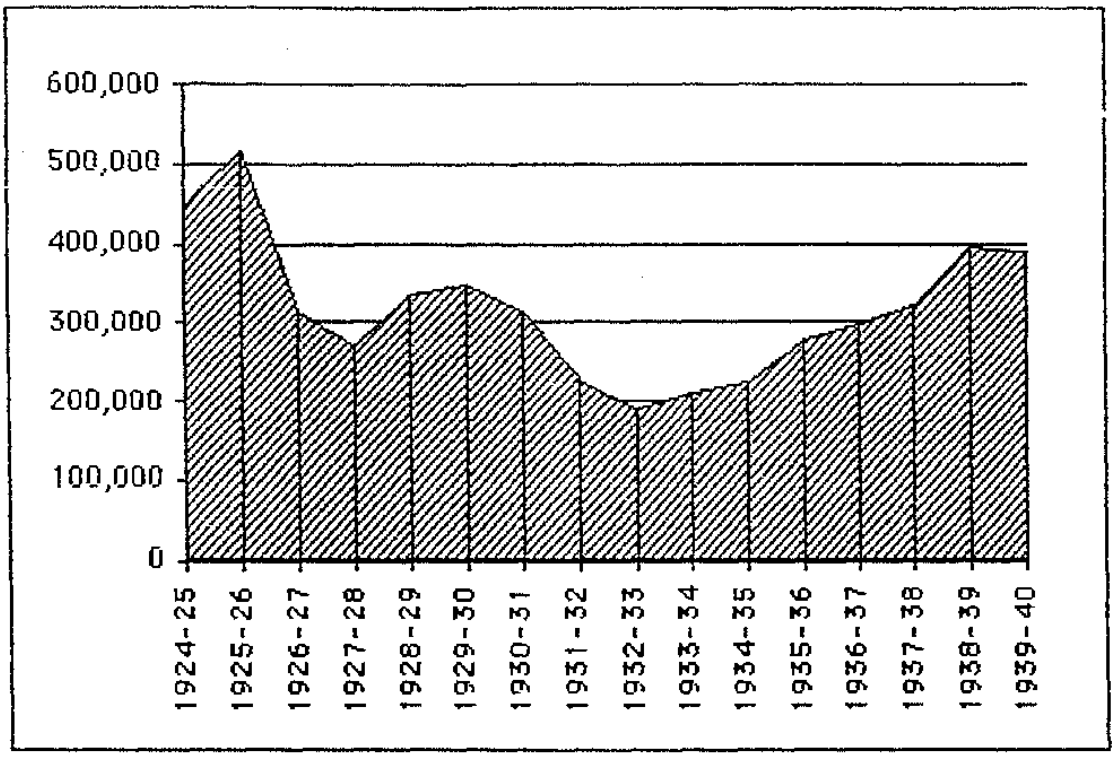


Chart II.3: Net Income of Maori Land Boards, 1924–40. Source: AJHR, B-1, Pt IV, 1926–41. The 'net income' figures do not include opening balances, or withdrawals during the fiscal year of funds deposited with the Native Trustee.

have been exacerbated by the sharp decline in net income which the Maori Land Boards experienced in the late 1920s, as the proceeds from land-purchasing and royalties for kauri gum and flax extraction fell (Chart II.3).

The solution adopted in 1929 by the new Native Minister, Sir Apirana Ngata,[20] was to give Maori access to State funds. As he himself summarised the process:

> During the 1929 session, when Parliament sanctioned a scheme for the development of unoccupied Crown lands preliminary to selection,[21] it was decided to apply similar provisions to lands owned and occupied by Maoris. To overcome any delays or difficulties arising from the nature of the titles to the lands proposed to be developed, the Native Minister was authorized to bring such lands under the scope of a development scheme. Upon notification of the fact the owners were prevented from interfering with the work of development, and private alienation of any land within the scheme was prohibited. The funds for development were provided by the Minister of Finance through the Native Land Settlement Account. The difficulties as to title were literally stepped over, and the development and settlement of the lands made the

20. Knighted in 1927; Native Minister in the Ward Government from December of 1928.
21. Ngata was referring here to the Land Laws Amendment Act 1929. There had previously been 'no specific authority for the Government to develop Crown lands in advance of their disposal to settlers', although it had for some time been providing settlers with access to credit for land development: see A Gould, 'Maori Land Development 1929–1954: An Introductory Overview with Representative Case Studies', CFRT, Wellington, 1996, p 13.

