

Ngai Tahu Land Report

19 Schools and Hospitals

19.1 Introduction

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The claimants' grievances in respect of the Murihiku purchase include a complaint that:

The Crown failed to provide schools and hospitals at each Ngai Tahu village which provision was part of the price agreed upon by the Crown. (W6)

Claimants' counsel confined his submission on the question of schools and hospitals to the Murihiku purchase. There is, however, clear evidence that when Walter Mantell was setting aside reserves following the Kemp purchase, he made promises to Ngai Tahu that the government would provide schools, hospitals and other assistance. We will discuss these promises as well as those made by Mantell during his negotiations for the purchase of the Murihiku land.

Probably the clearest description of the promises are to be found in the evidence of Mantell and various Ngai Tahu chiefs before the Smith-Nairn commission. At this point we will quote from the evidence of one chief only, Natanahira Waruwarutu, who in discussing the negotiations with Mantell following the Kemp purchase, said:

After a considerable argument Mr. Mantell spoke about schools and hospitals, and the large amount of money, as a final payment, and the looking after the Maoris by the Govt. (R7:app 3:48){FNREF|0-86472-060-2|19.1|1}

Other Ngai Tahu witnesses gave similar evidence.

At the same hearings Mantell testified as to the promises he made while setting aside reserves following the Kemp purchase. He explained that following receipt of his instructions of 2 August 1848, he thought it necessary to obtain further instructions from Lieutenant-Governor Eyre. This was because of misgivings he had about his ability to persuade Ngai Tahu to sign a fresh deed, given that they had sold 20 million acres for only £2000 and Mantell was left with only £1500 to distribute. He thought it desirable that he should be authorised to offer a further inducement as he feared that otherwise he would find it extremely difficult to complete the negotiations. And so he saw Eyre who told him:

that I must distinctly point out to the natives that the main consideration which they would receive for their lands was, after all, not the small amount of money which was then to be given to them by the Govt., but would consist in the enhanced value of the reserves which should be made for them; in the schools which the Govt. would have instituted for the instruction of themselves and their children, in the hospitals which

would be instituted for the care of their sick and in the appointment of officers to look after their interests. (R7:appendix 3:37){FNREF|0-86472-060-2|19.1|2}

Having received this assurance Mantell proceeded on his mission:

and whenever difficulties arose on the part of the natives, and objections were raised, I made and constantly repeated to them this assurance of the Lieut-Governor. It was my belief at the time that had I not had it in my power to give them this assurance, I could not have got their assent to the Cession of the land. (R7:appendix 3:38){FNREF|0-86472-060-2|19.1|3}

Mantell, when asked whether there was to be a school at every kainga, replied that nothing definite was ever said. When pressed on the point he agreed that the Ngai Tahu would have been left with the hope of a school in "every kainga of reasonable size" (R7:appendix 3:45).{FNREF|0-86472-060-2|19.1|4} As to hospitals Mantell said:

My own idea of the matter was, that some 3 or 4 hospitals might be established in the whole length of the country, but that medical attendants would be appointed who would visit the districts lying between the hospitals. (R7:appendix 3:45-46){FNREF|0-86472-060-2|19.1|5}

As will be seen, Murihiku chiefs gave similar evidence of promises by Mantell during the 1852 Murihiku purchase.

Waitangi Tribunal, Department of Justice, Wellington.

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19.2 The History of the Promises

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19.2.1 Mr Tony Walzl, an historian called by the Crown, gave detailed evidence covering all aspects of the promises. He drew our attention to the apparent absence of any record of Mantell's interview with Eyre, or of any written instructions in respect of his negotiations in either the Kemp or Murihiku transactions. However, Mr Walzl reminded us that Mantell's instructions gave him a discretionary authority which may well have been wide enough to encompass the promises which he made. Mantell was instructed that:

Should any unforeseen difficulties arise not anticipated or provided for the Lt. Governor feels assured he may with confidence commit to you a discretionary power to act as upon a mature consideration of all the circumstances you may deem best, requesting only that in such occasions you will keep in view the objects & intentions of your Mission. (M3:100-101){FNREF|0-86472-060-2|19.2.1|6}

Nor was Mr Walzl able to discover any contemporary note or record by Mantell in correspondence or his personal papers touching on the promises he was later to testify he had made. Mr Walzl also remarked on the absence of any reference to the Crown's failure to implement the promises in a wide-ranging report which Mantell, then commissioner of Crown lands, Otago, made to the colonial secretary on 18 March 1856, on the condition of Ngai Tahu in Otago and Murihiku (M15:66-81).{FNREF|0-86472-060-2|19.2.1|7}

The tribunal has no reason to doubt that Mantell did receive the instructions referred to from Eyre. His apprehension as to the difficulties he might meet seem to us entirely reasonable. Moreover, as will be seen, Eyre's instructions were in accord with current policy. Nor, as we will later indicate, are we in any doubt that Mantell did make the promises to which he later referred.

