

CHAPTER 15

MAORI LAND ADMINISTRATION IN THE TWENTIETH CENTURY

PART I

Maori Land Boards and Councils, 1909–30

The main authority controlling and administering Maori land in the first half of the twentieth century was the system of Maori Land Councils, created by legislation in 1900 and drastically modified from 1905 to become the Maori Land Boards. About 500,000 acres of Crown purchases begun under legislation of the 1890s were completed between 1900 and 1909, a further 300,000 by the Crown under the Maori Land Settlement Act 1905, and a further 200,000 acres of private purchases between 1900 and 1909. The Native Land Act 1909 and its 1913 amendments then became the legal instruments under which about 3.5 million acres of remaining Maori land were purchased.

15.1 Precedents and Motivations

There were a number of significant steps leading to the 1900 legislation:

15.1.1 The 1886 Act

The concepts underlying the Maori Land Councils Act 1900 can be traced back to Ballance's Native Land Administration Act 1886. This measure was a response to the confused and uncertain state of titles that had developed under the Native Land Act 1873, and to the strong Maori pressure to control both the determination of title and the management of land through local runanga. Direct dealings in Maori land were suspended; the owners of a block of land were to elect committees which would decide what portions of the land would be sold or leased and on what terms; the land would then be handed over to a district commissioner, a Crown official, who would carry out the instructions of the block committee and distribute the proceeds, less costs. But Maori were reluctant to hand land over to Crown officials, even as agents for themselves, many still believing that they would get better

returns from direct dealing. Among these was James Carroll, who won the Eastern Maori seat partly on the strength of his opposition to the 1886 Act.

15.1.2 The 1891 royal commission

The 1891 royal commission report, mainly the work of W L Rees and James Carroll, recommended (as many Maori wanted) that block committees undertake the determination of titles, with the Native Land Court ratifying their decisions and deciding disputed cases. The block committees would also decide upon the area of land to be reserved and instruct a 'Native Land Board' to sell or lease the rest. The issuance of titles and management of the land would be through the Native Land Board, a national body comprising three Crown appointees and three Maori members elected by 'tribal committees'. The board was also to act as an appellate court and deal with the stream of petitions about the decisions of the Native Land Court which reached the Native Affairs Committee of Parliament each year. If the block committees did not 'perform the duties incumbent upon owners', the board would 'step in and do it for them'. This element of compulsion was characteristic of the Liberals' approach towards Maori land. They were interested in a more efficient process than the previous mishmash of laws, and one more equitable to Maori; but they were not prepared to see Maori land idle and unused.¹ In fact, few of the recommended machinery provisions were implemented by the Government until 1900, the Native Land Court system continuing (with an Appellate Court added in 1894), together with the purchase of undivided individual interests in titles under a restored system of Crown pre-emption (see ch 7).

15.1.3 The Urewera District Native Reserve Act 1896

A partial precedent was provided in the Urewera district. Following Tuhoe resistance to surveys and to the land court, in the early 1890s, Carroll negotiated arrangements for an Urewera commission, comprising five Tuhoe and two official members, to determine hapu boundaries in the district.²

15.1.4 Maori protests, 1890s

The Kotahitanga movement and the Kingitanga gained wide-spread influence by the 1890s and presented strongly-supported petitions and draft Bills to Parliament opposing the Native Land Court and Native Land Acts, and seeking the return of authority over Maori land to Maori organisations. In 1895, a national boycott of the land court was attempted through the Maori Parliament but was eventually defeated because Crown officials could always find someone to lodge an application for

1. See AJHR, 1891, g-1, pp xxii-iv and discussion in Donald Loveridge, 'Maori Land Councils and Maori Land Boards; an historical overview', Waitangi Tribunal Rangahaua Whanui series, September 1996, pp 17-21

2. See A Miles, *Urewera*, Waitangi Tribunal Rangahaua Whanui Series unpublished report, chs 5, 6

blocks that the Crown was interested in buying.³ In 1897, the Maori Parliament petitioned Queen Victoria in her jubilee year, seeking a cessation of any further purchase of Maori land, though expressing a willingness to lease it.⁴

15.1.5 The Government's response

Carroll had supported the Maori preference for leasing rather than sale but for most of the 1890s this found no favour with Ballance, Seddon, and the rest of the Liberal Cabinet, who pressed ahead vigorously with Crown purchases. The very success of this programme (which saw nearly two million acres of land purchased by the Crown between 1891 and 1899) resulted in a level of landlessness which threatened to make Maori a burden on the state. Cathy Marr argues, however, that this was not so much a concern to officials as the continued difficulty of purchasing under the existing system, with confusion of titles, constant litigation, and long delays in the land court to separate out the undivided interests which the Crown was buying in numerous Maori blocks. The proposals of the 1891 commission offered the possibility of more expedient settlement of Maori land, if only by lease.⁵ Seddon made it clear to Parliament, however, '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'. He anticipated that the present difficulty in settling 'large tracts' of Maori land would be overcome, although he estimated that not one million acres of the five or six million still in Maori hands (disregarding land already leased) would be 'fit for settlement'.⁶

Seddon and Carroll presented to Maori hui in 1898 elements of their proposals based on block committees and district land boards. This led to intense debate within the Maori parliament and the kingitanga and between leaders of these organisations and the Government. The Maori leadership wanted stronger powers over the land for their organisations than the Government proposed. Generally speaking, the East Coast leaders, Carroll, Wi Pere, Paratene Ngata, and his able young son Apirana, supported an amended version of the Government's Bill. Like Carroll in 1891, Wi Pere agreed that if Maori owners did not work the land or gain revenue from it within a specified time, the boards should have power to take it over and administer it on the owners' behalf. The Government re-introduced its Bill in 1899 but held it over for a further year because of division among the Maori members. In the interim, section 3 of the Native Land Laws Amendment Act 1899 stopped *new* purchases of Maori land by the Crown, (although it allowed the completion of purchases where agreements had already been made, which allowed officials such as Wilkinson in the Rohe Potae considerable scope to continue buying undivided individual interests). Dr Loveridge believes that this concession,

3. C Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block), 1840–1920*, Waitangi Tribunal Rangahaua Whanui series, 1996, pp 197–198

4. Testimony of Wi Pere to the Native Affairs Committee, AJHR, 1899, i-3 A, p 19 (cited in Loveridge, p 13)

5. Marr, pp 203–205

6. NZPD, 1899, vol 110, pp 743–744 (cited in Loveridge, p 15)

along with the appointment of James Carroll as Native Minister in December 1899, tipped the balance within the Maori Parliament away from 'home rule' and in favour of working through the national Legislature.⁷

15.2 The Legislation Enacted

15.2.1 Compulsory or voluntary process?

The Maori Lands Administration Bill introduced in 1900 had still not finally decided the question of whether the district boards would automatically – compulsorily – assume control over the land in their districts, or whether it would be placed under them voluntarily. In the Native Affairs Committee, it is clear that Maori members did not support a compulsory system and so it was decided. Seddon said that, unlike Ballance's 1886 Act, this Bill was strongly supported by Maori and that there was therefore no danger of land not being vested in the Councils. Carroll, who in 1891 had noted the failure of Ballance's Act because it was not obligatory, did not object to a voluntary provision in 1900. Neither did Apirana Ngata, although he later said the Bill was doomed to failure because of the voluntary principle.⁸ Perhaps all of them had tactical reasons for accepting a voluntary system. But the voluntary principle had only narrowly got by; clearly if the Government's intention that the land would be vested and settled was frustrated, the voluntary principle was likely to come under attack.

15.2.2 The Maori Land Administration Act 1900

The preamble stated the desire of Maori owners to retain possession of their remaining five million (sic) acres of land, and the need for a better administrative system to see that it was used. Six 'Maori Land Districts' were created each with a 'Maori Land Council' of between five and seven members: the president and two or three members appointed by the Government (one at least to be Maori) and two or three elected by adult Maori of the district (by open declaration as with the election of Maori members of Parliament), virtually guaranteeing a Maori majority.

First, the councils were to determine what land Maori in the district needed for their own occupation, and to set it apart as papakainga, absolutely inalienable.

Remaining Maori freehold land could be leased directly by its owners for terms of up to 50 years, with the consent of the land council, who were to see proof that sufficient papakainga land (for the owners use and occupation) remained and that other conditions securing equity were met.

Approval of sale was not by the councils but by the Governor in Council, but new sales in practice remained suspended.

7. Loveridge, pp 15–16

8. Loveridge, pp 28–30

Section 9 of the Act – in theory – gave the councils ‘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’. They would be assisted in determining ownership by the ‘Papatupu Block Committees’, who would provide a written report identifying boundaries, family, and individual interests, and relative shares. However the councils were not to exercise these powers until directed by the Chief Judge of the court.

The councils were given power (by section 30) to incorporate the owners of specific blocks. By a majority decision, incorporated owners could then vest their lands in the council in trust for leasing, managing, and improving (but not selling) on agreed terms. An amendment of 1901 allowed lands held by over 11 owners, not incorporated, to be vested in the councils by majority decisions or simply put under them for administration.

15.3 Administration of the Act

Seven Maori land districts were created between 1900 and 1902. This involved new negotiations with the kingitanga leaders, which resulted in the appointment of King Mahuta to the Legislative Council and of Henare Kaihau, a member of the House of Representatives, to the Waikato Maori Land Council. The councils were administered by a new Maori Land Administration Department, formally within the Justice Department. Effectively they were run by James Carroll as Native Minister, and Patrick Sheridan, a former Native Department official, as Superintendent from 1901 to 1906. Te Heuheu Tukino complained in 1905 that the officials stifled the autonomous development of the councils.⁹ Four councils were headed by present or former Native Land Court judges.

