

NATIONAL OVERVIEW

volume i

Professor Alan Ward

Waitangi Tribunal Rangahaua Whanui Series

WAITANGI TRIBUNAL 1997

The cover design by Cliff Whiting invokes the signing
of the Treaty of Waitangi and the consequent interwoven development
of Maori and Pakeha history in New Zealand as it continuously
unfolds in a pattern not yet completely known

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as part of its Rangahaua Whanui research programme. Any views expressed or
conclusions drawn are those of the author.

Mr Morris Love
Director
Waitangi Tribunal

25 March 1997

Tena koe

In fulfilment of my commission dated 30 April 1996, I have this week delivered to Mr Dominic Hurley, the senior editor of the Waitangi Tribunal, the three-volume *National Overview* of the Rangahaua Whanui project, commenced by the Tribunal in 1993. Volume i of the overview summarises the chapters in volumes ii and iii. It also contains a section (pt iii) entitled 'Optional Strategies for Dealing with Historical Treaty Claims', which was written in fulfilment of my supplementary commission of 4 November 1996. Volume ii contains chapters on the 20 national themes selected for discussion in the overview. Volume iii contains chapters summarising the main features of land alienation in the 15 districts into which New Zealand was divided for research purposes. An executive summary of some 42 pages is included in volume i.

I would like to thank the Waitangi Tribunal for the privilege of working on this report. It is a report to the Tribunal embodying my historical interpretations of the evidence assembled during the Rangahaua Whanui programme – interpretations that are not necessarily shared by either the Tribunal itself or the Tribunal's administration.

Yours sincerely

Alan Ward
Emeritus Professor of History
University of Newcastle
New South Wales

*The Natives were keenly averse to selling
and it was impossible to purchase by assembled owners meetings,
and therefore individual purchase had to be adopted.*

Memorandum to the Native Minister, 23 March 1921
(ma 31/21, National Archives, Wellington)

THE AUTHOR

My name is Alan Dudley Ward, emeritus professor of history at the University of Newcastle, Australia. I was born and educated in the Gisborne district. I hold an MA in history (first class honours) from Victoria University of Wellington (my thesis being on East Coast Maori trust lands) and a PhD in Pacific history from the Australian National University (my thesis being on the extension of British law and administration in Maori districts). My principal employment since 1967 has been as an academic historian, with particular interest in the advent of the nation state in indigenous Pacific societies and special reference to land tenure and land law. I have published extensively in this area, including the book *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*. Throughout 1973 and intermittently thereafter, I was a consultant to the Department of Lands in Papua New Guinea, with particular responsibility for facilitating cash cropping on customary (non-registered) land. In 1981 and 1982, I was the director of the Department of Rural Lands in the Republic of Vanuatu. Between 1979 and 1986, I worked with French academic colleagues studying land reform in New Caledonia. From 1987 to 1991, I was a contract historian to the Waitangi Tribunal, writing historical reports in respect of the Ngai Tahu claim and the district Whanganui ki Maniapoto. In 1992 and 1993, I was the chief historian for the Crown Congress Joint Working Party dealing with surplus Railcorp lands. From 1993 to the present, I have been on the advisory group of the Waitangi Tribunal's Rangahaua Whanui research programme in a part-time capacity. From July 1996, I have been engaged full-time on compiling the *National Overview* report for that programme.

ACKNOWLEDGEMENTS

Many people have contributed to the compilation of this report. Particular acknowledgement must be made of the unflagging energy and good humour of my principal research associate, Dr Janine Hayward. Also of research associates Ms Suzanne Cross and Dr Keith Pickens. The authors of many of the various Rangahaua Whanui reports that underlie this overview advised on areas of their particular research. Among the many Waitangi Tribunal staff who supported the project, particular acknowledgement is due to Dr the Honourable Ian Shearer, Dr Grant Phillipson, Ms Jo Ara, Mr Noel Harris, Mr Dominic Hurley, and Ms Kate Riggir.