The first written reference to any such promises is a personal letter from Mantell to J J Symonds of 21 August 1855. In this letter Mantell commented that:

Now in making purchases from the natives I ever represented to them that though the money payment might be small, their chief recompense would lie in the kindness of the Govt. towards them, the erection & maintenance of schools & hospitals for their benefit & so on-you know it all. (G2:409){FNREF|0-86472-060-2|19.2.1|8}

Mantell's correspondence with the British colonial secretary

19.2.2 In 1855 Mantell obtained leave from his position of commissioner of Crown lands, Otago, and by February 1856 was residing in London. On 5 July of that year he placed on record his concern that his promises as to the provision of schools and hospitals and other assistance for Ngai Tahu had not been fulfilled. He took the bold, and possibly unprecedented step for an official employed by a colonial government, of writing direct to the secretary of state for the colonies in the British government. Several letters ensued between the Colonial Office and Mantell before the colonial secretary, W Labouchere, in September 1856, dispatched a copy of all the correspondence to Governor Browne for a report from New Zealand on the issues raised by Mantell (A8:II:81-88). {FNREF|0-86472-060-2|19.2.2|9} In his letter of 5 July 1856 Mantell claimed that by promising more valuable recompense in schools and hospitals and in "constant solicitude" for Ngai Tahu's welfare and general protection on the part of the Imperial government, he procured the cession of some 30 million acres of land for small cash payments. He accused the colonial government in New Zealand of neglecting to fulfill these promises and referred to the small sums expended on schools and hospitals. He documented the refusal of the colonial government to replace worn out books used by the Reverend Wohler's mission station on Ruapuke Island (A8:II:82). {FNREF|0-86472-060-2|19.2.2|10} He claimed to be writing to the colonial secretary:

at the request of the Chief and sub-ordinate Chiefs of the united tribes ... for in the Local Government they have long ceased to repose confidence. (A8:II:83) {FNREF|0-86472-060-2|19.2.2|11}

The colonial secretary wished to know Mantell's authority for making the promises and whether he had officially raised the matter with the New Zealand government.

In response to the first question Mantell advised:

That, in my written instructions, no specific authority is given, and that it was not only unnecessary, but even inexpedient, that such specific authority should have been inserted, is, I conceive, sufficiently clear. (A8:II:84) {FNREF|0-86472-060-2|19.2.2|12}

However, he amplified this statement by saying that he had no reason to believe that his immediate superiors differed from him on this point and that a written record of them:

might tend to perpetuate a distinction between the races, which, at the time that these purchases of land were made, by me it seemed to be the desire of the Imperial Government to abrogate. (A8:II:84) {FNREF|0-86472-060-2|19.2.2|13}

Mantell gave a further reason for the absence of a written record of the promises:

Had I myself been justified in entertaining any fear that the Government would fail in fulfilling promises (verbally given on authority, only verbal for reasons which I considered valid), I should not have hesitated to insert them in the text of those Deeds of Cession which I drew. But Sir George Grey, during whose Government all of my purchases were made, seldom, to the best of my recollection, refused any reasonable

request on behalf of these Natives, nor had I ground for believing that his successor would be less just.

I have received three sets of instructions to purchase lands, of which the last two refer for details to the first which contains nothing more definite on the point now under comment than directions to induce the Natives to accede to my views, or to get, or win their consent. (A8:II:84){FNREF|0-86472-060-2|19.2.2|14}

Mantell then enlarged on his instructions from Eyre:

Lieutenant-Governor Eyre, who directed those (the first) instructions to be written, impressed upon me the propriety of placing before the Natives the prospect of the great future advantages which the cession of their lands would bring them in schools, hospitals, and the paternal care of Her Majesty's Government, and, as I have before said, I found these promises of great use in my endeavours to break down their strong and most justifiable opposition to my first commission, and in facilitating the acquisition of my later purchases, adding to the Crown lands an area nearly as large as England. (A8:II:84){FNREF|0-86472-060-2|19.2.2|15}

In response to the colonial secretary's second question as to whether he had officially raised the matters with the New Zealand government Mantell said:

...I have the honour to state that I brought the subject under the notice of Colonel Wynyard, at Auckland, on the 19th May, 1855, at an interview which His Excellency accorded to enable me to avoid a correspondence, and at which, by his direction, the Native Secretary was present.