Difficulties and delays were immediately encountered because of the complexity of securing deeds of trusts for vesting land and the lack of credit available to the councils for surveying, roading, subdividing, and preparing the land for lease. Even more seriously, very little land was vested in the councils in the first years: 48,135 acres in 1902 and 50,528 acres in 1903, 96 percent of it in the Aotea land council.¹⁰ Maori suspicion of handing land over to official bodies, even with Maori majorities, was apparent and their complaints were numerous. By 1906, although 286,184 acres had by now been vested in the councils, only 56,333 acres had been leased through them. Dr Loveridge notes, however, that the rate of vesting had picked up, that the block committees had worked very effectively in title determination (with astonishing results in Taitokerau in Stout and Ngata’s view) and had approved *privately* arranged leases totalling 139,441 acres by 1906. Loveridge therefore concludes that it was rather Pakeha impatience and the manoeuvring of politicians of both races than complete dissatisfaction by the owners that prevented the system

9. AJHR, 1905, i-3b, p 15, cited Loveridge, p 43; see also S Katene, ‘The Administration of Maori Land in the Aotea District, 1900 to 1927’, MA thesis, Victoria University of Wellington, 1900

10. Loveridge, p 49

getting a fair trial. The system allegedly ‘created a deadlock and a block in a settlement of the unoccupied lands’ in the view of Stout and Ngata, but, as Loveridge points out, the councils had overseen the leasing of 190,000 acres by 1907 and the Crown had completed purchase of another 398,302 acres: ‘there are grounds for suggesting that the problem was as much one of perception as reality’.¹¹

15.4 Retreat from Voluntarism and Self-Determination, 1903–08

15.4.1 Compulsory provisions commence

Early steps were taken to get more land vested in the councils and alienated. Under the Maori Land Laws Amendment Act 1903, Land Councils could, on their own authority, vest in themselves land which was governed by the 1895 Native Townships Act (previously a majority of owners had to request this). The Native Minister could vest blocks in the councils to administer, with payment of survey liens being a first charge on the land. (This was an alternative to a portion of the block being sold under an order of the Native Land Court to pay for surveys). Also, by the Native Land Rating Act 1904, where the Court had made an order against Maori land for non-payment of rates, the Native Minister could similarly vest it in the councils.

Loveridge rightly notes that, although involving compulsory vesting for leasing, these last two measures were intended to rescue land from the alternative of forced sale.¹²

15.4.2 The Maori Land Settlement Act 1905

By the Maori Land Settlement Act 1905, the Government seriously began to take control of Maori land again, and the agencies administering it.

(1) *Compulsory vesting*

In 1905, Carroll told the House that too much Maori land remained undeveloped and unprofitable; he introduced, late in the session and with limited consultation with Maori, the Maori Land Settlement Bill. Section 8 empowered the Minister to compulsorily vest land in the Land Councils (now renamed boards) which in his opinion was ‘not required or is not suitable for occupation by the Maori owners’ for lease, not sale, for up to 50 years. This, said Carroll, would provide ‘a ready and quick method’ for dealing with lands owned by a large number of Maoris, who can not utilize them, and that consequently for years passed these areas have remained unprofitable.¹³ Carroll wanted this applied to all the North Island but came up against William Herries, shadow minister of Native Affairs for the Reform Party. Herries wanted to resume Crown purchasing everywhere. The compromise in the

11. Loveridge, pp 51–53. (Note that Willan calculates that the completion of purchases begun before 1899 was 467,898 acres pass to the Crown between 1900 and 1905. See below, chapter 11.)

12. Loveridge, pp 55–57

Act was that the Crown would resume purchasing in five of the seven land districts and that compulsory vesting for leasing (but not Crown purchase) would apply in Taitokerau and Tairāwhiti districts until 1 January 1908. It must be appreciated that the context of this legislation was fierce pressure from the settler community to 'open up' remaining undeveloped Maori land, led by the Opposition and including a campaign in 1905 by the *New Zealand Herald*. Sections 20 to 26 of the Act even the allowed the Crown to buy a block on a basis of the majority in value of the owners signing, and to pay the minority's share to the Receiver-General.

Amendments to the Maori Land Settlement Act in 1906 provided for compulsory vesting for non-clearance of noxious weeds, and for land suitable for Maori occupation 'but not properly occupied by the Maori owners', which could be leased to other Maori.

Dr Loveridge's analysis shows that 153,891 acres were compulsorily vested in the boards between 1906 and 1909, being 96.4 percent of all lands vested in this period. About 136,471 acres of this was vested under section 8 of the 1905 Act.¹⁴

(2) *The councils are restructured*

The 1905 Act also lopped off most of the Maori representatives of the land boards leaving only the president and two appointed members, one a Maori. Carroll argued that there was a 'prejudice in the public mind' against the councils, and suggested that 'better men' could be got by appointment rather than election.

The change was protested by a substantially-signed Tainui petition. The historian John Williams noted that by this change 'the pretence of the 1900 Act that the Maoris were being granted a measure of self-government was all but dropped'.¹⁵

(3) *Removal of restrictions on leasing*

The 1905 Act also removed most of the conditions on the boards' approval of leases of Maori land. Previously, restrictions on alienation could only be removed by the Governor in Council but now the boards themselves could approve alienations. The Act itself provided that the rent be not less than five percent of assessed capital value, and that the lessors had sufficient other land or income for their maintenance. The result was a spurt of direct leasing, totalling 905,947 acres by March 1909 – over 2000 individual leases. Stout and Ngata, however, considered that the gathering of the individual owners' agreements was mainly the work of a select group of agents, and recommended lease by public auction, as with the vested lands.¹⁶

(4) *Carroll's stance*

In Dr Loveridge's view, Carroll was not reluctant to see compulsory measures taken that would cause undeveloped Maori land to be leased and yield revenue. He was

13. NZPD, 1905, vol 135, p 703 (cited in J L Hutton, 'A Ready and Quick Method': the alienation of Maori land by sales to the Crown and private individuals, 1908–30' (report for the Crown Forestry Rental Trust in negotiation with the Waitangi Tribunal Rangahaua Whanui series Wellington, 1996) p 23)

14. Loveridge, pp 59–61

15. John A Williams, *Politics of the New Zealand Maori*, p 127 (cited in Loveridge, p 80)

16. Loveridge, pp 82–84

opposed to sale, unless the owners clearly wanted to sell and the land was really surplus to needs, but as far as leasing was concerned, and the provision of a swift and effective machinery to assist leasing, Carroll did not need much pushing from the settler hue and cry to shift away from the principles of the 1900 Act towards the more mandatory provisions of 1905, with the boards dominated now by Crown appointees. Carroll remains something of an enigma in this time of intense concern about Maori land.¹⁷

15.5 Crown and Private Purchases, 1900–10

15.5.1 Crown purchases, 1900–05

Meanwhile, although no new Crown purchases had been initiated since 1899, the ‘completion’ of purchases already initiated saw a further 467,898 acres pass to the Crown between 1900 and 1905.¹⁸

15.5.2 Crown purchases under the 1905 Act

Crown purchases between 1905 and 1910 resulted in 294,858 acres being acquired, mostly under the 1905 Act, with some still being ‘completed’ under previous legislation.¹⁹

15.5.3 Private purchases, 1900–09

Private purchasing was still heavily restricted but private persons could buy if the land was owned by not more than two owners (prior to 1895) or, (if owned by more than two owners), by removal of restrictions on the recommendation of a Maori land board. Willan remarks that 228,042 acres was acquired by private purchasers between 1900 and 1909.²⁰

15.6 Assistance Proposed for Maori Farming

As part of the trade off for renewed purchasing, Ngata at last secured some support in principle for financial assistance for Maori farmers. Section 18 of the 1905 Act provided that advances could be made to Maori from the Land for Settlements Account to help their farming ventures. Policy statements in 1906 for the first time included the intention to ‘give the Natives a “start” to farm their lands (set aside for

17. Loveridge, pp 97–90

18. AJHR, 1911, g-6, p 2 (cited in Rachel Willan, ‘Maori land sales 1900–1930’, report for the Crown Forestry Rental Trust in association with the Rangahaua Whanui programme, Wellington, 1996, p 7)

19. Willan, p 9

20. Return of Native Lands, 20 October 1900 to 30 June 1909, NA 16/1 (cited in Willan, p 10) See also Hutton, ‘A Ready and Quick Method’, p 26

their maintenance) and to guide them in making the land productive'. Hutton's view is that the loan provision was 'not well promoted or entirely successful' among Maori communities.²¹

An effort was also made to define in the Acts the minimum area of land necessary for maintenance of Maori: the equivalent of either 25 acres of first class land, or 50 acres of second class land, or 100 acres of third class land for each man, woman, and child.²²

15.7 The Stout–Ngata Commission

Carroll continued to try to steer between seeing Maori land retained and developed by Maori, and the relentless pressure by settlers to secure it for themselves. The political reality for Carroll (and perhaps also his own conviction to some extent) was that Maori land could not remain 'idle': if Maori did not develop it then it had to be made available for settlement. Moreover the settlers wanted the freehold not the leasehold: 'Maori landlordism' remained a very negative term in the settlers' vocabulary.

The Liberal Government thus moved towards a 'stocktaking' or inventory of remaining land. In 1906, it set up a royal commission comprising Sir Robert Stout and Apirana Ngata, to appraise all remaining Maori land. A sufficiency of land was to be set apart to be occupied and farmed by the Maori owners; the balance was to be opened to settlement by Crown purchase, by vesting in the land boards for leasing, or by the owners leasing it themselves under the supervision of the land boards.²³

The commissioners' terms of reference suggested that land set apart for Maori might be for individual occupation and farming, or by the owners as a tribe or village, or by other Maori (before alienation to settlers). Prompt and detailed reports were expected, including recommendations for compulsory acquisition.²⁴

Of the 4,975,444 acres of remaining land, the commissioners ultimately investigated 2,791,190 acres (the balance being already under lease) and made recommendations on 2,040,084 acres before the commission was terminated. They met almost every hapu involved and, by their own account, with few exceptions their recommendations reflected the wishes of the majority – albeit wishes which involved recognition of the guidelines under which the commissioners were working. Their recommendations also reflected a sharp appreciation of how little good land was left to Maori in many districts. Recommendations for sale were therefore for only 66,000 acres, 19.1 percent of the area ear-marked for 'general settlement', in the first half year of the commissioners' work, and 280,000 acres (80.9 percent) for leasing.

21. AJHR, 1906, b-6, p. xiv, (cited in Hutton, 'A Ready and Quick Method', p 17)

22. AJHR, 1907, g-1c, p 8

23. Joseph Ward, financial statement, 28 August 1906, AJHR, 1906, vol 2, pp xiii–xiv (cited Loveridge, p 64)

24. AJHR, 1907, g-1, pp i–ii

15.8 The 1907 Act

But the commissioners were overtaken by the impatience of the legislature. Part ii of the Native Land Settlement Act 1907 provided for the administration of leases *to* Maori by the land boards. This could potentially have affected 867,479 acres of the land ultimately covered by the commissioner's recommendations. Under Part i of the Act, however, the land boards were by order-in-council to receive the land recommended by the commissioners to be not required for Maori occupation. By section 11, the boards were to divide this approximately 50 percent for lease (for up to 50 years by public tender) and 50 percent for sale (by public auction subject to an upset price).