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LIST OF ABBREVIATIONS

AJHR	<i>Appendices to the Journals of the House of Representatives</i>
app, apps	appendix, appendixes
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon, Irish University Press, 1968–69)
ch, chs	chapter, chapters
doc, docs	document, documents
ed	edition, editor
encl	enclosure
ff	following
fol, fols	folio, folios
ma	Maori Affairs series
NA	National Archives
no, nos	number, numbers
NZLR	<i>New Zealand Law Reports</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
olc	old land claims (see F D Bell, 'Report of the Land Claims Commissioner', AJHR, 1862, d-14, app)
p, pp	page, pages
para, paras	paragraph, paragraphs
pt, pts	part, parts
RDB	<i>Raupatu Document Bank</i> (139 vols, Wellington, Waitangi Tribunal, 1990)
rod	record of documents
s, ss	section, sections (of an Act)
sec, secs	section, sections (of this report, or of an article, book, etc)
sess	session
td	Turton's deed (see H H Turton (ed), <i>Maori Deeds of Land Purchases in the North Island of New Zealand</i> , Wellington, Government Printer, 1877, vol i)
vol, vols	volume, volumes
Wai	Waitangi Tribunal claim

DIRECTOR'S FOREWORD

The Rangahaua Whanui project set out to examine on a broad district basis those areas of the country that had not otherwise been closely examined through the Treaty claims process. It also canvassed a range of national themes; these themes apply across districts and a broad understanding of them is required for Treaty claims research. Professor Alan Ward, Dr Janine Hayward, Dr Keith Pickens, and Ms Suzanne Cross formed a small team to provide a summary of the wealth of documents that established the core of the project. The three-volume summary they produced is the *National Overview* of the Rangahaua Whanui project.

It should be noted that the *National Overview* is a report to the Waitangi Tribunal and not a report of the Tribunal. It serves to guide the Tribunal, the Government, and others on the way forward for the resolution of Treaty claims generally. It can guide those who want to get a broad picture of what is still to be resolved in Treaty claims or those who want to gain an overview of claims in a particular region or even throughout the nation. It is not a substitute for the detailed research that is required either to present a claim before the Tribunal or to negotiate a claim with the Government. It does, however, provide good guidance on what that detailed research would need to cover.

The *National Overview* is the logical entry point to the whole Rangahaua Whanui project. Volume i serves as a detailed table of contents for the project. Of course, it goes much further than that, featuring sections on Treaty principles and the major causes of land alienation, a set of broad criteria on breaches of the Treaty, and a discussion on how those criteria might assist in dealing with claims of different types. There is also a section on future strategies for claims settlements. The report reflects the views of the author, which may not be shared by the Tribunal. The issues are raised to assist in the debate over Treaty claims settlements.

Professor Ward's *National Overview* could provide the basis for a detailed debate on directions for the way forward in the resolution of Treaty claims. The outcome of such a debate could be the foundation of a clear vision of what lies at the end of the claims settlement process. If Maori, the Government, and interested parties can agree on a common vision, then the achievement of that vision will be a real possibility. Without such a vision, unrealistic expectations and unreasonable responses will prevail, and there will be little in the way of strategic direction. If the populace has a clearer idea of where Treaty claims are going, they will be far more accepting of them, especially if that vision is shared by their peers. I believe the *National Overview* could be the trigger for that process.

Director's Foreword

The *National Overview* is the flagship for the project as a whole, and I take this opportunity to thank and congratulate the large number of researchers, analysts, writers, editorial staff, and various assistants who have all contributed to the project.

No reira noho ora koutou.

Morris Te W Love
Director
Waitangi Tribunal

CHAIRPERSON'S FOREWORD

Where is the Treaty claims process heading? The Waitangi Tribunal knows of no comprehensive statutory policy to define suitable goals. Nearly a decade ago, it was conjectured within the Tribunal that the re-establishment of tribal groups with a reasonable economic base, upon lines that might have been maintained had original Treaty expectations been adhered to, would represent a reasonable outcome.¹ That led to questions of the principles that might govern the furnishing of relief in proper cases and whether, in terms of the Tribunal's jurisdiction, relativities between tribes are a relevant factor. The Tribunal is not a court and is not called upon to award damages based upon a reckoning of loss as a court does. Being more like a commission of inquiry, it is required instead to recommend the action to be taken to compensate for or remove the prejudice arising from established claims or to prevent other persons from being similarly affected in the future.² The legislation provides little in the way of guiding principles for the proper approach to be taken to the settlement of historical grievances, having regard to the range and incidence of injuries as a whole and the outcomes to be achieved.

Pursuant to clause 5a of the Second Schedule to the Treaty of Waitangi Act 1975 (which enables the Tribunal to commission research and to receive reports on any matter relating to a claim or to the functions of the Tribunal), the Tribunal commissioned a series of district overviews of historical grievances and injuries and a series of studies of themes of national relevance. By these means, it sought to be better apprised of the nature and extent of the claims and the commonality of the issues. This programme, which began in 1993, was the Rangahaua Whanui research programme. The volume that follows is the *National Overview*, which was commissioned to analyse and draw into one report the principal findings of the various district and national theme reports.