> prime consideration. The Minister was armed with the most comprehensive powers, which he could exercise directly through the Native Department or delegate to any Maori Land Board or to the Native Trustee.[22]

The principles were similar to those adopted in the 1928 legislation, but with the resources of the State to draw upon Ngata could and did widen the scope of Maori land development beyond anything previously seen.

A thorough historical investigation of the Maori Land development schemes of the 1930s is badly needed,[23] but such a task is well outside the scope of the present study. Suffice it here to say that the Maori Land Boards were pressed into service by the Native Minister to move land development along as fast as possible. Apart from a single Native Trustee scheme, Ngata reported in 1931, the boards were being used to conduct all 'local administration'. He explained that:

> These bodies had already acquired experience in making advances to Maori farmers and in passing judgement on facts relative thereto. They had custody of the titles, had local knowledge of the lands and people, and possessed staffs, both European and Maori, which with some adjustments could be made to serve the development policy.[24]

This was true enough, and may have been the only course open to him under the circumstances, but the boards were not well-suited to the expanded role thrust upon them in 1929.

The National Expenditure commission reviewed the structure and functions of the Native Department, and related bodies including the Maori Land Boards, in depth in 1932. It found, with respect to land development, that the boards 'have not the administrative machinery to assume responsibility for work of this description'.[25] Shortcomings had been detected at all levels, from the management of farm properties and the launching of large development schemes.[26] But administration as such was not the only problem. Looking at the boards themselves, the report noted that their structure had not changed since 1913, even though:

> The functions of Boards have undergone considerable change since their inauguration, and the President has a heavy responsibility devolving upon him. Originally the main duty of the Boards was to protect Natives from exploitation, but

22. AJHR, 1931, G-10, p vi
23. A useful starting-point is a set of reports recently produced for the Crown Forestry Rental Trust. See Gould; Graham Owen, 'Tikitere: The Proverbial Image 1931–1972', CFRT, Wellington, March 1996; Dion Tuuta, 'Mahoenui Development Scheme: Synopsis of Activity 1929–1957', CFRT, Wellington, 1996; and Dion Tuuta, '"Something Definite must be Done": The Ranana Development Scheme 1930–1962', CFRT (Twentieth Century Maori Land Administration Research Programme), Wellington, 1996
24. AJHR, 1931, G-10, p xvii
25. AJHR, 1932, B-4A, p 32, paragraph, paragraph248. The Under-Secretary of the Native Department commented in his evidence to the 1934 Native Affairs Commission that the 1929 legislation 'was revolutionary insofar as the Department was concerned as it imposed an entirely new class of work upon the staff and made them subject to all the restrictions connected with the handling of public moneys. The Maori Land Boards had been up to that time almost free from Treasury control as the Public Reveuues Act and Regulations applied to only a limited degree . . .', National Archives, MA 87/3A, p 3.
26. AJHR, 1932, B-4A, p 39, paragraph 329–330

> the trend of recent legislation is to provide ways and means of assisting in their social and economic welfare. Their financial operations are of some magnitude.[27]

It was noted that:

> The feature of the Board's [sic] constitution is that the President has sole jurisdiction, and when sitting in company with the Registrar has a casting-vote in addition to his ordinary vote. The Boards may therefore be deemed to be 'one man' Boards. The fact that the President has jurisdiction over alienations, and that he is also the Judge of the corresponding Native Land Court district, indicates that the line of demarcation between Boards and Courts has in some respects disappeared.[28]

The commissioners could thus see 'little objection to the Courts taking over from the boards those functions which can reasonably be vested in them',[29] and also observed that the other functions of the land boards had 'so changed in recent years that they are in reality branches of the Native Department, and should be recognized as such'.[30] It comes as no surprise that the commission concluded that the Maori Land Boards should be abolished altogether, with their 'judicial' functions (in the confirmation of alienations) being transferred to the Native Land Court and their other duties being assumed by a re-structured Native Department which also incorporated the Native Trustee.[31]