The matter of the 50:50 split was strongly debated in the shaping of the Act. Carroll and Ngata had to give way to Herries and his allies in the Native Affairs Committee, Carroll gaining a minor concession in the form of Maori being able to lease to Maori and provision for Maori farmers to mortgage their land to pay for stock and improvements.²⁵ Not only did the Government gain the power to vest land compulsorily in the boards, but for the first time the boards were directed by statute to sell half of it. Although sale under this Act was no longer by secretive purchasing for trivial prices, the compulsory aspect was a heavy intrusion into the free choice of the owners – choices which the owners were expressing in detail to the Stout–Ngata commission.

The Act was also an overriding of the trend of the Stout–Ngata recommendations. Of the 346,000 acres they had so far recommended for general settlement, only 66,000 acres or 19.1 percent was ear-marked for sale. Eventually they would recommend nearly 700,000 acres for general settlement; but now 50 percent of that would be sold. Stout and Ngata themselves commented in 1908 that the provision amounted to confiscation, and was not a provision which could be applied to European land.²⁶ This would appear to be a clear breach of the Treaty.

By January 1910, some 317,098 acres was actually vested in the boards under Part i of the 1907 Act and 187,489 acres under Part ii. (Dr Loveridge gives an alternative figure of 328,882 acres under Part i from another return.²⁷) According to Dr Loveridge little was done with this land before the boards came under the virtually identical provisions of Parts xiv and xvi respectively of the Native Land Act 1909.

Much more land was recommended for compulsory vesting by Stout and Ngata (or by Stout and Jackson Palmer, Ngata's successor through 1909): 943,521 acres for general settlement and 869,481 acres for Maori settlement. But, confusingly, at least 135,000 acres of this (from both categories) was subject to timber agreements, another 222,000 was land being put under incorporated owners, and 20,000 sold.²⁸

25. Hutton, 'A Ready and Quick Method', p 24

26. AJHR, 1908, g-1f, pp 1–2, 4. See discussion Loveridge, pp 71–73 and Barbara Gilmore, 'Maori Land Policy and Administration during the liberal period, 1900–1912', MA thesis, University of Auckland, 1969

27. ma 16/1, Native Department reports on Native Land Commission recommendations (cited in Loveridge, p 76)

A 1908 amendment of the Native Land Settlement Act added to the boards' responsibilities the control of the Native Townships and the leases under the Thermal Springs District Act 1908. The amendment Act also made the boards responsible for confirming all alienations of free-hold land in the North Island.

15.9 The Native Land Act 1909

15.9.1 The Act

A consolidation of the endless stream of legislation affecting Maori land had been proposed by the 1891 Commission. In 1909, urged by Carroll, Stout, and Ngata, the Government began the consolidation. Carroll and Ngata played major roles in shaping the law; otherwise Maori opinion was not systematically consulted in the drafting.

Principal provisions of the Act were as follows:

- (a) The Act retained the Maori land boards as restructured in 1905
- (b) Part xiv of the Act dealt with lands vested in the boards under Part i of the 1907 Act, as a result of Stout–Ngata recommendations. This was the category of which 50 percent was to be sold and 50 percent leased. That requirement remained. As Dr Loveridge remarks, the Government did not, in 1909, take advantage of the opportunity to drop a measure which might force sales against the real wishes of the owners.
- (c) Part xv of the Act took over the provisions of earlier legislation for the administration of land vested in the boards *leasing* only (whether vested voluntarily or compulsorily). This restriction (to leasing only) on the vested land remained, although the terms and conditions agreed with owners under the 1900 Act were unilaterally replaced by the terms and conditions of the 1909 Act itself. But the 1905 provision for compulsory vesting of 'idle' Maori land in Taitokerau and Tairāwhiti was dropped. Hence it was to be 'the initiative of the assembled owners' that land would be vested in the boards, in any district.
- (d) Part xvi took over the provisions of Part ii of the 1907 Act, relating to land reserved for 'native occupation' under the Stout–Ngata recommendations. This land could be leased by the boards (but not directly by the owners) for up to 50 years. The main change in 1909 was that the 10 owners of the land could now take it out of Part xvi – with the possibility that it could be sold.
- (e) Part xvii provided for the incorporation of owners (the only good part of the Act according to Wi Pere, member for Eastern Maori). Alienation by incorporated owners (like alienation of unincorporated owners under Part xviii) had to be approved for the Maori Land Board or Public Trustee, who would deduct costs of the alienation and outstanding rates and taxes and pay over the balance.

28. Loveridge, pp 76–77

- (f) Section 207 swept away all the previous web of restrictions on alienation of Maori land and stated simply that:

a Native may alienate or dispose of land or any interests therein in the same manner as a European, and Native land or any interests therein may be alienated or disposed of in the same manner as if it were European land.

A lessee or purchaser no longer had to concern himself with the effect of some 40 other Acts or visit Wellington to get a removal of restrictions by Order-in-Council. Unless there was a restriction in the 1909 Act itself he or she could deal with the land. The removal of previous restrictions extended to the papakainga land defined under the 1900 Act – a category which was no longer formally restricted.

- (g) Section 220 laid down what the new restrictions were. The main ones (in a list of eight) were: that the instrument of alienation had to be promptly executed and witnessed; that the alienation could not, in the opinion of the board, be ‘contrary to equity or good faith or the interests of the Native alienating’; that no native could be made ‘landless’ by the alienation. A ‘landless’ native was defined as one whose ‘total beneficial interests in Native free-hold land . . . are insufficient for his adequate maintenance’. The minimum acres defined in the 1905 Act as necessary for Maori to retain for maintenance was dropped. Finally, payment had to be ‘adequate’, by the reference to the valuation of land to the Land Act 1908.
- (h) Under section 217 the land boards had to confirm all alienations, having first satisfied themselves that the criteria of section 220 had been met. Dr Loveridge notes that, in effect, this extended the system of direct leasing with control by the boards, adopted in 1907, to all alienations, with the likely expectation that a greater flow of alienations would follow.²⁹
- (i) Part xviii introduced perhaps the most important provision of all – alienation via a meeting of assembled owners. Carroll introduced the provision in parliament as follows:

Where the owners exceed ten the bill proposes a new method of dealing with land, which is practically a resuscitation of the old runanga system, under which from time immemorial the Maori communities transacted their business.³⁰

The assembled owners could choose (subject to the approval of the land board) to: vest the land in the Maori Land Board for lease or sale; to form an incorporation under an order of the Native Land Court; to effect a sale or lease to a particular individual; and to sell the lands to the Crown.

29. Loveridge, p 102

30. NZPD, 1909, vol 148, p 1102

The meetings were to be called by the relevant land board and chaired by its president. A resolution was deemed carried if a majority by ‘aggregate share’ in person *or by proxy* voted for it.³¹

- (j) Under section 363, in respect of land for which it proposed to negotiate, the Crown could prohibit for one year (extendable to three years) all other dealings – sale, lease, licence, mortgage, and so forth – affectively imposing a form of pre-emption on the land concerned.

15.9.2 Character of the 1909 Act

Prime Minister Joseph Ward stated, in supporting the Bill, ‘it is proposed to purchase from the Natives as large an area as possible’.³² Carroll, who saw the Bill through the House, considered that ‘ample protection’ had been included ‘against the improvidence of the average Maori’.³³ Notwithstanding the safe-guards, Loveridge considers that the Act was one ‘which more than anything else facilitated further sale in Maori land’. Both Crown and private purchasing was facilitated. Carroll and Ngata did not apparently press hard to put under the boards the land recommended by the Stout–Ngata commission for *Maori* occupation but not yet vested. Pakeha settlement of Maori land then proceeded swiftly from 1910. Loveridge concludes:

This was probably the outcome that James Carroll expected from the 1909 act – easier alienation of Maori land, but alienation without the injustices which had marred such transactions in the past. He may also have thought that owners would give priority to leasing over sale. If this was the case though, he and Ngata seriously under-estimated the amount of land which would actually be lost to Maori over the following years.³⁴

15.9.3 Status of Maori land, 1910

Statistics of Maori land holding varies somewhat according to the various official returns compiled around this time. The Stout–Ngata commission estimated total Maori holdings on 20 December 1908 as 7,465,000 acres of which 2,675,177 were leased directly by the owners, a further 247,489 leased through Maori land boards with 150,000 under the East Coast Trust and Mangatu Incorporation.³⁵ By October 1911, the total had reduced to 7,137,208 in the North Island.³⁶

31. Briefly a system of ‘precedent consent’ was used. A party to a transaction could ask the land board whether a meeting of assembled owners was required. The board could decide whether the transaction was in the of public interest and the interest of the Maori owners without the need for a meeting of assembled owners. If consent was given the purchaser would proceed as if the land was owned by fewer than 10 owners. The provision was abolished in 1912 (Bennion, p 3).

32. Financial statement, 10 November 1909, AJHR, 1910, b-6, p xxii (cited in Loveridge, p 106)

33. NZPD, 1909, vol 148, p 1103 (cited in Loveridge, p 107)

34. Loveridge, p 107

35. NZPD, 1910, vol 150, p 339

36. AJHR, 1911, g-6, p 3, ‘Statement showing the position of Native lands in the North Island’.

15.9.4 Management of vested land, 1910–27

(1) Sales

Dr Loveridge's reading of the official returns shows some 775,320 acres of Maori land vested in the seven Maori land boards under various categories of the 1909 Act – about one tenth of the land remaining in Maori hands in the North Island. Most of this was in the Tokerau, Waikato–Maniapoto, and Aotea districts. The figure grew to 861,155 acres by 1927.³⁷ About 147,000 acres of vested land were sold during that period, mostly in the Waikato–Maniapoto land board district.³⁸ In Rachel Willan's view, this vested land was mainly bought by the Crown, including many sections in the Native Townships. Dr Loveridge points out that the proportion of vested land sold by the boards amounted to about the same proportion of Maori land alienations generally; and this suggests that the protection to owners offered by vesting was not great.³⁹ Vesting under the 1907 Act had been largely for the purpose of opening 'idle' land to settlement, and for this purpose seems to have been carried through under the 1909 Act. The years of most sales after 1909 were in the decade following, that is, 1910 to 1918.