These reports have now been filed and are being released for public information. Researchers were asked to consider all likely causes of grievance, because, not unnaturally given the lapse of time, many claims have been generally expressed until the necessary research has been completed. The Tribunal is also conscious of Maori contentions that past inquiries were insufficient to reach the heart of matters. It appears that, if lasting settlements are to be achieved, no narrow legal approach will do and a full inquiry must be made of all matters that are likely to be relevant.

While it was not intended that these research reports should cover more than the main causes of grievances and it was realised that much more would be needed from claimants before claims could be disposed of by hearings, the reports hopefully break the back of much of the basic research required. It has also been

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1. See Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed, Wellington, Government Printing Office, 1989
 2. See s 6(3), (4) Treaty of Waitangi Act 1975

Chairperson's Foreword

apparent for some time that protracted and individual claims hearings are not a speedy way of alleviating a problem of national proportions; it would be of great assistance to the Tribunal, and when dealing with Treaty issues generally, if the reports set the ground for independently negotiated settlements or if they helped to generate widely agreed guidelines for the resolution of historical Maori grievances.

This project has been part of a strategic plan to manage a large workload within the restrictions of the Tribunal's legislation and resources. It was apparent that the seriatim examination of claims was advantaging those first heard – to the possible prejudice of others – and was creating distortions in the public perception of the relative importance of claims. These reports now furnish core data for the public and for all claimants contemporaneously. As such, the programme has sought to serve, evenly and fairly, the interests of various claimant groups. The reports should also assist the Tribunal in marshalling claims for hearing and in enabling the Tribunal to consider findings in one district with an awareness of the possible impact on others.

The completion of these reports represents an important milestone in the Tribunal's operations. While the opinions in these reports are those of the authors and not the Tribunal, the Tribunal commends them for study, to indicate the nature and extent of the claims and of the issues to be addressed when considering the claims resolution process.

E T Durie
Chairperson
Waitangi Tribunal

13 December 1996

METHODOLOGICAL NOTE

The Rangahaua Whanui programme was formally launched on 23 September 1993 by a practice note from the chairperson of the Waitangi Tribunal (see app i). The purposes of the programme are set out in that note and in the chairperson's foreword to this report.

The programme was shaped in the early months by a 'mentor group', which included Tribunal members, senior Tribunal researchers, and members of other organisations working in the Treaty claims area. The various research reports then commissioned were supervised by an advisory group comprising the acting research manager and senior academic historians contracted by the Tribunal.

The research reports were of two kinds:

- (a) *National theme reports*: The national theme reports covered issues that arose explicitly or implicitly in many or most of the Treaty claims. These were researched in terms of their general application in the country as a whole, not on a case-by-case basis, although particular cases are examined by way of illustration. Examples of national themes are 'Crown pre-emption purchases' and 'the Native Land Acts 1865 to 1899'. The full list of national themes selected for consideration forms the table of contents of part 1 of this report. The potential list is theoretically much larger, but the themes chosen reflect an early decision of the mentor group to focus on the alienation of land and natural resources and an assessment by the mentor and advisory groups of which issues had the widest general application, as indicated by common historical themes coming through the claims before the Tribunal. Seventeen research reports on national themes have been completed; these have been released or are being prepared for release. Because of staff and funding limitations at the time the project was launched, wholly new reports were not commissioned on raupatu, the Native Land Court in the nineteenth century, and native committees, given the amount of research already available or emerging from claims research, or in view of work being done in other agencies. A cluster of reports on Maori land administration in the twentieth century was kindly funded by the Crown Forestry Rental Trust and carried out under their aegis by a team headed by Dr Don Loveridge following a research design initially formulated by Dr Loveridge and myself. Unfortunately, a report on surveys and survey costs, also being undertaken by the trust, has not been completed at this time. A Tribunal report on purchases under FitzRoy's pre-emption waiver was only partially completed because of the illness of the researcher. On the question of public works takings, the report prepared by Ms Cathy Marr for the Office of Treaty Settlements was largely relied upon, together with Dr David Williams's *Maori Land Legislation Manual*.