Most of these recommendations were adopted by the Government. The Native Department – which since 1922 had been headed by the chief judge of the Native Land Court[32] – absorbed the Native Trust Office and the East Coast Commissioner in 1932. A 'Native Land Settlement Board' was also established which controlled:

(a) the investment of all Native Trustee and Maori Land Board funds;
(b) all expenditure on 'farming operations', including those by the Native Department, Native Trustee, Maori Land Boards, and East Coast Commissioner; and
(c) the selection and appointment of all farm supervisors and managers for such operation (with the cost to be charged to the relevant agency).[33]

The Native Land Amendment Act 1932, which created this powerful new body, also relieved the Maori Land Boards of their responsibilities for confirming alienations of Maori freehold land (s 2), and dealing with resolutions passed by assembled owners under Part XVIII (s 5). These measures, Ngata told the House, would enable all of the judicial work of the Native Department to be done by the Native Land Court, and marked 'the first step towards reducing the status of the Maori Land Boards, and making them in effect the district offices of the reorganized Native Department'.[34]

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27. Ibid, p 33, paragraph 248
28. Ibid, p 33, paragraph 257
29. Ibid
30. Ibid, pp 37, paragraph 300
31. Ibid, pp 37, paragraph 332
32. See AJHR, 1922, G-9, p 1. The chief judge became the Under-Secretary of the Department.
33. The Native Land Amendment Act 1932, no 25, s 17. In addition, the board became responsible for all purchasing of Maori lands by the Crown, the Native Land Purchase Board being abolished (s 7).
34. NZPD, 1932, vol 234, p 663 (Ngata)

In the event, it was another 20 years before the Maori Land Boards finally vanished down the maw of the Department of Maori Affairs and the Maori Trustee. Renewed attempts were made in 1934 to have them abolished altogether. A submission to the Native Affairs commission by the Native Trustee identified 'the chief weaknesses of a Maori Land Board' as follows:[35]

(1) Its membership is too small and the President has too much power.
(2) Its activities in regard to investments, farming etc., are too limited to call for expert staffing with increased administrative cost.
(3) As it had its own Common Fund, cash in hand could not be utilised to the best advantage. This has since been remedied.
(4) As it is a corporate body, Head Office [of the Native Department] has insufficient control to check and co-ordinate work.
(5) The restricted nature of Board activities prior to 1930 had its effect on the officers and in comparison with the rest of the Public Service they lacked ambition and the incentive to qualify themselves for higher position. The advent of land development has shown up the deficiencies of the staff.
(6) The existence of seven small Boards must result in increased administrative cost.

P G Pearce recommended that the Government either:

(a) Constitute one Maori Land Board for the Dominion which would absorb the existing seven . . . [or]
(b) Transfer all functions of the present Boards to the Native Trustee.

The first option was only mentioned, however, 'because of the general antipathy towards the Native Trustee'.

These criticisms were vigorously rebutted by the land boards' supporters – who were generally inclined to think that the Native Trustee's functions and duties should be taken over by the Maori Land Boards.[36] The Native Affairs commission agreed with their appraisal of the Native Trustee, and concluded that there were:

> great advantages to be derived from using the President of a Maori Land Board, who is also the Judge of the District, as the official head of Native land development in the District.

This commission called for a few changes in accounting practices, and considered that greater emphasis should be placed on assistance for individual farmers than on large-scale development schemes, but explicitly rejected the 1932 recommendation

35. Submission by P G Pearce, 'Reasons for the Abolition of Maori Land Boards and the action required', MA 87/4, no I/16

36. See, in particular, the two submissions made by John Harvey in June of 1934 'on the Question of Abolition of Maori Land Boards and the Absorption of their Functions and Duties by the Native Trustee' (MA 87/4 no I/17), but also the 'Statement by Judge F O V Acheson about proposal to abolish Maori Land Boards and transfer their duties and functions to the Courts and the Native Trustee', not dated, (MA 87/8). Acheson (the president of the Tokerau board) commented that 'The Maori leaders should be consulted before any change is recommended or made. During many years experience in two districts I have heard many adverse comment [sic] on the Native Trust Office by responsible Maoris but never a word of praise. They regard the Native Trust Office as without a heart, with no real interest in the welfare of the Race.'

that the land boards be abolished altogether.[37] Although the 'Board of Native Affairs' which replaced the Native Land Settlement Board in 1934 had even more powers than its predecessor, particularly with respect to land development, the effect on the land boards appears to have been minimal.