(2) Leases

The boards were equally active in letting vested land in the decade after the passage of the 1909 Act. Between 1910 and 1928 they leased 180,107 acres. Yet Dr Loveridge points out that this amounting to only about a third of the vested lands available for leasing. In 1928, some 200,000 acres were as 'idle' as they had been when vested.⁴⁰

15.9.5 Alienation by owners through the Maori land boards

Under Part xvi of the Act, only 214,720 acres were placed under the boards between 1907 and 1927, for lease to lessees from among the beneficial owners themselves, and only 12.3 percent of this (26,508 acres) was so leased.⁴¹

Part xviii was the provision whereby in respect of blocks with *more than 10 owners*, a meeting of 'assembled owners' could lease or sell the land directly to the Crown or private individuals, with the boards checking the conditions for approval of the alienation and carrying it into effect. The provision was used extensively. By 1930, almost one million acres (962,186) had been sold and 536,346 acres leased under Part xviii. Again the first decade after the passage of the Act saw the most activity.

Blocks with *10 or fewer owners* could be sold or leased directly to the Crown or to private parties (without a meeting of assembled owners). Alienation to private

37. Loveridge, pp 113, 119

38. For a detailed analysis of very complex statistics, see Loveridge, pp 119–128. Willan gives the figure of 147,788 acres (Willan, p 26).

39. Loveridge, p 129

40. Ibid, p 132

41. Ibid, pp 133–135

parties required the board's approval. Even more land passed in this way in the period to 1930: 1,196,096 acres by sale (including 44,549 acres of land in the South Island) and 1,080,504 acres by lease. In the first five years of the Act's operation, an average of 225,000 acres a year was alienated and 120,000 per year for the next five years.⁴²

15.9.6 Total sales and leases through the Maori land boards, 1910–30

In all categories of their responsibilities under the 1909 Act, the Maori land boards carried out, or over-saw, the sale of 2,305,203 acres of Maori land between 1910 and 1930 and the leasing of 1,823,465 acres. A further 70,514 acres were sold in 1930 to 1933 (under which categories of the Act not being differentiated in the statistics), and a further 106,194 acres leased. By Dr Loveridge's calculations, this gives totals of 2,375,717 acres sold and 1,929,659 acres leased between 1910 and 1933 through the boards, or 4,305,376 acres altogether.⁴³

15.9.7 Crown and private purchases, 1911–30

Rachel Willan has made a separate study of Crown purchase data, both through the land boards and outside of them, for the Rangahaua Whanui programme. She began with the annual returns from the Government's Native Land Purchase Board (not from the Maori land boards) which showed 1,536,716 acres of Maori land purchased by the Crown between 1911 and 1930.⁴⁴ Only 360,138 acres of this were shown as being through Maori land boards, approved under Part xviii (involving 10 or more owners). Willan then notes various other categories of Crown purchases which make up the balance of 1,176,578 acres:

- (a) Purchase of lands vested in the Maori land boards. The minutes of the Native Land Purchase Board show that this frequently occurred but totals are not available and it is not clear how much of the 147,788 acres of vested land sold was bought by the Crown and how much by private parties.
- (b) Purchases from the Native Trustee. Again figures are not complete, but AJHR returns show 77,733 acres including 56,541 acres in Taupo–Tokaanu and 26,000 acres of West Coast Settlement Reserves.
- (c) Urewera District purchases. From 1914 to 1921, 263,485 acres were purchased by the Crown in this area, prior to the Urewera acquisitions being included in the purchase board returns.
- (d) Maori land with fewer than 10 owners sold to the Crown and land under Maori incorporations, did not have to pass through the land boards for confirmation. Willan estimates that between about 592,000 and 771,000 acres was acquired by the Crown by this means.⁴⁵ Willan concludes there-

42. Loveridge, p 1–39

43. Ibid, pp 141–143

44. Willan, p 25

45. Willan, pp 35–41

fore that 2,282,299 acres was purchased through the Maori land boards between 1910 and 1930 (Loveridge has 2,305,203 acres) both by the Crown and private purchasers; and that, in addition the Crown purchased 1,211,167 acres by processes that did not involve board approval, a combined purchase total of 3,578,065 acres between 1911 and 1930.⁴⁶

Thus, the 7,137,205 acres owned by Maori in the North Island in 1910 had, by 1930, been reduced by sales totalling about 3.5 million acres.⁴⁷ Between 2.5 and 2.7 million acres of this had been leased over that period and much of that leased land eventually purchased. About 3.6 million acres remained in Maori title at 1930.

15.9.8 Location of most sales

Sales which came under a form of approval of the Maori land boards, 1910 to 1930, were distributed as follows, by digital calculation according to Rangahaua Whanui districts:⁴⁸

District	Acres
Auckland	549,648
Hauraki	88,229
Bay of Plenty	151,307
Urewera	590,096
Gisborne–East Coast	353,289
Waikato	256,808
Volcanic plateau	501,351
King Country	806,107
Whanganui	258,749
Taranaki	252,640
Hawke's Bay–Wairarapa	704,170
Wellington	427,532

15.9.9 Crown advantages in purchasing

The 1909 Act contained a number of provisions which favoured the Crown over other purchasers, if it chose use them. It could restore Crown pre-emption over

46. See Willan, p 33 for the breakdown of categories. Willan has focused on sales; her figure of 1,260,479 acres leased between 1900 and 1910 and 938,494 acres leased 1911 to 1930 did not correspond well with Loveridge's figures of 905,947 acres and 1,823,465 acres respectively for those two periods. Further work is required on the basic data in various official returns which are confusing and difficult to analyse.

47. See Loveridge, pp 137–143 and Willan, pp 32–33. (Willan's return is inadvertently headed 1900 to 1911 instead of 1900 to 1930; her sub-heading 1900 to 1910 should read 1911 to 1930.)

48. Table prepared by Dr Keith Pickens from AJHR tables identified by Dr Loveridge.

particular areas or a particular time. It could purchase any land vested in the Maori land board over which the board had power to sell, without auction or public tender, on terms agreed with the board. (This further shut out the beneficial owners from involvement in the disposal of their land). The Crown could purchase from an incorporation without the board's confirmation and could also purchase undivided interests. (This meant that, as in the nineteenth century, the Crown could treat with some shareholders, increase its ownership and apply for partition in due course. This provision undermined the capacity of the owners as a whole, or a block committee, to control the alienation.) Finally, the Crown could purchase any Maori not vested in boards in the same manner as the European land, without confirmation being required.

15.9.10 Prices paid by the Crown

The Crown purchased heavily along the line of the Napier–Wairoa railway, in the King Country (Rangitoto, Rangitoto Tuhua, Wharepuhunga, and Tauwera blocks) and on the East Coast.⁴⁹ The Crown also bought in the West Coast Settlement Reserves, the Native Townships of Te Kuiti, Taumarunui, and Otorohanga and at Orakei in Auckland, not for new settlement but to provide a better tenure for existing lessees.⁵⁰ This cost the Crown rather high prices in the post World War I boom. Ngata suggested, however, that Maori were still being paid pre-war prices, at 1909 valuations, in the order of 12s 6d to £1 an acre. Maori in 1921 were pressing for independent valuation. Bennion feels unable to gauge the accuracy of Ngata's remarks.⁵¹ Nevertheless he cites the comments of the Under-Secretary of the Native department in 1932, in respect of criticism by the National Expenditure Commission of poor returns from the Government's land purchase policy generally: the Native Department should not be blamed, said the Under-Secretary, as it was 'undoubted' that the Native Land Purchase Board had purchased at prices much lower than others were willing to pay Maori and that Maori were obliged to sell to the Crown at Government valuation because of the Government's capacity to impose pre-emption over any block for which it was negotiating.⁵² This seems to support Ngata's accusation.

15.9.11 Reform Government policy: tightened Crown control

(1) *William Herries*

William Herries, member for Bay of Plenty, shadow minister for Native Affairs during the Liberal regime, had never liked the bureaucratic controls and slowness of the Maori Land Board procedures, limited though those controls were. His

49. NZPD, 1920, vol 187, p 1293 (Herries). Many blocks and prices are given. See also Bennion, 'Maori Land and the Maori Land Court, 1909 to 1953', Rangahaua Whanui Series unpublished draft, 1996, p 24.

50. Bennion, p 25

51. NZPD, 1921, vol 190, p 156 (cited in Bennion, pp 25–26)

52. Under Secretary to Native Minister, 5 August 1932, ma 1/19/14 (cited in Bennion, p 49)

preference was for direct dealing, with the Native Land Court rather than the boards approving the transactions. As Native Minister from 1912, he immediately took steps to simplify the procedures for administering Maori land.

(2) *The court and the boards merged*

By the Native Land Amendment Act 1913, Herries, in his own words, ‘practically made the Native Land Court and the Maori Land Board the same’.⁵³ Apart from his general dislike of the boards, which he considered ‘not strong enough’ to move the land quickly, Herries was concerned that different decisions were being made over the same land by the Court and by the boards. By the 1913 Act, in each Native land district a judge would hence forth constitute the court, and the judge and registrar of the court would together constitute the land board. The judge would sit either as court or board. Judges and registrars were appointed by normal public service procedures. None had to be Maori. In other words, the ‘Maori’ land boards had become Pakeha institutions; Maori no longer had any direct involvement in the decision making affecting land vested in the boards. Carroll strongly criticised the change, especially as it was made without serious consultation with Maori owners.

(3) *Increased powers for the Crown to purchase*

The 1913 amendment Act also required the presidents of land boards to report annually on Maori freehold land ‘not actually used’ by the owners, and gave the boards power to order the court to partition the land (ss 42–62). Furthermore, it gave the Crown power to acquire any interests in Maori land, including freehold land, reserves vested in the public trustee and lands vested in the Maori land boards (including undivided shares of blocks owned by more than 10 persons).