Methodological Note

- (b) *District reports*: The district reports examined the effect of various Crown policies in different regions of New Zealand, particularly in respect of land alienation. Fifteen research districts were demarcated, mainly according to natural geographic boundaries and local government boundaries. With the exception of Tuhoe, conventional tribal boundaries were deliberately ignored in this demarcation. (There is good evidence that tribal boundaries as commonly understood are to a considerable extent constructs of post-1840 history in any case, and that hapu and their various interests intersect and overlap.) Given the shortage of staff at the beginning of the project, five districts were not made the subject of wholly new reports: the southern South Island and Taranaki, which were already the subject of Waitangi Tribunal reports; the Bay of Plenty and the Chatham Islands, which were already heavily researched for claims hearings; and Waikato, because the main raupatu claim had already been settled. Twelve district reports have been completed by Tribunal or commissioned researchers. In two districts, Hauraki and the East Coast, claimant research reports have been undertaken according to a research design approved by the Tribunal and have been partly completed.

A *National Overview* of the Rangahaua Whanui programme was envisaged from the outset of the project. I commenced work on it part-time in January 1996, with a research associate, Dr Janine Hayward, and worked on it full-time from July 1996. A draft of all three volumes was completed by December 1996 and has been revised in the first months of 1997. The overview has been written mainly from the data in the various commissioned reports in the Rangahaua Whanui programme as a whole and reflects the depth of work done in the various reports. In cases where district reports are not yet available, work has been done by the *National Overview* team itself to provide such additional data as could be managed within the time available.

Nevertheless, it should be appreciated that the *National Overview* report is a different kind of document from the component reports of the Rangahaua Whanui programme itself. For detailed, fully referenced, discussions of the various issues and districts in the Rangahaua Whanui programme, readers are referred to the various component reports. Summaries of those reports and discussions by the *National Overview* team of themes and districts not covered by separate Rangahaua Whanui reports are to be found in volumes ii and iii of this report: volume ii contains the national themes summaries, volume iii the district summaries.

This volume, volume i, is essentially an interpretive account, surveying New Zealand history from 1840 until approximately the Second World War in so far as it relates to Treaty issues and gives rise to Treaty claims. It is a historical analysis and seeks to explain, in a succinct and accessible way, the origins and most important effects of various Crown actions alluded to, both severally and in relation to one another. In order to keep volume i short, supporting evidence has largely been omitted. In some cases, the various sections of volume i are simply the conclusions of the chapters in volume ii; additional data from the various national theme and district reports is drawn upon only to illustrate the arguments advanced.

Methodological Note

Particular points may be contestable; no historian attempting to survey the whole of New Zealand's colonial history in 12 months can vouch for every detail of what is often contentious ground. Readers seeking fuller substantiation of the arguments are referred to volume ii, where each of the national themes is treated at much greater length, and to volume iii, where evidence of the outcomes in the districts is located.

For the briefest statements of the findings of this report, please refer to the maps and tables on the cumulative alienation of Maori land and to the 42-page executive summary at the front of this volume.

Part iii of this volume, 'Optional Strategies', has been written in fulfilment of a supplementary commission dated 4 November 1996. In the light of the historical evidence disclosed by the Rangahaua Whanui research, I was invited to make some suggestions to the Tribunal as to how the historical claims might best be dealt with. Some of the key points in those suggestions have also been included in the executive summary.

This is a commissioned report to the Waitangi Tribunal. It embodies my considered professional opinions. Those opinions may or may not be shared by the Waitangi Tribunal or the Tribunal's administration.

Alan Ward
March 1997

National Overview



Figure 1: Alienation of Maori land in the North Island at 1860

These maps have been drawn from maps compiled for the 1940 *Historical Atlas* (the project was abandoned because of the Second World War), which are now held in the Alexander Turnbull Library map collection. These are large-scale maps and cannot show blocks below a certain size. Together with the accompanying tables