On this occasion I brought under Colonel Wynyard's notice many facts with which I have not troubled you. His Excellency gave to my remarks the most polite attention, but none but the most unsatisfactory replies. I, therefore, in the belief that I should there find both inclination and power to aid my Maori friends, resolved to bring the main question before the Secretary of State for the Colonies. (A8:II:84){FNREF|0-86472-060-2|19.2.2|16}

19.2.3 On receiving the colonial secretary's despatch Governor Browne obtained a report from Native Secretary McLean. On 26 January 1857 McLean advised the governor:

I can find no trace or record of any other promise made to these Natives; nor have they, to my knowledge, alluded to any direct promise made by the Government, that has not been fulfilled.

If any distinct promise has been made to the Ngaitahu tribe of prospective advantages to be obtained by them, consequent on the cession of their land; I submit that Mr. Mantell should have distinctly stated, for the information of the Government, what the real extent and nature of these promises actually were, by whom made, and by what authority. In the absence of such information, which Mr. Mantell has failed to produce in any definite shape, I conceive that the Government is not chargeable with the blame imputed to it by Mr. Mantell, inasmuch as the terms of the original treaties or

agreements for the cession of their lands have been strictly observed and fulfilled by the Government. (A8:II:88){FNREF|0-86472-060-2|19.2.3|17}

McLean concluded his report by saying:

With the exception of education for the young, for which purpose there are no funds at your Excellency's disposal, I do not perceive that any neglect has been evinced towards the Natives referred to by Mr. Mantell. (A8:II:88){FNREF|0-86472-060-2|19.2.3|18}

On 9 February 1857 Governor Browne reported to the colonial secretary, Labouchere. He advised that he agreed with Mantell in thinking the colonial government was bound to care for the interests of the Maori population. He reported that government agents had long made promises that schools and hospitals would be provided when negotiating a purchase of land from Maori:

I am satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial government have been held out to the Natives to induce them to part with their land. Nor does it appear to me that the obligation could be less imperative if no promise had ever been made. The difficulty is how to fulfill either the promise or the obligation. (O21:58){FNREF|0-86472-060-2|19.2.3|19}

It seems to us impossible to construe these comments in any way other than as a categorical endorsement of the promises made by Mantell in the course of his negotiations in both the Kemp and Murihiku purchases. Indeed, the governor appears to be saying that in making such promises Mantell was doing no more than following a long established policy. It is noteworthy too that the governor saw such promises being made as an inducement to Maori to part with their land. It is apparent that this is one of the reasons why the promises were to be made.

19.2.4 Near the end of his correspondence with the secretary for the colonies, Mantell wrote to Tiramorehu:

I am urgently pressing upon the Principal Secretary to the Queen to fulfill my words to you expressed of old when you gave your lands to me. This was the word (but you will probably bear it in mind) that you were not to consider so much the small amount of money given by me for your lands, rather the schools for you and your children and the Hospitals and the constant care for you on the part of the Government. These are the things which constitute the great payment for your lands. (B2:4/2:265-266){FNREF|0-86472-060-2|19.2.4|20}

Mantell's action in making representations in England direct to one of the Queen's principal secretaries of state clearly made a considerable impression on Tiramorehu and Ngai Tahu generally. The letter was produced on more than one occasion before select committees and commissions of inquiry. It served to cement and crystallise the promises in the minds of Ngai Tahu. As the Crown historian Mr Walzl said, from this point on the promises were firmly fixed in the minds of European and Maori, and over the following years there was no serious attempt to challenge their existence (O20:19-20).

19.2.5 When, in July 1861, William Fox formed a new ministry, Mantell agreed to join it as native minister if Fox and his colleagues would support certain measures for the benefit of Ngai Tahu. These included the provision of schools and hospitals and the appointment of a suitable government officer to look after the welfare of Ngai Tahu "as promised by [Mantell] on the sale of their lands to the Queen" (O21:22). {FNREF|0-86472-060-2|19.2.5|21} But the necessary funds did not eventuate and Mantell resigned after five months in office.

In the following year, Matenga Taiaroa addressed a letter dated 13 February 1862 to "all my Tribe, to my Hapu, and to my Son [H K Taiaroa]" in which he referred to the Treaty, the sale of Otakou and Kemp's purchase. He commented that Kemp referred to "schools, hospitals and other words on account of which the land was given". "After that," he said, "came Mr. Mantell, whose words were to the same effect" (M15:170-171). {FNREF|0-86472-060-2|19.2.5|22}

This appears to be the first recorded statement that Kemp, in addition to Mantell, promised Ngai Tahu schools and hospitals at the time of the purchase.