This extended the piecemeal purchase of individual interests, to land held in trusts. Ngata and Carroll bitterly condemned this provision as it enabled the Crown to buy land in trusts and facilitate the acquisition of the freehold by Pakeha tenants of Maori landlords.⁵⁴ Herries claimed:

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 to buy ploughs and horses to enable him to cultivate his own land that is cultivable.⁵⁵

This of course begs lot of questions about why the land was allegedly ‘useless’ to Maori but apparently not useless to Pakeha, and whether the sale of individual interests in multiply-owned land would enable the capital to be used by the vendor in farming any remaining portion. Herries was articulating the usual popular ideology without confronting the practical difficulties in the way of Maori farming. Loveridge notes that the 1913 amendment Act had little measurable effect on the total sales of Maori land.⁵⁶ But it is unlikely that the piecemeal acquisition of Maori

53. NZPD, 1913, vol 167, pp 35–36

54. Ibid, p 400 (Ngata) and pp 838–839 (Carroll) (cited in Loveridge, p 150)

55. NZPD, 1930, vol 167, p 388 (cited in Loveridge, p 151)

56. Ibid

interests – about which most Maori in modern New Zealand can tell a story – did not contribute both to the steady diminution of the Maori freehold estate and to the freeholding of Maori leasehold by Pakeha tenants, (sometimes via an initial acquisition of the Crown, as with the Native Townships for example).

15.9.12 Maori land shortage recognised at last?

The willingness of governments to continue acquiring Maori land well into the twentieth century is astonishing from the perspective of 1975 onwards. Dr Lovridge has shown that Carroll and Ngata too were among the principal architects of the 1909 Act which facilitated Crown and private purchasers. Lovridge cites Ngata's reference to 'the acknowledgedly large remnant of surplus Native land' even as he criticised Herries' 1913 Bill.⁵⁷ Ngata and Carroll were, of course, bearing the brunt of settler pressure to bring 'idle' land into production and they tried to facilitate Maori farming first, then leasing and last of all sale. 'Surplus' in Ngata's sense probably meant surplus to what he thought Maori could actually farm themselves, and both he and Carroll genuinely thought it did Maori no good at all to have land in their possession which was not developed and yielding them a revenue.

It was not until 1920, however, that C B Jordan, Under-Secretary of the Native Department, carried out an inventory of Maori land remaining: 4,787,686 acres out of the 7,137,205 acres they had owned in 1911, by his calculation. About 3 million acres of that was leased out, and 380,000 acres occupied by Maori owners. Of the 1.6 million acres remaining Jordan deducted half a million as unsuitable for settlement (a considerable under-estimate probably) which left an average of 19 acres per head for the 47,000 Maori of the North Island and their descendants. He concluded, 'instead therefore, of there being a huge area of Native land available for general settlement, it would seem that there is barely sufficient for the requirements of the Natives themselves'.⁵⁸

15.9.13 Leases tend to become freeholds

Jordan believed that the three million acres leased would 'never return to the occupation of the Native owners'; this was largely correct, because neither the Maori land boards nor the private Maori lessors ever accumulated enough savings from rentals to pay off the tenants for their improvements (as the boards were supposed to do under the 1909 Act); this constituted a powerful pressure either to renew the lease or to sell the freehold. Despite Ngata's warning in 1913 that Maori in many districts might be 'almost homeless', and despite Jordan's warning, another half million acres were purchased by the Crown and private interests with the boards' approval, between 1920 and 1932.⁵⁹

57. NZPD, 1913, vol 167, p 400

58. Herries reported in 1920 that only 15,000 acres remained in customary title (NZPD, 1920, vol 187, p 1290).

15.10 Adequacy of Protection of Maori Interests

15.10.1 Assessment of Maori land requirements

The purchase of close to half of the remaining Maori land (more than half of the readily usable land), when the Maori population was beginning to grow rapidly again, raises even more acutely than before the question of the Crown's obligations to Maori under the Treaty. There can be no doubt whatsoever that in the 1890s (as in the late 1850s) the principal Maori leadership was opposed to any more land-selling whatsoever. The protests, petitions, and alternative laws proposed by the Kotahitanga movement and by the Kahunganui of the King movement vehemently argued that too much Maori land had already been purchased, that the Maori people were threatened by this and that the Crown purchases should stop. The statements of Maori members of parliament reflected the same concerns. Members like Hone Heke (northern Maori) were adamant that 'the balance of the land which remains to us is not sufficient for our maintenance and support and for the maintenance and support of our descendants'. Heke believed that 4 million farmable acres remaining in 1900, amounted to not more than 50 acres a head. 'And let us suppose that the Natives are beginning to increase in any one part of the country: what are they going to live on'.⁶⁰

In response, Carroll, Ngata, and their allies put in place the 1900 legislation, proposing to define inalienable papakainga lands and to lease voluntarily to settlers most of the remainder, via the Maori land boards. It soon emerged, however, that Maori were in no hurry either to lease or sell. There were many good reasons. Stout and Ngata listed several. They include the objection of Maori owners to being 'deprived of all authority and management of their ancestral land', their anxiety that the new policy 'was only another attempt to sweep into the maw of the State large areas of their rapidly dwindling ancestral lands', the preference of Maori owners for direct negotiation, and the acute title problems affecting remaining lands. 'So long as the title was in an abeyance and they were immersed in the joys of litigation, the settlement of the country could wait', noted Stout and Ngata somewhat petulantly.⁶¹ Settler impatience with the slowness of Maori to vest land in the boards led to a number of provisions for compulsory vesting, and then to the 1909 Act which allowed direct dealing by both Crown and private purchasers, with only a cursory check against 'landlessness'. Settler demands, and what was considered by successive governments to be the national interest, over-rode the aspirations expressed by Maori leaders around 1900. But there is evidence also in support of Dr Loveridge's view that leaders like James Carroll believed that holding land in any undeveloped state did nothing for Maori. When he introduced the 1909 Act Carroll did so on the basis that it was restoring to Maori communities, via block committees (which Carroll likened to traditional runanga), the power of decision over their land, including the right to alienate it. In short, he claimed to be recognising rangatira-

59. NZPD, 1920, vol 187, p 1290

60. NZPD, 1900, vol 114, p 511 (cited in Hutton, 'A Ready and Quick Method', p 19)

61. See Hutton, p 13

tanga, not weakening it. The old rationale that it would benefit the Maori themselves to alienate land they were not farming was believed in by Carroll himself and possibly by Ngata too.

But Carroll and Ngata had a clear preference for leasing, not selling; they struggled against the settler drive for the freehold, and resentment of 'Maori landlordism'.⁶² Another difference between the attitude of the settler politicians and the Maori leaders was their attitude towards multiple title. Men like Seddon and McKenzie harped away about 'putting a stop' to Maori 'communal' life, the 'non-subdivision of land, and the communal titles which forced them into idleness, carelessness and neglect'.⁶³ Herries too persistently pressed for individualisation of tenure. Carroll and Ngata on the other hand, East Coast leaders as they were, supported the system of block committees and incorporation of owners, partly because that recognised the traditional rangatiratanga of hapu in respect of land, and partly because most remaining Maori land was unsuitable for sub-division into small holdings anyway.

15.10.2 Assembled owners

How equitable and representative was the system of dealing through block committees and meetings of assembled owners in any case? Recent writings are divided on the question. Messrs Butterworth and Young are inclined to accept to a considerable degree, Carroll's claim that the power granted in 1909 did return to Maori runanga a collective control of their own lands; it 'gave rangatiratanga a legal recognition' and was 'a very important provision because it was at these meetings that the tribal leaders could exercise their influence to stop the improvident sale of land'.⁶⁴ Richard Boast is sceptical: 'The collectivity here being, however, [in the 1909 Act] not any of the natural units of Maori society but the accidental and artificial one of block owners'.⁶⁵

Who were these block owners? In the great blocks held by incorporated owners on the East Coast, they commonly involved large sections of hapu living on or near villages which had grown out of traditional kainga. The public block committee elections, supervised by the Maori Land Court, reflected the dynamics of Maori whanau and hapu relationships, and of factions within them. Moreover, as Butterworth and Young say, the tribal leaders in many areas, seem to have kept a pretty tight control over alienations. More recently, the success of the Puketapu incorporation in the King Country or the Mangatu blocks on the East Coast and many of the properties formerly administered by the East Coast trust, testify to the value of incorporation under strong leaders.

62. See T Brooking 'Busting Up the Greatest State of All: Liberal Maori Land Policy, 1891–1911', *New Zealand Journal of History*, vol 26, no 1, 1992, p 95

63. NZPD, 1900, vol 144, p 511 (Seddon)

64. G V Butterworth and H R Young, *A History of the Department of Maori Affairs*, GP Books, Wellington, 1990, p 67

65. P Spiller, J Finn, and R Boast, *A New Zealand Legal History*, Wellington, Brooker's Ltd, 1995, p 161

However, the meeting of assembled owners provision commonly meant that the owner group as a whole was not consulted. By section 343 of the 1909 Act, decisions of such meetings were deemed carried if the owners voting in favour owned a larger share of the land, by value, than those who voted against.⁶⁶ Only five persons constituted a quorum and proxy voting was allowed. Unrepresentative or irresponsible block committees and meetings of assembled owners therefore had power under the 1909 Act to alienate the land of the community, provided they could get a majority by value out of those who managed to assemble on the night. Giving meetings of assembled owners full power to deal with the land, even by sale, may be seen as a part-fulfilment of Treaty rights; but it also by-passed the need for a full consensus of the owners (or even a clear majority of owners), and ignored or over-rode the wishes of owners not present at crucial meetings.

There is the added complication that not all sales of Maori freehold land were foolish or ill-considered: there were, and are still, many parcels of Maori land, fragmented by partition over many decades, and almost useless in economic terms on their own, which could well be grouped with other lands. Ngata's drive for consolidation of title reflects this. So too, do many individual decisions of block committees or trustees who could sell a fragment to a Pakeha farmer who wanted to add it to adjoining land, while the Maori vendors could buy general land to improve their own estates. This is the period when the ownership of general land by Maori starts to become significant, though usually in quite small areas. It is thus difficult to say that every sale of Maori land was prejudicial in its effect, notwithstanding its contribution to the totality of Maori land loss.

Yet the sheer scale of the alienations makes it incredible that all or even most of the land sales were beneficial in their effect, leading to purchases elsewhere or to wise investments of the price paid. That was the theory, or the politicians' justification, for what was being done. In practice, Maori were selling in the twentieth century for the same reasons as in the nineteenth: they needed revenue, and the familiar problems of confused and fragmented title encouraged sale. By now too, the fact was that the land would support only a few commercially viable farms. Owners at most could normally hope for small dividends. Meanwhile the usual personal debts pressed upon them. The pressures and temptations to sell were therefore enormous.