National Overview

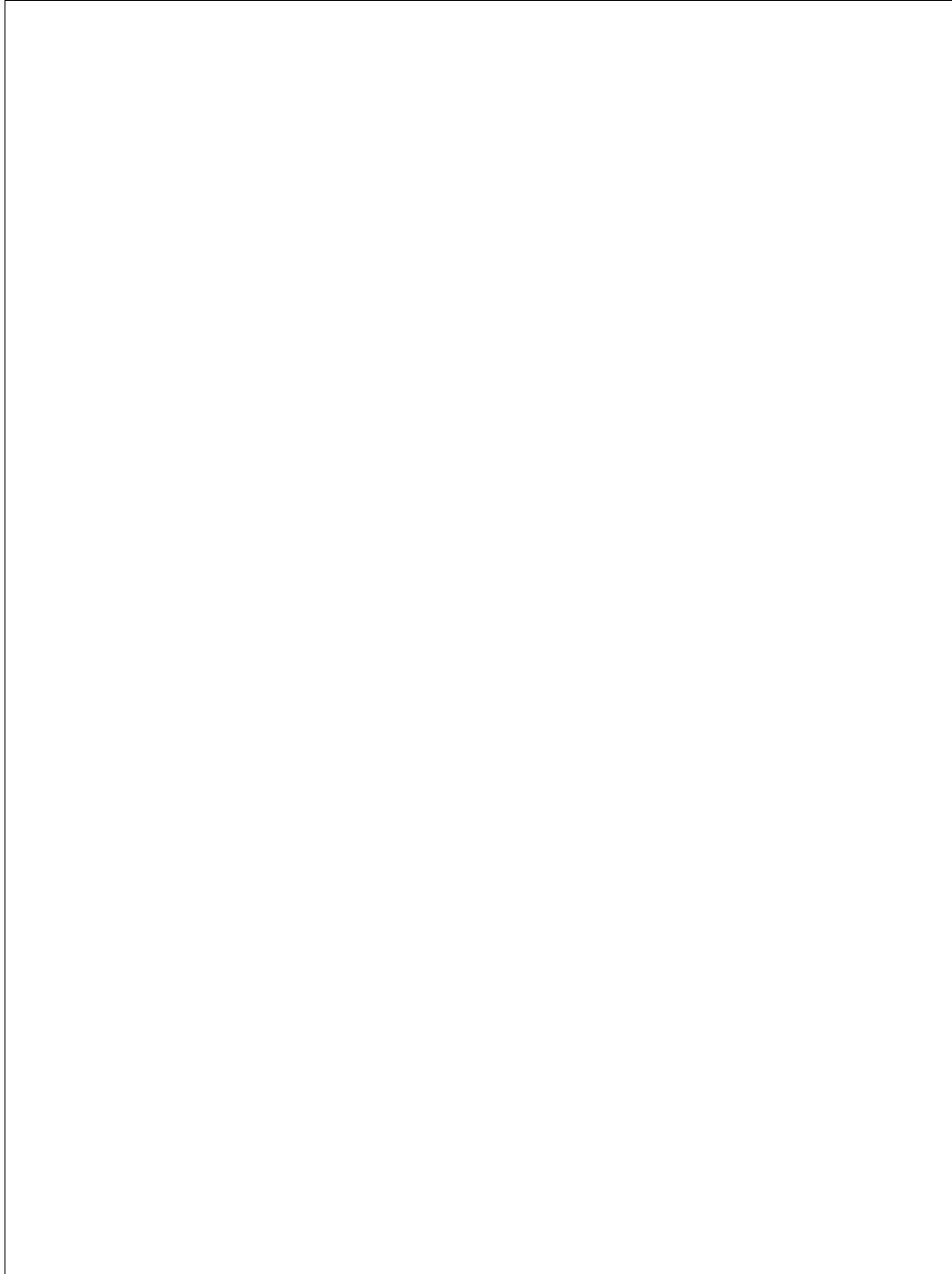


Figure 2: Alienation of Maori land in the North Island at 1890

and graphs, they nevertheless show the progressive alienation of Maori land in the various Rangahaua Whanui research districts, according to the main legal and administrative regimes put in place since 1840.