Ngai Tahu continue to seek action

19.2.6 During the 1860s Ngai Tahu maintained pressure on the government for action on the promises. Until November 1863 the Imperial government had responsibility for "native affairs" in New Zealand. But this now devolved to the General Assembly (O21:51). When yet another new government, the Whitaker-Fox Ministry, was formed in October 1863, Fox became colonial secretary and as such, assumed responsibility for native affairs. He appointed H T Clarke to settle the purchase of Rakiura (Stewart Island) and at the same time to investigate and report on the condition of Ngai Tahu in Otago and Southland. Clarke in fact sent two reports to the colonial secretary. One concerned his findings on the general condition of Ngai Tahu in the southern provinces. The second related specifically to the promises of schools and hospitals. The general report, 29 September 1864, gives a depressing account of a "squalid, miserable and ignorant" people. The chiefs, challenged by Clarke as to why they had not exerted themselves to "raise their people from their present condition" answered:

that they have placed full reliance upon the government giving full effect to its engagements-that the Government promised to undertake the task of ameliorating their condition as part of the consideration for their lands; that after waiting in vain for these benefits they concluded in their own minds that the Government had forgotten them. (M15:57-58){FNREF|0-86472-060-2|19.2.6|23}

Clarke, among other recommendations, proposed that:

- a government officer be appointed immediately, whose sole duty would be to look after the interests of Maori in Otago and Southland. He should also act as commissioner for Maori reserves;
- two interpreters, one for Otago and one for Southland, be permanently attached to the resident magistrates' courts as officers of those courts;

- three medical men be appointed to attend the Ngai Tahu sick.
- schools be established at Moeraki, Waikouaiti, Otago Heads, Ruapuke and Aparima.

In his second report, 30 September 1864, concerned with the non-fulfillment of Mantell's promises, Clarke wrote:

At every meeting held with the Natives during my late visit to the southern Provinces, great prominence was given to this subject. Natives from Waimatamate, Waitaki, Moeraki, Waikowaiti [sic], Otagou, Ruapuke, and Aparima, were unanimous in alleging that they have been deceived. They state that besides the monied consideration given by Mr. Mantell, they were also promised that out of the revenue accruing from the lands then ceded, the Government would support schools, hospitals, &c., and would promote and encourage undertakings having for their object the amelioration of the condition of the Natives. These promises, they say, have never been fulfilled. (A8:II:91){FNREF|0-86472-060-2|19.2.6|24}

On 15 November 1864, Fox, in a memorandum on Clarke's two reports, noted that:

Considering the great length of time during which faith has failed to be kept with the Natives they are entitled to a very large amount of arrears, and the Government should propose to the Assembly no niggard vote for the purpose. Since the pledges were given a whole generation has run to seed without receiving the benefit of that culture which was promised. No reparation can be made now for this neglect, but it should be remembered when action is taken, and it should prevent any murmur at the appropriation of what might under other circumstances appear too large an appropriation of the public money, to a small remnant of a tribe which once owned three-fourths of the Middle Island. (O21:56){FNREF|0-86472-060-2|19.2.6|25}

19.2.7 Happily, it appeared for Ngai Tahu, when on 24 November 1864 the Weld Ministry took office, Mantell was again made native minister. Mantell appointed C Hunter Brown to investigate the promises and offer solutions. But some months before Hunter Brown reported on the promises Mantell had yet again resigned as native minister. Hunter Brown advised that he had spoken to Ngai Tahu:

of the intention of the government now to establish schools and hospitals and hostelries if they were found useful and told them in each place what I should recommend, while explaining that the decision would still rest with the Government and I made use of this to urge them strongly to cooperate towards the maintenance of schools but with little success. (O20:27){FNREF|0-86472-060-2|19.2.7|26}

Mantell's successor, FitzGerald, was not sympathetic to Ngai Tahu. On 9 October 1865 he wrote to the Reverend J W Stack at Kaiapoi in reply to news that, although a new school had been opened there, the local Ngai Tahu would not pay school fees to support it:

tell them that when I was Superintendent I went to them with the Bishop of New Zealand, and we told them that to put a clergyman, a School, a Hospital, in each small village of 10 or 12 inhabitants was utterly impossible, but that if they would all come together and live together in one place, all these things should be provided, but they

would not. It is entirely their own fault that we have not been able to do more for them. (O21:44){FNREF|0-86472-060-2|19.2.7|27}

And so Ngai Tahu were expected to believe that it was all their fault that successive governments had not honoured the promises or indeed adhered to the general policy adverted to by Governor Browne in his 1857 despatch to the colonial secretary, Labouchere. Moreover, FitzGerald's comments seem entirely to disregard the fact that the government agent Mantell had apportioned such minuscule reserves in various areas to Ngai Tahu that it would have been economic suicide for them to attempt to relocate onto one totally inadequate reserve. FitzGerald's comments also reveal his insensitivity to the Ngai Tahu wish and indeed legitimate desire to live in their traditional way in their own hapu groups.