During the 1920s, the Maori Land Boards (and the Native Trustee) were employed as vehicles for making available to Maori the resources which they needed to develop their own lands. As far as can be determined, the boards did a reasonably efficient job (and certainly appear to been more popular with their clients than the Native Trustee). In all probability, though, the precedents which were set by these activities were more significant than the results which they produced on the ground. The land boards' resources were quite limited, and were bound up in a web of responsibilities to the beneficial owners of the lands in their care. The boards certainly had not been designed to direct Maori land development on the scale which came to be considered necessary and possible from 1929 on, and were very quickly sidelined once the need to make do with any tools which came to hand had passed. In short, the Maori Land Boards helped to set the scene for the State-assisted Maori land development of the 1930s, but were superceded by new institutions purpose-built for the administration of this massive programme.

37. AJHR, 1934, G-11, pp 25–26

PART III

'Inimical to the Good, Sound Administration of Maori Affairs'?

CHAPTER 14

THE END OF THE MAORI LAND BOARDS

At the end of 1932 the powerful Maori Land Boards created by the 1909 Act became a thing of the past. The institutions which remained were no longer directly responsible for the alienation of any Maori freehold lands other than those vested in them under Parts XIV and XV or special legislation, or administered by them under Part XVI.[1] Nor were the boards responsible any longer for decisions concerning the investment of their own funds, or expenditures on their own agricultural operations. Their principal activities became the administration of vested lands, and the management (under the direction of the Board of Native Affairs) of a few farm properties remaining in their hands.[2] In reality, though, as Ngata had forecast, the Maori Land Boards became part and parcel of the reconstructed and decentralised Native Department of the 1930s. As time went on it became increasingly difficult to distinguish them as a separate entity: the boards were rendered down to a set of statutory functions sometimes performed by officials who, in most cases, were also officers of the court, or the department, or both. The presidents of the Maori Land Boards, of course, were also Native Land Court judges – and also chairmen of the Board of Native Affairs' district advisory committees – while the administrative officers of the boards were also registrars of the courts and key local officials of the department.[3] The boards reported to an Under-Secretary who was also the Native Trustee.[4]

It seems more than likely that if the Second World War had not intervened, the Maori Land Boards would have disappeared in a restructuring of the department at some point during the 1940s. As it was, they were one of the first casualties of the wave of reform which swept through Maori affairs from the early 1950s on. The first harbinger of extinction was the appointment in 1949 of a Royal Commission 'to Inquire into and Report upon Matters and Questions relating to certain Leases of Maori Lands vested in Maori Land Boards'. The leases in question were those originally made under the 1900 Act and its amendments and under Part I of the

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1. Fortunately for historians with poor memories, the new consolidation of the Native Land Act passed in 1931 retained the same 'Part' numbering as the 1909 Act.
2. Reported on in detail in the Board of Native Affairs' annual reports from AJHR, 1936, G-10 onwards.
3. See G Butterworth and H Young, *Maori Affairs: A Department and the People Who Made It*, Iwi Transition Agency–GP Books, Wellington, 1990, p 82. Outside of Wellington the land boards in the latter half of the 1930s provided the Native Land Court and the department with office accommodation 'at no cost to the State': see AJHR, 1937, G-9, p 5. In essence, in moving out to the districts the department took over the existing land court/land board administrative structure.
4. The chief judge was no longer the Under-Secretary of the department after 1933, when Judge R N Jones was replaced.

1907 Act. The Native Land Act 1909 had placed these under Part XV and XIV, respectively. Section 262 of this Act provided that the Maori Land Boards could lease these lands for any term they thought fit:

> but each and every such lease and every renewal thereof shall terminate not later than fifty years after the twenty-fifth day of November, nineteen hundred and seven, being the date of the coming into operation of the Native Land Settlement Act, 1907.

In other words, the bulk of the lands vested in the boards could no longer be leased after 25 November 1957.

The principal problem facing the Government in 1949 was that most of the vested lands were being held under leases which on completion made provision for lessees to receive compensation for permanent improvements. 'Doubts have arisen', the commissioners were informed:

> touching the efficacy and justice of the existing provisions of the law and the provisions of the leases aforesaid as far as they relate to the amount of compensation payable to the lessees and the manner in which the amount of compensation shall be discharged . . .