The system of proxies at meetings of assembled owners was also abused, with lawyers representing the purchasers of Maori land collecting the proxies, attending meetings of assembled owners, and out-voting those owners who attended and opposed the alienation. Maui Pomare, in debate, said that a private purchaser could 'pocket a lot of proxies, cram the meeting with owners who wanted to sell – to sell to him – and he got the land'.⁶⁷ A trade developed in proxies among competing purchasers. Herries tried to improve the proxies system in 1913 by requiring the intention of the giver of the proxy to be written on the form before the meeting, but

66. J Fisher, 'Native Land Act 1909', *New Zealand Yearbook 1910*, p 714 (cited in Hutton, 'A Ready and Quick Method' p 41)

67. NZPD, 1913, vol 167, p 408 (cited in Bennion, p 12)

this did not necessarily stop a buyer rounding up proxies in his favour. In 1916, Herries admitted that ‘a certain amount of abuse had crept in with regard to proxies under earlier regulations’.⁶⁸ But one must doubt whether the situation had really been remedied, and in any case about one million acres of land had already been sold.

The process of notification of dealings with Maori land under the boards was also inadequate. The law generally required only putting a notice in the *Kahiti*. Herries, in 1916, admitted ‘that there was a chance of abuse’ in giving no notice, to the owners, of meeting where their land might be sold. Indeed he tacitly admitted that there had been abuses, but claimed that the problem had been rectified and that there was ‘now’ no very serious complaint. But by 1916 over half of the land that was going to be sold under the 1909 Act had been sold.⁶⁹ In any case, doubts must remain about the adequacy of the *Kahiti* notices. Herries thought the owners would ‘probably’ hear of the meeting if they did not read the *Kahiti* themselves. No doubt some Maori were avid readers of this journal, looking for mention of blocks in which they had interests, but they were almost certainly a minority, perhaps a very small minority. With increased fragmentation of title through succession, and increased mobility of the population, many Maori simply never heard of advertised meetings of land board or assembled owners. They joined an increasing mass of people who felt that the whole thing was beyond them, and were thus prone to consent to sale of their interests when a buyer or his agents sought them out.

15.10.3 Partitions

The system of partitioning out alienators’ shares of a block imposed a serious burden upon Maori groups trying to retain land. They constantly had to show a completely united front to prevent partition. The ease with which the Crown, in particular, could secure partition of a block (through the land boards), as in the nineteenth century, presented a remorseless pressure, which effectively discouraged efforts to develop land, and instead, as before, encouraged land selling amongst sections of the owners. It was also a secretive process. As Pomare said ‘while the Maori is having his breakfast the Judge is partitioning without his knowledge’.⁷⁰

Bennion suggests that the power of meetings of assembled owners to hold on to the land was largely illusory. Meetings were called at the request of one owner (or seller) and ‘the mere fact of a meeting being held was almost a guarantee that some land would be purchased and pressure placed on the remaining estate which, if the partition was a significant one affecting fertile areas in the block, made it less economic as a consequence’. The only way to avoid sale, some Maori concluded, was never to assemble. Partitions could bear very hard on those who did not turn up to meetings, however, and help shape the decision. Even their homes and gardens

68. NZPD, 1916, vol 177, pp 737–738

69. Ibid, pp 737–738 (cited in Bennion, p 14)

70. NZPD, 1913, vol 167, p 386 (cited in Bennion, p 112)

could be affected. ‘Innumerable petitions’ flowed into the Maori Appellate Court about the partitions.⁷¹

15.10.4 Leases

The tendency for leases to lead to sales of the freehold has been noted by several analysts. This was partly because, as Loveridge noted, the boards did not enforce the creation of sinking funds from rents received, to pay for the improvements at the end of the lease, as the 1909 Act envisaged.⁷² There remained also, as always, the inability of Maori to raise adequate finance to restock the land once the lease fell in. The Crown’s buying of undivided shares in blocks exacerbated the problem, as mentioned above. The Waipiro block in the Ngati Porou rohe, of 35,000 acres, was a celebrated case in point.⁷³

15.10.5 Checks on landlessness

The available evidence casts serious doubt on the adequacy of the processes for checking on Maori landlessness. Ngata and others complained in 1907 that no machinery had been provided to enforce the minimum acreages to be retained by Maori according the 1905 Act.⁷⁴ The provisions of section 373 of the 1909 Act requiring the Crown to ensure that no Maori would become landless (in terms of the definition in the Act) was weakened by subsection three, which provided that a breach of the condition would not of itself invalidate the transaction.⁷⁵ A clause in the 1913 amendment Act (section 91) provided that the ‘landlessness’ provision of the main Act did not apply if the land being sold would not, in any event, provide sufficient support to the Maori owner, and where another form of income would be an adequate alternative. (This probably explains why the Waikato–Maniapoto board approved some transactions while noting that the vendor would be landless).⁷⁶ In respect of private purchases, the onus was on the *purchaser* to show that the Maori he was purchasing from was not landless. ‘It is his business to find that out’ said Herries in 1916.⁷⁷ This opened a window to sharp practice and it is difficult to see how, without making its own independent checks, the boards could be sure of the facts alleged.

Dr Loveridge doubts that the checks required before confirmation by landlords could have been adequate in view of the sheer number of transactions passing through them or through the Native Land Purchase Board. Hutton, who studied the

71. Bennion, pp 18–21

72. Loveridge, pp 172–173

73. NZPD, 1921, vol 190, pp 156–157 (Ngata) (cited in Bennion, p 22)

74. NZPD, 1907, vol 140, pp 142 (Ngata), 387 (Fraser)

75. Hutton, ‘A Ready and Quick Method’, p 36

76. J L Hutton, ‘The Operation of the Waikato–Maniapoto District Land Board’, report for the Crown Forestry Rental Trust in conjunction with the Twentieth Century Maori Land Administration Project, May 1996, (bound with Hutton ‘A Ready and Quick Method’), pp 16–17

77. NZPD, 1916, vol 177, pp 737–738

Waikato–Maniapoto board in some depth, considers that the 1909 Act created a huge load of work for the boards which were given few additional resources. He notes that there is little evidence in the minutes of the Waikato–Maniapoto board of questioning about the reasons behind the sales. Although there was commonly a check that alienators had land elsewhere – the information to be supplied by the Native Land Court staff – there was little evidence of checks on its quality, the revenue it yielded, the debts it carried, or the needs of the heirs (the family of the alienator). With a steady schedule of meetings, and upwards of thirty applications for alienation to be considered at each meeting, ‘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 Natives alienating”’.⁷⁸

Hutton’s analysis suggest that boards rarely declined to approve an alienation. The most common reason for declining was under-evaluation of the land concerned. Submission of deeds with the purchase price to be entered later was also a ground for rejection.⁷⁹ The dilemmas of the nineteenth century remained as sharp as ever: Maori groups and individuals wanted to control the alienations of land with minimal interference by boards and Government officials, largely because they wanted cash in hand. Some wanted it for development purposes, some for consumer spending, many to pay off debts. Bennion cites the case of a Wairarapa chief who:

at one time had no fewer than three motor-cars running. He was living upon his capital, and today he is heavily in debt all over the place, and continually representations are made to the Native Land Court, when sitting at Greytown, to permit this man to sell even the last remnant of his property in order to pay his debts. Judge Gilfedder, to his credit be it said, has declared that he will not make the transactions of the Native Land Court a method of paying the debts of Natives, and he has set his face against these men doing anything further to dispossess themselves.⁸⁰

The root of the dilemma is of course that governments had created the possibilities for individual Maori to secure an interest in the title and alienate that interest in what had been a tribally controlled patrimony.

15.10.6 Relation of the boards and court with the Government

Hutton is of no doubt that the Maori land boards were agencies of the Crown: ‘The Board was created by the Crown and followed Crown policy.’⁸¹ Bennion notes that the boards were not under the direct administrative control of the permanent head of the Native Department, and had power to govern their own proceedings. But the Government’s legal advisers (such as John Salmond) argued that the Government could intervene very directly in the boards’ decisions:

78. Hutton, ‘Waikato–Maniapoto District Land Board’, pp 16–17

79. *Ibid*, pp 18–28

80. Bennion, p 32

81. Hutton, ‘Waikato–Maniapoto District Land Board’, p 33

when it really mattered the government in reality had control over the boards . . . not only were they in their internal operations variously agents for Maori, trustees for Maori and sometimes it seems, agents or more directly servants of the Crown, but the legislative changes such as the 1913 legislation and legislation after 1934 were to alter their external relationships, further complicating their internal responsibilities and duties. And while the land court remained somewhat more distant from government simply because it was a court, in the period until 1932 when some further distinction was made, the court virtually was the board, and it was also very much tainted with the confusion over roles and status.⁸²

In Tairāwhiti, Judge Jones was for many years a Native Land Court judge, the president of the Maori Land Board, and a district land registrar, a not unusual situation apparently.

Efficiencies in administration were gained in one sense by this conflation of roles in one person, but possible conflict of roles or even of interest certainly existed. Bennion notes evidence that boards assisted Government land purchase officers with cash advances at times, acted administratively to facilitate leasing, and became caught up in ambivalent roles in the distribution to Maori of revenues received (indeed they commonly sought the Under-Secretary's direction). The trustee aspect of the boards' role appears to have suffered under the pressure of their other duties.⁸³ Bennion cites a letter of resignation from the administrative officer of the Ikaroa board in 1918 listing a range of matters suggesting carelessness of the interests of Maori owners of land for which the board was responsible. In 1932, the National Expenditure Commission noted that 'the functions of the Maori land boards have so changed in recent years that they are in reality branches of the Native Department, and this should be recognised'.⁸⁴ This was a reference to the boards' role in development schemes but it reflected an earlier tendency.

