

CHAPTER 5

COMPULSORY VESTING OF MAORI LAND, 1900 TO 1906

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

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

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

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

not required for occupation by the Maori owners, which would then be compulsorily vested in the land boards. For the first time, land boards were empowered – indeed, required – to sell part of the lands compulsorily vested in them. The income from such sales would go to the former owners, and the balance of the property could only be alienated by lease. None the less the Native Land Settlement Act 1907 forced some Maori to sell land, and the land boards were made a vehicle for obligatory sale.

5.1 Special Cases, 1902 to 1904

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

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

Maori landowners were thus given a choice where mortgages derived from survey liens were concerned. They could either allow part of the land to be taken –

2. Statutes, 1901, no 42, s 8(11)

3. Statutes, 1903, no 92, s 17(2)

4. Statutes, 1894, no 45, s 65

5. Statutes, 1903, no 92, s 35(1–3)

6. Ibid, s 35(4)

whether by the mortgagee or the Crown – to pay off the debt, or they could allow the whole of the block to be vested in a land council under the 1900 Act. Although owners could negate the vesting by reimbursing the Crown for its expenditures within two months, a substantial number of such blocks were later vested in the land councils.⁷

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

5.2 The ‘Resumption’ of Idle Lands, 1905 to 1906

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

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

Such lands had of course been the principal target of the 1900 Act, and the 1905 Bill which Carroll was discussing constituted an admission that the expectations raised five years earlier had not been met. As a means of regaining lost ground,

7. See Schedule 1 of Statutes, 1904, no 49 for lands so vested, and s 3 for the ‘buy-back’ provision. It should be noted that the 1900 Act made no provisions for lands vested in trust in the land councils to be re-vested in the owners.

8. Williams, p 125 implies that this Act was the first in which compulsory vesting in land councils was employed as a mechanism, which is not correct. He may well be right, however, that it was the first time such a mechanism was used in response to political pressure as a means of offsetting criticism of the Government’s Maori land policy.

9. Statutes, 1904, no 41, s 9

10. NZPD, vol 135, p 703

compulsion was to be applied to the owners of some of the aforementioned 'waste Native lands'.

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

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

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

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

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

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

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

11. NZPD, vol 135, p 703. Carroll was reading from s 6 of the Bill, which with minor alterations became s 8 of the Act. The Maori Land Councils were renamed 'Boards' by this Act: see below.

12. When land was vested the land board could set aside parts of it as inalienable reserves. The Maori owners could be given a right of first refusal on leases for any portion of the land which the board considered appropriate. Provision was made for the land to be returned to the owners at their request after 50 years, if all of all 'incumbrances' had been discharged. See s 8 and 14.

13. NZPD, vol 135, p 704

14. According to Herries, 'those members who represent that part of the country' asked for it to be applied; NZPD, vol 135, p 707. He was presumably referring to MPs holding the Northern and Eastern Maori seats, Hone Heke and Wi Pere. See also G Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', NZLR, August 1985, p 245.

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

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

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

Herries and his friends preferred a different kind of ‘resumption’: the Act also authorised the Crown to begin purchasing of Maori land in five of the seven land districts in the North Island. Tokerau and Tairāwhiti were exempted until 1 January 1908.¹⁶

The Crown had not initiated any new purchases of Maori lands since 1899.¹⁷ It seems certain that Carroll saw compulsory vesting as the only means available to him of forestalling a return to such sales. Herries claimed that, the Maori Land Council system having failed because Maori had refused to have anything to do with them, the object of the Bill was clearly:

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

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

Over the next four years (1906 to 1909), a total of some 136,471 acres of Maori land was vested in Maori Land Boards under section 8 of the 1905 Act.²⁰ This figure included 51,286 acres in the Tokerau Maori Land District, and 85,185 in the Tairāwhiti Maori Land District (see Table I.2) As can be seen, a substantial

15. NZPD, vol 135, pp 707–708

16. Statutes, 1905, no 44, s 20–25. In the event, all of the lands which were vested in Maori Land Boards under the 1905 Act (some 56,008 acres in the period 4 September 1906 to 18 October 1909, according to proclamations in the *Gazette*) were located in the Tokerau and Tairāwhiti Maori Land Districts: see below.

17. The purchases made in 1900 to 1905 involved lands where negotiations had begun prior to the 1899 Act: see above.

18. NZPD, vol 135, p 960

19. Butterworth, p 245, states that Ngata’s promotion of the 1905 Act ‘had the effect of ensuring Ngata’s election, with Carroll’s covert backing, to represent Eastern Maori in the 1905 election’. Note that Williams, p 126 implies that Ngata ‘took the lead’ in Parliament in the passage of the Act, but in fact he was not elected until December of 1905, almost two months after it was passed.

20. This provision was not continued in the Native Land Act 1909, so that the ability to vest land under s 8 ceased when it came into effect in 1910: see NZPD, 1909, p 1102 (Carroll).

amount of land (80,463 acres) was vested in the new Maori Land Boards within a year of the passage of the 1905 Act. This may help to explain why the Maori Land Settlement Act 1905 was soon being used as a template for the application of further compulsion. A 1906 amendment provided that Maori lands which had not been properly cleared of ‘noxious weeds’ could be vested in land boards on the same terms as those defined as ‘not required or not suitable for occupation by the Maori owners’ in the 1905 Act (s 3).²¹ Under another section of this statute, the

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

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

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

The impact of these pieces of legislation seems, in the event, to have been relatively limited. Up until the time of their supersession by the Native Land Act in

21. Statutes, 1906, no 62, s 3

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

1909, only 5975 acres had been vested in land boards under the ‘noxious weeds’ section, and 11,505 acres under the ‘occupation’ section.

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

Year	Section 3	Section 4	Total	Percentage total
1906		7200	7200	41.2
1907	5975	3100	9075	51.9
1908	0	905	905	5.2
1909		240	240	1.4
1910		60	60	0.3
Total	5975	11,505	17,480	100.0
Percentage total	34.2	65.8	100	

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

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

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

23. See Table I.1: Lands vested in Maori Land Councils and boards under 1900 Act, 1900–1909

24. None could be found in the *New Zealand Gazette* for 1900 to 1905.

5.2

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all of the balance, some 20,495 acres (12.8 percent of the total), was vested in the Aotea Land Board.

Table I.4: Lands vested in Tokerau and Tairāwhiti Māori Land Boards under 1900 Act and Amendments, 1906 to 1909. Source: Table I.1, ‘Lands vested in Māori Land Councils and boards under 1900 Act, 1900–1909’.

Year	Tokerau	Tairāwhiti	Total (year)	Cumulative
1906	42,656	39,331	81,987	81,987
1907	19,536	11,863	31,399	113,386
1908	22,848	409	23,257	136,643
1909	0	893	893	137,536
Total	85,040	52,496	137,536	137,536

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

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

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

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

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