National Overview

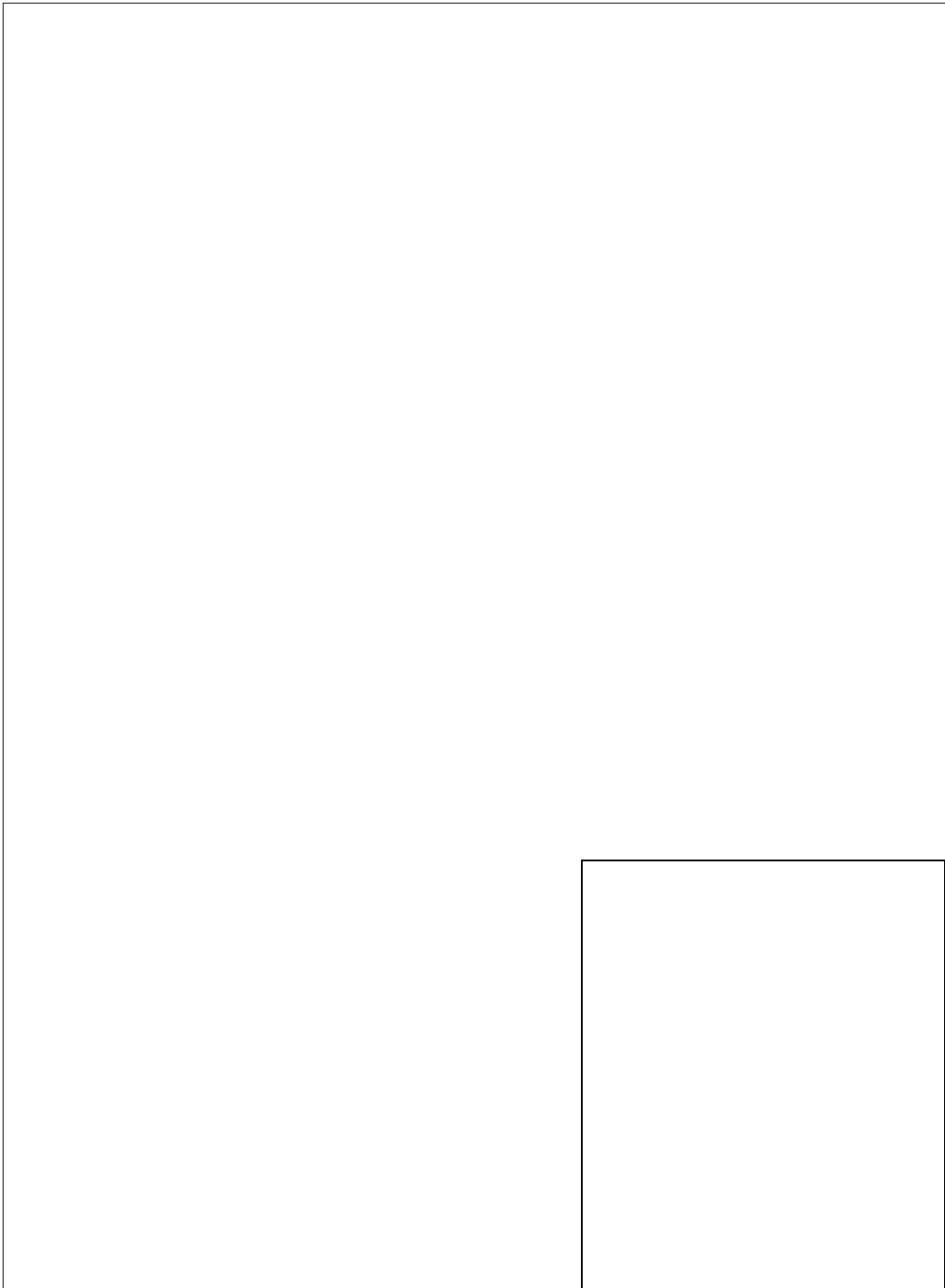


Figure 3: Alienation of Maori land in the South Island at 1910

National Overview

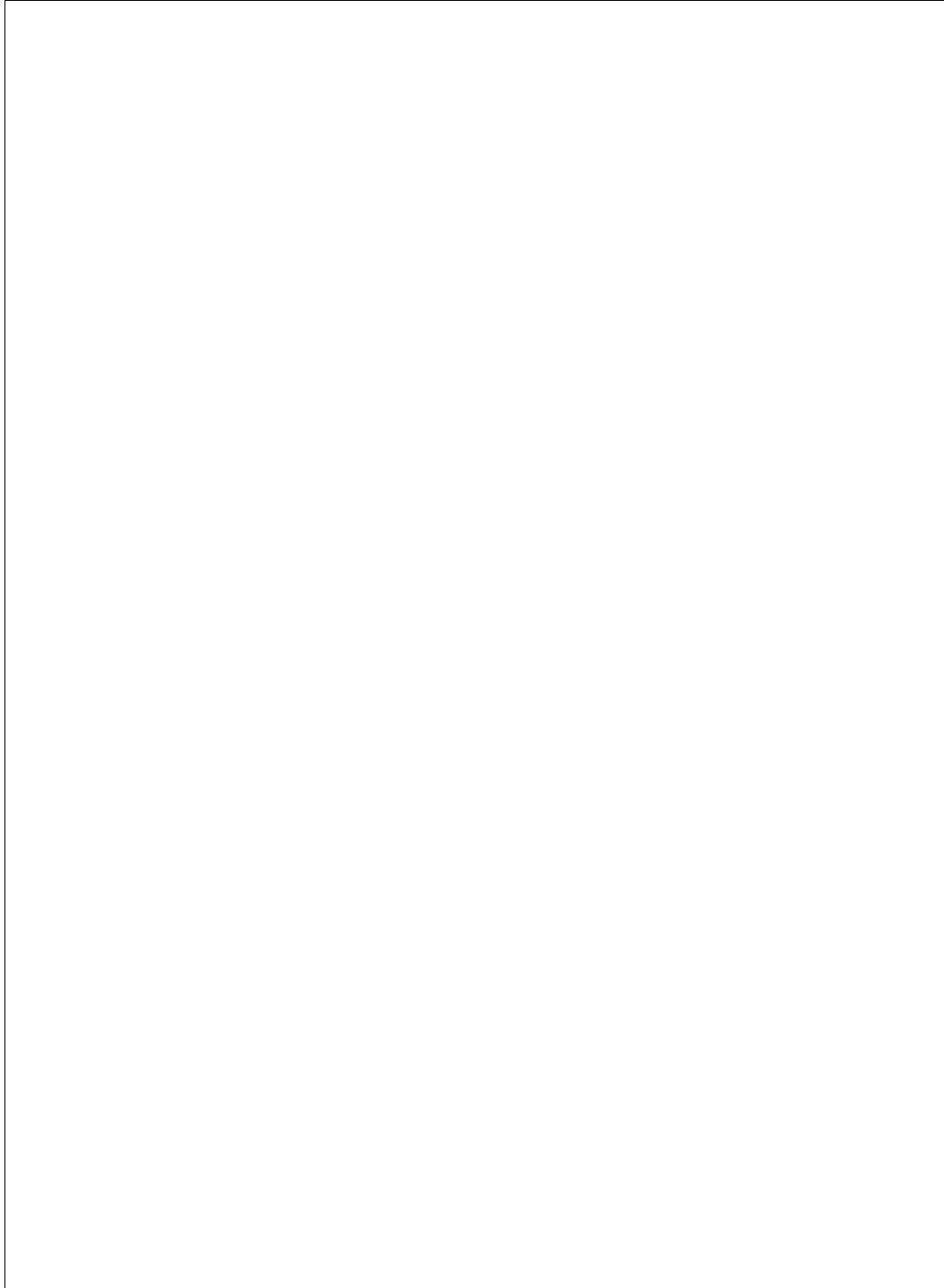


Figure 4: Alienation of Maori land in the North Island at 1910

National Overview



Figure 5: Alienation of Maori land in the North Island at 1939

National Overview

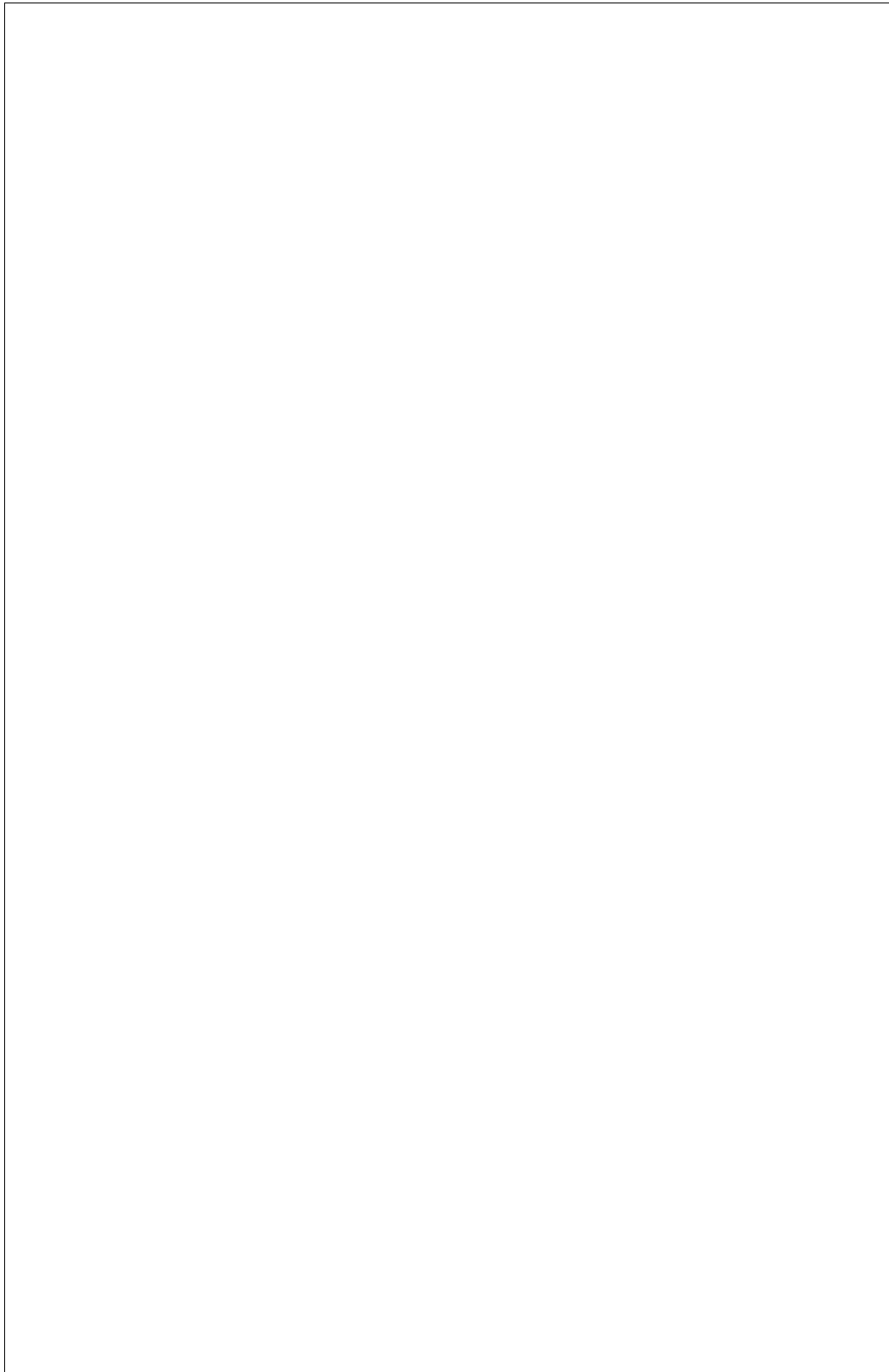


Figure 6: Proportions of Maori land by district at 1860, 1890, 1910, and 1939

Total district area			1860			1890			1910			1939		
District	km ²	acres	km ²	acres	%	km ²	acres	%	km ²	acres	%	km ²	acres	%
Auckland	17,000	4,200,784	9815	2,425,378	58	4058	1,002,804	24	3108	768,109	18	884	218,461	5