15.11 Conclusions on Maori Land Administration, 1900–30

The period 1900 and 1930 (or more particularly the period 1910 to 1930 when the 1909 Native Land Act came into effect) was a period of very rapid land alienation, rivalling that under the Liberals in 1891 to 1899. Some 4.5 million acres was acquired by the Crown and private purchasers between 1900 and 1930. About three million acres were leased between 1900 and 1930, much of it subsequently free-holded. The rate of alienation was high – over 250,000 acres a year during the heaviest period of purchasing between 1911 and 1915. Although the law and administrative structures were supposed to assist Maori to retain and develop their land and sell only that which was surplus to their needs, there was relatively little development in fact, due to the complexity of titles, fractionation of the land into uneconomic holdings, and lack of development capital. After 1909 (or even after

82. Bennion, pp 26–27

83. *Ibid.*, pp 28–30

84. AJHR, 1932, d-4a, p 400, para 37

1907 or 1905) the system operated mainly to facilitate alienation of the land for pakeha settlement. As Dr Loveridge comments, in respect of alienation through the Maori land boards:

it is very difficult . . . to see how the 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.⁸⁵

The campaign of almost all the national Maori leadership before the 1900 legislation was to stop further sale of Maori land altogether, restore administration of land to Maori hapu and alienate only by leasing. But new sales commenced under the 1905 and 1907 Acts (with elements of compulsion) and, in the Native Land Act 1909, the barriers to piecemeal purchase were all but dropped, with dramatic results. At the same time Maori themselves were virtually excluded from the Maori land boards. From 1913 the land boards comprised only the Judge and Registrar of the district Maori Land Court. The 1913 Native Land Act Amendment Act also gave the Crown power to acquire any interests in Maori land, including lands vested in trust, and undivided interests in blocks with multiple owners. Mr Parata (Southern Maori), commented on the legislation: 'all along the line the Natives have been robbed, and the government is proposing to make robbery of the Maori easier by this legislation'.⁸⁶

The arguments of Native Minister James Carroll that the 1909 Act returned power of decision to local Maori runanga via the 'meeting of assembled owners', or of William Herries that Maori were free to sell or not sell as they pleased, are only partly valid. The machinery provisions of the 1909 Act favoured partition and piecemeal alienation by simple majorities of assembled owners (not of the totality of owners). Though some communities remained united and opposed to the sale, the system was open to manipulation, especially through the use of proxy votes. The Crown could buy individualised interests and secure a partition with relative ease. The checks and control by the land boards against Maori landlessness were limited. The pressures to sell the freehold rather than to lease were strong, as were the temptations of the boom in prices around the First World War.

At bottom was the issue of whether individual Maori or sections of Maori should ever have been given the power to alienate the freehold of what had been a tribal patrimony. In the light of the almost unanimous demands of the Maori leadership before 1900, a strong case can be argued, in Treaty terms, that even if it was the wish and inclination of individuals and small groups to see the freehold, the duty of active protection of the Maori people at large meant that sales of the freehold should have been approved very rarely, if at all, after 1900 and then only on the basis of full hapu involvement. The period 1905 to 1910 was very late in the day for governments to be launching a new campaign to acquire the freehold of Maori land. Even though it was not yet clear that the Maori population was fast rising it was certainly

85. Loveridge, p 56

86. NZPD, 1913, vol 167, p 811 (cited in Hutton, 'A Ready and Quick Method', p 20)

known to be stable. Many precious acres, saved from the great periods of land buying in the nineteenth century were acquired between 1910 and 1930. When Ngata finally secured finance to launch the development schemes from 1928, there was precious little good land left on which to launch them. By 1938, it was realised that the Maori people could no longer be supported on rural lifestyles alone.

PART II

Maori Land Administration, 1945–74

Note: Constraints of time and funding have prevented a full research report into post-war Maori land administration. This section will therefore only mention features of the period, for possible future consideration. A discussion of Maori land development schemes may be found in chapter 17 and a discussion of the Maori Trustee in chapter 18.

15.12 The Situation at the End of the War

The period just before and during World War II had seen a remarkable concentration of control over Maori land in the hands of a coterie of officials based in, or directed from, Wellington. The Maori land board presidents were also the judges of the Maori Land Court and district land registrars; the registrars of the court were also local officers of the Native Department; they both reported to the Secretary of the Department who was also usually the Native Trustee and at one time was also Chief Judge of the Land Court. The whole system was overseen by the Board of Maori Affairs, a committee of heads of several Government departments chaired by the Minister of Maori Affairs (or by the secretary of the department in his stead).

The success of the Maori War Effort Organisation, (see also chapter 20) which captured great support and respect from the Maori people, had been viewed with some jealousy by the Department of Native Affairs. The Maori Social and Economic Advancement Act 1945, while giving important opportunities for local and district level Maori responsibility, did not place Maori in the top levels of Government administration as the progenitor of the Act, Eruera Tirikatene, had hoped. The control of the Native Department, the Board of Maori Affairs and the Maori Land Court over the lives and lands of Maori remained very strong. Their administration was paternalistic and often genuinely caring of Maori interests. Maori recognised this and many have warm recollections of that period. But they also resented the strait-jacket controls and began, from 1945, increasingly called for the repeal of laws which they saw as denying them responsibility over their own land and equality with Pakeha under the Treaty. In this context, Bennion notes the important challenge of the Tuwharetoa people to the Aotea Maori Land Board over forest laws, which resulted in the seminal Privy Council decision of 1941, denying the Treaty, as such, legal effect.⁸⁷

87. Bennion, p 61

It should also be noted that all of the senior officials of the Maori administration were Pakeha, the pattern being broken only in 1948 with the appointment of T T Ropiha as Under-Secretary of the Department and member of the Board of Maori Affairs. Mr M R ('Mick') Jones had provided a Maori voice though, as private secretary to successive Ministers of Maori Affairs since 1940.

15.13 The End of the Maori Land Boards

Although the law officers of the Crown held that it was not especially irregular for several offices to be held by one person (even when he was reviewing in one capacity an action that he had carried out in another) the legislation had become confusing, and irregularities arose. For example, many leases had been given by Maori land boards since 1936, and Maori Land Court judges had made recommendations at the behest of the Board of Maori Affairs without the formal confirmation required from the boards. Presidents of boards (the Maori Land Court judges) were not apparently kept abreast of the boards' routine work, which was directed by the registrar. Retrospective validation was made in the Maori Purposes Act 1949.

Bennion's evidence shows how matters were generally arranged between the President and the Registrar without formal sittings:

the Board is flexible with the Registrar in the Office and the President round the district. Some matters come to the Office and are dealt with by the Registrar, some are dealt with by me in the district and some are dealt with by us after conference in Auckland. In many cases we confer by telephone. A large proportion of the decisions of the Board are on questions involving knowledge of the law and on them Maori members would be unable to assist. Fixed meetings (say monthly) would restrict the movements of the President who (as Judge) already has difficulty in fitting in all the sittings necessary.⁸⁸

In 1948, most judges denied the need for Maori members of the boards, saying that their duties were largely administrative.⁸⁹ The ambiguous role of the judges, having both administrative and judicial powers, was discussed between 1949 and 1951, with the Under-Secretary advocating that the boards be abandoned and their functions transferred to the Maori Trustee.

The case was strengthened by the evidence from a 1949 legal commission into leases of land vested in Maori land boards, which revealed sloppy administration: the sinking funds for payment for lessees' improvements not made; lack of inspection of leases to see that lease terms were met; lack of detailed records.⁹⁰

In 1952, the minister of the day, Ernest Corbett, decided to eliminate the duplication of functions by dissolving the boards and placing the vested land under the Maori Trustee. Dr Loveridge notes that one member of Parliament, Murdoch,

88. Pritchard to Under-Secretary, 8 September 1949, MA 28 31/29 (cited in Bennion p 68)

89. Bennion, p 69

90. AJHR, 1951, g-5

congratulated the Minister and hoped that by the legislation ‘the taihoa policy will be a thing of the past and that we will never hear that word again’. Mr Paikea then defended Carroll’s policy as being ‘responsible for saving most of the Maori land from being sold to the pakeha people’.⁹¹ The terms of the debate of 1900–09 were still alive in 1952.

Bennion notes that when the boards were wound up they held £335,500 in Government securities, over £300,000 in mortgages and £1,305,500 held for distribution to beneficiaries.⁹² The only serious protest from Maori at the board’s demise came from Ngati Whakaue, who felt strong associations with the Waiariki board.

15.14 New Compulsory Laws of Alienation

Characteristically (in that it represented the Pakeha rural vote) the National Government in 1952 had taken the opportunity to legislate for further compulsory powers for alienating Maori land which was unoccupied, not properly cleared of weeds, or owing rates. But, for the following year, under the new consolidated Maori Affairs Act 1953, Maori began to take advantage of section 438 and form numerous trusts to forestall compulsory action against their land. At the same time, the Maori Trustee began a booming business through land leases, timber leases and an increasing number of sales.⁹³

15.15 Prichard–Waetford Report, 1965

In 1965, the report of the Committee of Inquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court was published. This document, known as the Prichard–Waetford Report, argued that urgent and drastic action was needed to deal with the effects of Maori land title fragmentation, and to prevent any worsening of the problem. It recommended, among other things, that Maori should be given every opportunity to realise any interests that might have, that reserved land should be made alienable, that in general there should be no appeal against orders amalgamating or partitioning Maori lands, that the limit for conversion (that is, compulsory purchase) of uneconomic interests in Maori land should be raised from £25 to £100 and the rate of conversion increased, that Maori land acquired by conversion should not be set aside for settlement exclusively by Maori, and that small areas of Maori land, with fewer than five owners, should be Europeanised. These recommendations were much in the tradition of the period 1905 to 1913, being concerned mainly with efficient use of the land in economic terms and with an element of compulsion about some of the solutions proposed.

91. NZPD, 1952, vol 297, p 775

92. ma 28/23/29 (cited in Bennion, p 70)

93. E Schwimmer, *The Maori People in the Nineteen-Sixties*, p 24 (cited in Bennion, p 71)

The committee nevertheless believed, on the basis of its meetings in the districts, that there was Maori support for this.⁹⁴

15.16 Maori Affairs Amendment Act 1967

The Maori Affairs Amendment Bill was introduced into Parliament in May 1967. Part i of the Bill provided that Maori land with fewer than five owners, and meeting other criteria, would be Europeanised.