They were required to look into this question and, if necessary, recommend solutions to any problems which were uncovered.[5]

The commissioners' findings did not cast the Maori Land Boards in a very good light. Although the first set of regulations for the leasing of lands vested in the Maori Land Councils, issued in 1901, did not require that leases contain any provision for compensation for lessees, from 1903 such terms became mandatory for leases under the 1900 Act and its amendments.[6] Sections 8 and 14 of the Maori Land Settlement Act 1905 specified that land vested compulsorily in the new Maori Land Boards could only be leased for a maximum of 50 years, and could be returned to their owners at that point. The Native Land Settlement Act 1907 (which was separate from the Maori Land Administration legislation) set similar conditions, but also had a statutory provision requiring compensation for lessees for permanent improvements. The 1909 Act incorporated the 50-year limit and the requirement for compensation 'for all substantial improvements of a permanent character'. In order to pay such compensation, boards were required to set aside a portion of rents from each lease in a sinking fund, while owners had the option of registering any improvements which they made with the board.[7] These provisions had been retained in subsequent legislation.

The commission decided that it had been:

> the intention of the Legislature and of the Maoris at the time when in the first decade of the present century the vested lands with which we now have to deal were vested in the Maori Land Councils (or their successors the Maori Land Boards), that the

5. AJHR, 1951, G-5, pp 2–3 (Commission)
6. See AJHR, 1951, G-5, pp 15–16. The original regulations referred to in the report can be found in *New Zealand Gazette*, 7 January 1901, no 1, pp 1–9, and the 1903 amendments in *New Zealand Gazette*, 27 August 1903, no 67, p 1867–68
7. Sections 263 and 264, and also NZPD, 1909, vol 148, p 1277

> period of vesting should be limited, and that the lands should return to the Maori beneficial owners in due course.

and found that the present owners wished to recover the land and make use of it themselves.[8] This being the case, it looked carefully at the preparations which the boards had made for dealing with expired leases. Or, rather, it looked for such preparations, to discover that only one Maori Land Board had actually 'set aside any rents to provide a fund towards compensation for improvements' – but even in the Ikaroa district it appeared doubtful that the amounts set aside would be sufficient to enable owners to pay the compensation likely to be required.[9] Ascertaining the compensation required was in any case likely to be complicated everywhere by the fact that the provisions for recording improvements had 'rarely been used by any lessee'.[10] The commission was also critical of the lack of 'regular inspection' of leased lands in some districts to insure that the terms of leases were being met – a problem which had been identified by the State Expenditure commission in 1932 – and the consequent lack of detailed records concerning land use and improvements.[11]

The recommendations of the commission constituted a complex set of proposals for finding the money to pay off lessees, in order that those owners who wished to do so could regain their lands. As for the Maori Land Boards, it recommended that in future they give 'particular attention' to retaining funds to pay for improvements, collecting 'full information' about those made, making regular inspections and, above all, actually consulting the beneficial owners of the land about what was done with it. The commission recommended that committees be created for the latter purpose, since no mechanism for consultation existed.[12]

While doubtless meant to be constructive, such suggestions came a half-century or so too late. When a deal for managing the vested lands problem was finally worked out by the Government in 1954, after lengthy negotiations with lessees and owners, the Maori Land Boards were not part of the solution. One historian has suggested that the Vested Lands commission's findings 'steeled' the minister of the day (Ernest Corbett) to eliminate 'the duplication of function between the Maori Land Boards and the Maori Trustee' at the expense of the former.[13] That may well be, since he had already shown an inclination to make use of the Trustee for purposes where the land boards could have served just as well if not better. In 1950, for example, the Government introduced new measures providing for the compulsory alienation of Maori land which was unoccupied, not properly cleared of weeds, owing rates or the owners of which 'have neglected to farm or manage the land diligently and the land is not being used to its best advantage'.[14] This, of

