

CHAPTER 7

MAORI LAND BOARDS, 1905 TO 1908

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

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

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

In introducing the Bill in the House James Carroll asserted that the change in name from 'Maori Land Councils' to 'Maori Land Boards' was both necessary, to avoid further confusion with the Maori District Councils set up in 1900, and

1. *Winston Dictionary*

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

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desirable, because of ‘some prejudice in the public mind’ against the land councils (nature unspecified). But the principal justification for dispensing with the elected members was alleged to be economic. This measure, Carroll stated, would:

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

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

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

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

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

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

3. NZPD, vol 135, p 703

4. That is, some £593 out of £3065 spent up to that time on election expenses, salaries (for presidents, Members and staff) and travelling expenses. And the £593 includes £79 spent ‘Taking plebiscite on boundary disputes’: see AJHR, 1903, G-8. Total land council expenditures to 31 March 1905 were £8289 17s 10d (AJHR, 1905, G-8). Presumably the proportion spent on elections up to this date was similar to that shown by the 1903 figures.

5. NZPD, vol 135, p 703

6. AJHR, 1905, I-3b, p 6, paragraph 30–31

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

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

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

- Aotea 6 March 1906
- Maniapoto–Tuwharetoa 6 March 1906
- Tokerau 6 March 1906
- Ikaroa 5 July 1906
- Tai–Rawhiti 10 August 1906
- Waiariki 11 August 1906
- Waikato 20 September 1906¹⁰

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

Other developments helped to widen the gulf between Maori Land Boards and Maori landowners. One of the most important ones was the reconstitution of the Native Department. Before his death in 1906, Premier Seddon had decided that there was a need for a single agency ‘to deal with all matters affecting the Maoris, more especially as regards their lands’.¹² Formed in June of that year, the new

7. AJHR, 1905, I-3b, p 10, paragraph 20–24

8. The vote was 48–14 against; NZPD, vol 135, p 846.

9. J A Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1900*, Auckland University Press–Oxford University Press, Auckland, 1969, p 127

10. See *New Zealand Gazette*, 1906, vol 1, p 745; vol 2, pp 1903, 2180, 2523

11. Statutes, 1905, no 44, s 3(1)

12. ‘Native Matters’, MA 16/1, p 1

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Native Department controlled the Native Land Court, the Maori Councils, and the Maori Land Boards. The first secretary was a land court judge, H F Edgar, but he resigned in January of 1907, to be replaced by T W Fisher (a former member of the Aotea Land Council). Placing all of the Government agencies concerned with Maori land under the control of one authority had the inevitable effect of shifting the focus of decision-making further away from the individual boards in the direction of Wellington. In 1906, for example, the land boards were for the first time provided with a uniform set of guidelines for dealing with applications for approval of leases and various other procedures.¹³ The growing role of the department can be seen in the steady growth of its budget and staff, both of which had increased by about 40 percent by 1909.¹⁴

The activities of the boards themselves expanded in both volume and range during this period. One reason for this was the removal of all restrictions on the leasing of Maori land. Under the 1900 Act, leases had to be approved by the Maori Land Councils. Titular or statutory restrictions on alienation, however, could only be removed or waived by the Governor at a council's request.¹⁵ Section 16 of the 1905 Act eliminated a step from this cumbersome process by simply removing all 'restrictions, conditions or limitations' on the leasing of Maori lands, statutory or otherwise. The Maori Land Boards thereafter had full authority over the process, subject to the provisions of the Act. This meant that they had to ensure, among other things, that the proposed rent was adequate (not less than 5 percent per annum of the assessed capital value¹⁶), that the lessor had land or rental income sufficient for their maintenance, that the lease did not exceed 50 years in total, and that in general the lease was 'for the benefit of the Maori lessor' (s 18).

Stout and Ngata commented in 1907 that:

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

This observation is fully borne out by the statistics. As noted earlier, the private leasing of some 139,441 acres of Maori land had been approved by the land councils and boards by late 1906.¹⁸ By 29 October 1907, the total had increased to 410,334 acres in 966 separate leases.¹⁹ By 31 March 1908 it would rise to

13. Supplement to *New Zealand Gazette*, 17 August 1906, no 70, pp 2203–2205. B Gilmore, 'Maori Land Policy and Administration during the Liberal Period, 1900–1912', MA thesis, Auckland, 1969, p 104 takes this to be evidence of increasing Government interest in the boards.

14. See G Butterworth and H Young, *Maori Affairs: A Department and the People who Made it*, Iwi Transition Agency–GP Books, Wellington, 1990, pp 63–65. The Maori land purchasing operations set in motion by the 1905 Act, and the account set up to pay for them, were under the control of the Native Minister, but the purchasing carried out by the Department of Lands (see AJHR, 1907, G-3a, p 1). Edgar resigned, according to Butterworth, because he was 'out of step with Government thinking'.