Part ii had as its main purpose ‘to promote the effective and profitable use and the efficient administration of Maori land in the interest of the owners’. This part of the Act provided for the appointment of Improvement Officers, who would investigate Maori land on the instructions of the Secretary of Maori Affairs, and report on its situation, the state of the survey, the current use and occupation, the most suitable use, the number of owners, the position with respect to rates and any other relevant matter. After such consultations as ‘is conveniently practical’, the Improvement Officer was to ‘determine’ what action should be taken with respect to the land.⁹⁵ This action could include partition or amalgamation, laying out of roadways, incorporation, survey, or alienation. Proceedings thereafter were by application through the Registrar of the Maori Land Court, and while the Court had to take into account the interests of the owners, and satisfy itself that adequate consultation had taken place, it could proceed to make the necessary orders ‘notwithstanding any objection thereto by any owner or owners’.⁹⁶ One section of the Bill provided for land under incorporated owners to cease to be Maori land, thus losing, as Wetere said in 1974, ‘their tribal identity’.⁹⁷ Other sections provided for the sale of vested or reserved lands to lessees. In introducing the Bill, the Minister, J R Hanan, said that it was based on the Prichard–Waetford report, although ‘the committee’s recommendations have not been followed exactly in all cases’. The Bill was intended to put Maori on the same footing as Europeans with respect to land, and in particular to deal with the problems that had arise ‘from the system whereby much Maori land is owned in common by a number of owners in varying and often very small shares. Another problem is the awkward and impractical size and shape into which Maori land over the years had become divided’.⁹⁸

When the Bill was reported back from the Maori Affairs Committee, with a recommendation that it be allowed to proceed with the amendments that had been made, Rata, the other Maori members, and Opposition speakers tried to have the Bill referred back to the committee for further consideration. They said the Bill went far ‘beyond the Prichard–Waetford report’. It was not what the Maori people wanted: ‘not a single part of the Bill has failed to draw strong opposition from

94. ‘Report . . . of Committee on Inquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court’, Wellington, 1965, (Prichard–Waetford Report), pp 5, 35, 42, 79, 85, 143

95. Section 17 of the Maori Affairs Amendment Act 1967

96. Section 19 of the Maori Affairs Amendment Act 1967

97. NZPD, 1974, vol 395, p 5099

98. NZPD, 1967, vol 350, p 46

Maori groups.’ The suggestion that the Bill promotes the equality of Maori was ‘nothing more than a sugar coating on an otherwise bitter pill of accelerated alienation of Maori land’.⁹⁹ The Maori Council’s verdict was quoted to the Government:

Our main disagreement with the Bill is that the provisions that make it easier to sell our land are clear and definite but those which enable us to use our land for ourselves are much less clear and certainly far from definite.¹⁰⁰

The notion and purpose of Improvement Officers was objectionable and discriminatory. The submission of the Citizens Association for Racial Equality was cited in support of this point:

If . . . the public interest requires the enactment of measures that would compel the owners of unproductive or unused land to develop it or else sell it to others who will, then let the legislation apply to pakeha as well as Maori land.¹⁰¹

The motion to have the Bill referred back to the Maori Affairs Committee was defeated, the minister arguing that the legislation was necessary to ‘free our Maori people from much of the feudal serfdom which has kept them in an economic strait jacket for far too long’.¹⁰² In due course, the Bill came up for further consideration. In the course of his speech, Hanan stated that one of the key issues raised by the legislation was ‘to what extent should the rights of the individual owner to realise his interest to the best advantage to him be subordinated to the interests of the group wishing to hold property to the exclusion of outsiders’. He also advised the Maori members to think carefully before attacking the section to do with the Improvement Officer, issuing what may have been a veiled threat: ‘the Government could withdraw [Part ii] and leave much Maori land to go on accumulating rates until such times as some county decides it wants the rates’.¹⁰³

Despite this warning, the Maori members comprehensively attacked the Bill. Part i was objectionable to Maori because the legal status of the land was to be altered ‘without their [the owners] say-so’.¹⁰⁴ Part ii (providing for the Improvement Officers) was an intolerable intrusion. No European would accept that a civil servant should be appointed to tell him what to do with his land. Rata said there was a general Maori objection to the element of compulsion that was present in a number of places in the Bill. He quoted a Maori submission: ‘We would like to see a little less ‘must and a little more ‘may [in the Bill]’.¹⁰⁵ The provisions for consultation with Maori owners about their lands were inadequate. Several sections provided for the sale of land to lessees; lessees were nearly always Europeans. Most

99. NZPD, 1967, vol 353, p 3656–3662

100. *Ibid*, p 3657

101. *Ibid*, p 3667

102. *Ibid*, p 3658

103. NZPD, 1967, vol 354, p 4007

104. *Ibid*, p 4010

105. *Ibid*, pp 4011–4013

of the Taranaki leases, moreover, were due for renewal in 1969. Tirikatene-Sullivan quoted from submissions that had been made by the Law Society that parts of the Bill amounted to ‘compulsory deprivation of property rights of Maori landowners’, that the underlying tendency was to ease ‘restrictions on alienation of Maori land’, and that the legislation would have the effect of ‘converting Maori land into European land at an accelerated rate’.¹⁰⁶

Part ii of the Maori Affairs Amendment Act 1967 was repealed by section 6 of the Maori Purposes Act 1970. During the debate on this legislation it was admitted that the provisions had been ‘in fact little used’.¹⁰⁷

15.17 1973 White Paper

The Labour Party manifestos for the 1969 and 1972 general elections recognised the ‘right of kin-groups to remain proprietors of their land and committed the party to ‘retention of Maori land in Maori ownership and management in every practicable instance’.¹⁰⁸ Labour became the government in November 1972, with Rata as Minister of Maori Affairs. He immediately began a round of consultations with Maori. In November 1973, he tabled a white paper setting out the general direction the Government would follow with respect to a number of areas of Maori policy, including land.¹⁰⁹

15.18 Maori Affairs Amendment Act 1974

In July 1974, Rata introduced the Maori Affairs Amendment Bill. Those sections of the Bill relating to land were intended, ‘to restore the principle of hereditary ownership of land and to recognise the rights of the Maori people to succeed to and perpetuate ownership in common in accordance with Maori custom’. It was the Government’s belief ‘that the right of inheritance does not or should not affect the effective administration or utilisation of Maori land’. Part vii of the Bill set out new procedures to do with the alienation of Maori land, giving ‘the owners a greater say in any proposals to sell, lease, or to consider any other proposals affecting their lands’.¹¹⁰ Clause 33 removed the option to purchase from leases. Clause 52 repealed the parts of the 1967 Act that provided for the compulsory acquisition of uneconomic interests by the Maori Trustee. Clause 68 allowed those Maori land owners who had had their land declared to be no longer Maori land by Part i of the 1967 Act to apply for a declaration restoring its Maori freehold status. Clause 77 provided

106. NZPD, 1967, vol 354, pp 4022, 4373

107. NZPD, 1970, vol 370, p 4913

108. Government White Paper on Proposed Amendments to the Maori Affairs Act 1953, the Maori Affairs Amendment Act 1967, and Other Related Acts, Wellington Government Printer, 1973, p 6

109. Government White Paper on Proposed Amendments to the Maori Affairs Act 1953, the Maori Affairs Amendment Act 1967, and Other Related Acts, Wellington Government Printer, 1973

110. NZPD, 1974, vol 391, p 2688

that incorporated land that had become European land by virtue of section 68 of the 1967 Act could be declared, on application to the Maori Land Court, Maori land again. According to Rata, 252,000 acres of land had been effected by these compulsory sections of the 1967 legislation.¹¹¹ Clause 57 allowed European land owned by Maori to be declared, under certain circumstances, Maori land.

During the second reading, Rata said that the Bill was based on the opinions drawn forth by the 1973 white paper, and the amendments made by the Maori Affairs Committee. It now represented 'the wishes expressed by the majority of the Maori people'. It was intended to 'painstakingly [repair] the invasion of the rights of the Maori people brought about by the legislation of 1967'.¹¹² The basic philosophy underlying the parts dealing with alienation was 'that the continued alienation of Maori land to non-Maori ought not to be facilitated'.¹¹³ The Act was to come into force on 1 January 1975, except for Part vii, dealing with the alienation of land. That came into force on the day the Act was passed.¹¹⁴

15.19 Alienation of Maori Land, 1967–75

Maori members had opposed the 1967 legislation on a number of grounds, but one prominent line of attack was that the legislation would promote the alienation of Maori land. The 1973 white paper contained figures on the number of land transactions confirmed by the Maori Land Court from 1963 to 1973, whether leases or alienations, the amount of land involved, and whether the parties involved were Maori or European.¹¹⁵

Sales of Maori land to Maori appear to have remained more or less stable during the decade 1963 to 1973, save for a notable increase in 1969, when 26,753 acres were transferred. In 1968, by comparison, only 5584 acres changed hands. The figure for 1970 is 7498.

The figures for alienation of Maori land to Europeans show a similar 'one-off' increase in 1969, amounting to 35,301 acres. Thereafter the amount of land changing hands tended to decline year by year, except for 1972, when it was 34,151 acres. In 1973, it was 18,219 acres, the lowest total recorded in 1963 to 1973.

On the face of it, the figures in the 1973 white paper show that the 1967 Act did not markedly accelerate the rate at which Maori land was being alienated to Europeans. Nor did it produce, on the other hand, any sharp decline in the rate of alienation. The 1974 Act, however, was intended to curtail the loss of Maori land, and it had a dramatic effect. In the 11 years preceding 1974, alienations to Europeans amounted to 307,929 acres, an average of 28,000 acres per annum. From 1974

111. NZPD, 1974, vol 391, p 2694

112. NZPD, 1974, vol 394, p 4775

113. *Ibid.*, p 4777

114. Section 1(3) of the Maori Affairs Amendment Act 1974

115. Government White Paper on Proposed Amendments to the Maori Affairs Act 1953, the Maori Affairs Amendment Act 1967, and Other Related Acts, Wellington Government Printer, 1973, p 69

to 1975, only 5559 acres (2250 hectares) changed hands. In 1975 to 1976, the first full year of the Act's operation, 6533 acres (2644 hectares) were sold.¹¹⁶

The 1967 Act had continued the trustee's authority to sell reserved lands. Between 1967 and 1973 nearly 18,000 acres of this kind of land had been alienated.¹¹⁷ Section 9 of the Maori Purposes Act 1975 abolished the sale of reserved and vested land to lessees.

The 1974 Act marked a major reversal of the philosophy and law which had governed Maori land since 1862. The return to a view of land as a taonga of the community has strengthened in the Ture Whenua Maori Act 1993.

116. AJHR, 1975, e-13, pp 37, 39

117. AJHR, 1975, h-3, p 51