8. AJHR, 1951, G-5, p 17, paragraph 13
9. Ibid, p 40, paragraph 57
10. Ibid, p 18, paragraph 14
11. Ibid, p 77, paragraph 138. It was noted in 1932 that the land boards carried out 'no field inspections for the purpose of ascertaining whether the covenants of leases are being observed': AJHR, 1932, B-4A, p 34, paragraph 264.
12. AJHR, 1951, G-5, p 88, paragraph 165
13. Butterworth and Young, p 96
14. Section 34, Maori Purposes Act 1950

course, was exactly the kind of thing the Maori Land Boards had been dealing with for half a century, but the job was given instead to the Maori Trustee. It would also appear, however, that Corbett was responding to concerns of the judges of the Maori Land Court. He would tell the House in 1952 that they were finding it increasingly difficult to balance their judicial role with the administrative one placed upon them as presidents of the land boards, 'and they and my Government feel that that set-up is inimical to the good, sound administration of Maori affairs'.[15]

In any case, the Maori Land Amendment Act 1952 stated bluntly that 'Every Maori Land Board . . . is hereby dissolved'. With a few exception, all of the powers, assets and liabilities became 'exercisable by, vested in, or binding upon the Maori Trustee'.[16] The minister told the House that the 'immediate reason' for this measure was 'the need for simplifying the general administration of Maori affairs'. He expressed a fear that unless something was done:

> Maori administration as we know it to-day will completely collapse, because of administrative problems and complexities . . . This is not something that has grown up over the last year or two: it is a state of affairs that has been allowed to develop over the last fifty years, or even longer.

The proposed legislation, Corbett claimed, would contribute to a simplification of Maori administration by eliminating the existing overlap between the powers and functions of the Maori Trustee.[17] The Act passed through the House without encountering significant opposition. Appropriately enough, among the last words spoken on the subject in Parliament were those of an historically-minded national member who congratulated the minister on finally getting rid of 'that taihoa policy'. 'I hope the Bill', A J Murdoch stated:

> will be a means of a greater development among our Maori people and a fuller use of Maori lands. And I hope that the taihoa policy will be a thing of the past, and that we will not hear that word again.[18]

15. NZPD, 1952, vol 297, p 772 (Corbett)
16. Statutes, 1952, no 9
17. NZPD, 1952, vol 297, p 772 (Corbett)
18. Ibid, p 775 (Murdoch). It must be noted that the next speaker, T P Paikea of Northern Maori, rose in defence of Carroll's taihoa policy as being 'responsible for saving most of the Maori land from being sold to the pakeha people'.

CHAPTER 15

CONCLUSIONS

In order to understand what happened to Maori and their lands during the first part of the twentieth century, it is essential to understand what the Maori Land Councils and Maori Land Boards were meant to do, and what they actually did. Until the 1930s, these institutions were the principal instrument by which the policies of successive Governments towards Maori freehold lands were carried out. The common thread running through all of those policies was a determination, usually ardent and occasionally mindless, to put all of New Zealand's lands to productive agricultural use.

At the turn of the century Maori owned a substantial proportion of the 'unused' lands in the North Island, but in most cases lacked the resources to do anything with them. In the political climate of the day, it was imperative that the Government do something about this situation. Basically, three courses of action were open:

(a) To continue buying Maori land in quantity, as in the 1890s, and pass it on to settlers through the Crown;
(b) To expedite the leasing of Maori land to settlers; or
(c) To provide Maori with Government assistance to make productive use of their own lands.

Maori themselves, however, were vehemently opposed to further purchasing by the Crown, while there was little or no support among Europeans for the last option. The result was the compromise which produced the Maori Land Administration Act in 1900, and the Maori Land Council system. But this promising experiment failed. By 1909 the struggling land councils had been converted into the streamlined Maori Land Board system which supervised and facilitated what Brooking has aptly described as 'the ultimate Maori land grab' of the 1910s and 1920s.[1]

It is instructive to reflect on what the Maori Land Councils might have achieved if they had been given a few more years to put the land administration system set up in 1900 into operation, and – in particular – if they had been given access to a fraction of the capital made available for Maori land development three decades later. These land councils had their weaknesses, but they were scarcely given a chance to show what could be done with a regime based on voluntary participation by Maori landowners, and administered by institutions in which Maori and the Crown shared in decision-making. They were given no chance at all to show what

1. Brooking, 'Liberal Maori Land Policy', p 80. Although he dates this 'grab' to 1912–20, the particular sequence actually started in 1910 and continued into the late twenties after a brief hiatus during the slump which followed the Great War: see Tables II.25 and II.27.