Hauraki	3313	818,659	2975	735,073	90	1225	302,617	37	386	95,370	12	29	7141	1
Bay of Plenty	5862	1,448,530	5862	1,448,530	100	2464	608,795	42	1835	453,413	31	1223	302,106	21
Urewera	4105	1,014,366	4105	1,014,366	100	3471	857,692	85	2859	706,384	72	471	116,288	11
Gisborne–East Coast	8576	2,119,172	8576	2,119,172	100	4666	1,152,997	54	3262	806,015	38	1832	452,726	21
Waikato	9856	2,435,467	8980	2,218,894	91	1665	411,534	17	1173	289,792	12	133	32,984	1
Volcanic plateau	10,121	2,500,950	10,121	2,500,950	100	6388	1,578,517	63	4067	1,004,919	40	2038	503,568	20
King Country	9890	2,443,868	9358	2,312,292	95	8014	1,980,253	81	4577	1,130,898	47	1315	324,891	13
Whanganui	5415	1,338,074	4910	1,213,328	91	2597	641,781	48	2129	526,005	40	1082	267,256	20
Taranaki	8034	1,985,242	7679	1,897,598	96	2217	547,765	28	1104	272,700	14	81	20,060	1
Hawke's Bay–Wairarapa	24,404	6,030,350	12,686	3,134,675	52	6303	1,557,612	26	4257	1,052,010	17	1408	347,840	6
Wellington	11,020	2,723,097	8622	2,130,552	78	3886	960,371	35	2490	615,180	23	760	187,857	7
Northern South Island	13,614	3,364,087	—	—	—	—	—	—	429	105,981	3	—	—	—
Southern South Island	138,618	34,253,201	—	—	—	—	—	—	909	224,591	1	—	—	—
Chathams	726	179,462	—	—	—	—	—	—	295	72,881	41	—	—	—

Proportions of Maori land by district at 1860, 1890, 1910, and 1939