15. Statutes, 1900, no 55, s 24–25

16. As assessed under the Government Valuation of Land Act 1896.

17. 'Interim Report on Native Lands in the Wanganui District', AJHR, 1907, G-1a, p 14

18. Memorandum entitled 'Native Matters', in MA 16/1 (Native 2/5)

19. 'Return of Native Lands rendered available for Settlement purposes', Under-Secretary of Native Department, 29 October 1907, MA 16/1

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638,872 acres (1334 leases), and another 267,075 acres in 488 leases were added over the following year. At the end of the 1908 to 1909 fiscal year (31 March 1909), the amount of land privately leased by Maori owners with the consent of the councils and boards since 1900 amounted to 905,947 acres.²⁰ A departmental official commented in 1908 that:

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

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

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

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

20. ‘Return of Native Lands rendered available for Settlement purposes (Up to 31st March, 1909)’, appended to J Carroll’s Letter to the Prime Minister of 27 April 1909, MA 16/1

21. ‘Memorandum’ of 23 July 1908, MA 16/1

22. A view later expressed by Herries, when down-playing the accomplishments of the Stout–Ngata commission. He declared that ‘clause 16 of the Act of 1905 is just and fair both to the Maori and the European’, adding that ‘I do not think there is any better way of getting land into cultivation, as far as leasing is concerned, than by the clause which was put in by the Native Affairs Committee in 1905 . . . against the wishes of the Minister’. See NZPD, 1908, pp 1122–1123.

23. ‘General Report on Lands already Dealt with and Covered by Interim Reports’, AJHR, 1907, G-1c, p 11

24. ‘Ibid, p 16, ‘Recommendations’, A2

25. AJHR, 1907, G-1c, pp 12–13. This section quoted from, and was largely based upon pp 14–15 of the *Whanganui Report*, which gave specific examples of extensive acquisitions by particular families.

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

In order to make Maori lands accessible to a wider range of would-be lessees, and limit such abuses, Stout and Ngata recommended that all sales and leases of Maori land be made at public auction, with limits being imposed on ‘the persons who can become competitors according to the extent of their land-holdings at the time of sale’. Noting, however, that such a scheme would not work unless titles could be guaranteed to the highest bidders, they further proposed that all alienations be channelled through the Maori Land Boards, taking place ‘only through the Board as agent for the owners, or, in the case of lands vested in it, as registered owners of such lands’.²⁶

The commissioners were ‘of opinion that these [Maori Land] Boards must be used much more freely and on a greater scale in future if large areas of unoccupied Maori lands are to be opened to settlement’. Parliament took them at their word. The Native Land Settlement Act 1907, passed a short time afterwards, gave Maori Land Boards a central role in implementing the recommendations of the Native Lands and Native Land Tenure Commission. The following year, the Maori Land Laws Amendment Act 1908²⁷ imposed further powers and responsibilities upon the boards. Among other things, these institutions gained complete control of Native Townships, replacing commissioners which had been appointed under the Native Townships Act 1895 (s 2).²⁸ Carroll argued that ‘the bringing into line under one administration two different sets of townships is a virtue, and avoids a duplication and overlapping of authority’, and hinted that further powers would be given to the land boards in the future.²⁹ Two years later, in 1910, provision was made for all Native Township lands to be vested in the boards.³⁰

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

26. AJHR, 1907, G-1c, pp 13, 17

27. Statutes, 1908, no 253

28. Some boards were already involved with townships created since 1900: see above.

29. NZPD, 1908, p 1114

30. See Statutes, 1910, no 18

31. ‘Return of Native Lands . . . to 11 Oct. 1909’, p 2: MA 16/1. Orders in Council had yet to be issued for another 70,787 acres.

32. The Stout–Ngata commission recommended that some 64,596 acres of Maori land be so incorporated under Part II of the 1907 Act; see ‘Position as regards the Native Land Commission’s recommendations as on the 7th December, 1909’, MA 16/1.

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

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

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

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

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

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

These changes had been made piecemeal, through a dozen different Acts. In 1909 the legislative underpinnings of the land boards were rebuilt in the form of a single, coherent piece of legislation. Nominally a simple consolidation, the Native Land Act 1909 was more than that. Certainly it marked the beginning of a period of

33. The authorisation for such inquiries, usually involving problems which had arisen with specific blocks, is often found in the nether clauses of 'washing up' legislation: see, for one example, the Native Land Amendment and Native Land Claims Adjustment Act 1915, no 63, s 20.

34. NZPD, 1908, p 1114

35. The court retained jurisdiction over alienations elsewhere, until 1914: see below.

36. NZPD, 1908, p 1137 (Field)

legislative stability for Maori land administration, setting a place a basic system which would last for half a century.