might have been possible if Maori farming had been given a genuine 'chance to succeed' in the early 1900s.[2]

Active support by the Crown for Maori land development was the one component of the 'Native Land Board' system which James Carroll had advocated in the early 1890s, which he was not able to put in place during his distinguished career as New Zealand's first Native Minister of Maori descent. Its absence was perhaps the fatal flaw in the land administration system which he and Apirana Ngata fought to establish in 1904 to 1909. Although it may well have been inevitable that large quantities of Maori freehold land would be permanently alienated during this period, the absence of a fixed institutional goal of assisting Maori farmers to make productive use of as much of their own land as possible negated most of the benefits which their creators hoped for from the Maori Land Councils and the Maori Land Boards.

2. Brooking, 'Liberal Maori Land Policy', p 97

APPENDIX I

PRACTICE NOTE

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND Rangahaua Whanui and the claims as a whole

PRACTICE NOTE

This practice note follows extensive Tribunal inquiries into a number of claims in addition to those formally reported on.

It is now clear that the complaints concerning specified lands in many small claims, relate to Crown policy that affected numerous other lands as well, and that the Crown actions complained of in certain tribal claims, likewise affected all or several tribes, (although not necessarily to the same degree).

It further appears the claims as a whole require an historical review of relevant Crown policy and action in which both single issue and major claims can be properly contextualised.

The several, successive and seriatim hearing of claims has not facilitated the efficient despatch of long outstanding grievances and is duplicating the research of common issues. Findings in one case may also affect others still to be heard who may hold competing views and for that and other reasons, the current process may unfairly advantage those cases first dealt with in the long claimant queue.

To alleviate these problems and to further assist the prioritising, grouping, marshalling and hearing of claims, a national review of claims is now proposed.

Pursuant to Second Schedule clause 5A of the Treaty of Waitangi Act 1975 therefore, the Tribunal is commissioning research to advance the inquiry into the claims as a whole, and to provide a national overview of the claims grouped by districts within a broad historical context. For convenience, research commissions in this area are grouped under the name of Rangahaua Whanui.

In the interim, claims in hearing, claims ready to proceed, or urgent claims, will continue to be heard as before.

Rangahaua Whanui research commissions will issue in standard form to provide an even methodology and approach. A Tribunal mentor unit will review the comprehensiveness of the commission terms, the design of the overall programme, monitor progress and prioritise additional tasks. It will comprise Tribunal members with historical, Maori cultural and legal skills. To avoid research duplication, to maintain liaison with interested groups and to ensure open process:

(a) claimants and Crown will be advised of the research work proposed;
(b) commissioned researchers will liaise with claimant groups, Crown agencies and others involved in treaty research; and
(c) Crown Law Office, Treaty of Waitangi Policy Unit, Crown Forestry Rental Trust and a representative of a national Maori body with iwi and hapu affiliations will be invited to join the mentor unit meetings.

It is hoped that claimants and other agencies will be able to undertake a part of the proposed work.

Basic data will be sought on comparative iwi resource losses, the impact of loss and alleged causes within an historical context and to identify in advance where possible, the wide ranging additional issues and further interest groups that invariably emerge at particular claim hearings.

As required by the Act, the resultant reports, which will represent no more than the opinions of its authors, will be accessible to parties; and the authors will be available for cross-examination if required. The reports are expected to be broad surveys however. More in-depth claimant studies will be needed before specific cases can proceed to hearing; but it is expected the reports will isolate issues and enable claimant, Crown and other parties to advise on the areas they seek to oppose, support or augment.

Claimants are requested to inform the Director of work proposed or in progress in their districts.

The Director is to append a copy hereof to the appropriate research commissions and to give such further notice of it as he considers necessary.

Dated at Wellington this 23rd day of September 1993

Chairperson
WAITANGI TRIBUNAL

APPENDIX II

LIST OF LEGISLATION

The following legislation affected Maori Land Councils and Maori Land Boards between 1900 and 1952. This checklist is provided in part because it includes a number of Amendment Acts which are not separately listed in David Williams' *Maori Land Legislation Manual* – a disadvantage when it comes to searching *Hansard* for relevant debates:

The Maori Lands Administration Act (1900 No 55)
The Maori Lands Administration Amendment Act (1901 No 42)
The East Coast Native Trust Lands Act (1902 No 5)
The Native and Maori Land Laws Amendment Act (1902 No 56)
The Maori Land Laws Amendment Act (1903 No 92)
The Native Land Rating Act (1904 No 41)
The Maori Land Claims Adjustment And Laws Amendment Act (1904 No 49)
The Maori Land Settlement Act (1905 No 44)
The Maori Land Settlement Act Amendment Act (1906 No 62)
The Maori Land Settlement Act Amendment Act (1907 No 9)
The Native Land Settlement Act (1907 no 62)
The Maori Land Claims Adjustment And Laws Amendment Act (1907 No 76)
The Maori Land Laws Amendment Act (1908 No 253)
The Native Land Act (1909 No 15)
The Urewera District Native Reserve Amendment Act (1909 No 24)
The Native Townships Act (1910 No 18)
The Rating Amendment Act (1910 No 60)
The Thermal Springs Districts Act (1910 No 69)
The Native Land Claims Adjustment Act (1910 No 82)
The Native Land Claims Adjustment Act (1911 No 35)
The Native Land Amendment Act (1912 No 34)
The Reserves and Other Lands Disposal And Public Bodies Empowering Act (1912 No 46)
The Rating Amendment Act (1913 No 54)
The Native Land Amendment Act (1913 No 58)
The Reserves and Other Lands Disposal And Public Bodies Empowering Act (1913 No 67)
The Native Land Amendment Act (1914 No 63)
The Native Land Claims Adjustment Act (1914 No 64)
The West Coast Settlement Reserves Amendment Act (1915 No 62)
The Native Land Amendment and Native Land Claims Adjustment Act (1915 No 63)
The Native Land Amendment and Native Land Claims Adjustment Act (1916 No 12)
The Native Land Amendment and Native Land Claims Adjustment Act (1917 No 25)
The Native Land Amendment And Native Land Claims Adjustment Act (1918 No 13)

The Native Townships Amendment Act (1919 No 22)
The Native Land Amendment and Native Land Claims Adjustment Act (1919 No 43)
The Reserves and Other Lands Disposal And Public Bodies Empowering Act (1919 No 54)
The Native Land Amendment and Native Land Claims Adjustment Act (1920 No 63)
The Native Trustee Amendment Act (1921 No 29)
The Forests Act (1921 No 43)
The Urewera Lands Act (1921 No 55)
The Native Land Amendment and Native Land Claims Adjustment Act (1921 No 62)
The Native Land Amendment and Native Land Claims Adjustment Act (1922 No 48)
The Native Land Amendment and Native Land Claims Adjustment Act (1923 No 32)
The Native Land Amendment and Native Land Claims Adjustment Act (1924 No 45)
The Native Land Amendment and Native Land Claims Adjustment Act (1925 No 40)
The Native Land Amendment and Native Land Claims Adjustment Act (1926 No 64)
The Native Land Amendment and Native Land Claims Adjustment Act (1927 No 67)
The Native Land Amendment and Native Land Claims Adjustment Act (1928 No 49)
The Native Land Amendment and Native Land Claims Adjustment Act (1929 No 19)
The Native Land Amendment and Native Land Claims Adjustment (1930 No 29)
The Native Trustee Act (1930 No 33)
The Native Land Act (1931 No 31)
The Native Purposes Act (1931 No 32)
The Native Land Amendment Act (1932 No 25)
The Board Of Native Affairs Act (1934 No 44)
The Native Purposes Act (1937 No 34)
The Native Purposes Act (1938 No 23)
The Native Purposes Act (1939 No 28)
The Native Purposes Act (1941 No 22)
The Native Purposes Act (1942 No 15)
The Native Purposes Act (1943 No 24)
The Waikato–Maniapoto Maori Claims Settlement Act (1946 No 19)
The Ngaitahu Trust Board Act (1946 No 33)
The Maori Purposes Act (1947 No 59)
The Coal Act (1948 No 37)
The Maori Purposes Act (1949 No 46)
The Maori Purposes Act (1950 No 98)
The Maori Land Amendment Act (1952 No 9)
The Maori Purposes Act (1952 No 70)

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