In December 1865 Rolleston, under-secretary for native affairs, wrote to yet another native minister, A H Russell, in terms which supported the earlier views of Clarke and Hunter Brown (O21:48-49). {FNREF|0-86472-060-2|19.2.7|28} But Russell, like his predecessor FitzGerald, had begun the dismantling of the Native Department and showed little interest in the plight of Ngai Tahu. Instead the matter lay dormant until 1868 when the Native Land Court conducted its first hearings. Mantell gave evidence at these hearings about his promises. The court held that it had no jurisdiction to make a ruling on the promises.

The Ngaitahu Validation Act 1868 was passed later in the year to legitimate the Kemp purchase deed and to validate its subsequent reference to the court. This Act expressly left open for further consideration Mantell's promises as to schools, hospitals and other advantages in relation to the Kemp purchase.

The first inquiries

19.2.8 In 1871 H K Taiaroa was elected to the Southern Maori seat. He persistently sought to secure investigation of Ngai Tahu grievances regarding the unfulfilled promises and other matters by parliamentary select committees. The select committee which sat in 1872 was the first of many set up to investigate the Ngai Tahu case. It was unable to come to any firm conclusion but noted:

that these claims have not hitherto had that consideration which they deserve. (M15:165){FNREF|0-86472-060-2|19.2.8|29}

It recommended a further inquiry.

Accordingly another select committee was appointed to sit during the following session. But Sheehan, a member of this committee, advised the House of Representatives in 1874 that considerable difficulty was experienced in getting members of the 1873 select committee to attend and it was almost impossible to obtain a quorum (O21:62). {FNREF|0-86472-060-2|19.2.8|30} Eventually it seems the committee fell into a state of disarray and ended up recommending that two arbitrators be appointed to inquire into the matter. The government however, assured Taiaroa the matter would be settled before the 1874 session of Parliament (O21:60). {FNREF|0-86472-060-2|19.2.8|31} This did not happen. Taiaroa, in 1874,

proposed that yet another committee investigate the unfulfilled claims. Sheehan, who supported this suggestion, told the House:

it was absolutely proved by official documents that claims did exist. It was undoubtedly certain that the Natives had been promised schools and hospitals. (M15:159){FNREF|0-86472-060-2|19.2.8|32}

Other members however were opposed to the appointment of yet another committee. In the event, Taiaroa had the questions redirected to the Native Affairs Committee, a fate which Alexander Mackay in a letter to the Reverend Stack prophetically characterised as "consigning it to its grave" (O21:67-68).{FNREF|0-86472-060-2|19.2.8|33}

19.2.9 The Native Affairs Committee duly sat in 1875. It recommended the appointment of a full commission of inquiry, thereby stalling consideration yet again. By the following year nothing further had been done. The native minister, McLean, explained that the government had been unable to find commissioners willing to act. But McLean observed that Judge Fenton, although unable to undertake a full commission due to his "not being a good sailor" would be willing to review the matter and submit a very exhaustive report "embracing his extensive knowledge of the question" (O21:66).{FNREF|0-86472-060-2|19.2.9|34} In his report of 10 July 1876 Fenton, in discussing the promises, said:

Hospitals, I think, they have had, access to the Government institutions having been open to them as well as to Europeans. Schools they have partially had. But even failure in this respect cannot be the subject of pecuniary compensation.... If the Government have been remiss in this matter, all they can do is to hasten to repair their remissness, and provide schools for the future. (M15:179){FNREF|0-86472-060-2|19.2..9|35}

Not surprisingly, Taiaroa was critical of Fenton's report and in a detailed statement of 26 October 1876 denied that Mantell's promises had been adequately met:

Mr. Fenton says that these promises cannot be the subject of a money compensation. That is correct; these promises cannot be paid for with money, but they can be paid for if it be shown what lands went in consideration of those unfulfilled words; the payment would be the restoration of those lands. That is the only way in which compensation could be made. (M15:191){FNREF|0-86472-060-2|19.2.9|36}

The Smith-Nairn Royal commission

19.2.10 Taiaroa called again for a commission of inquiry into Ngai Tahu grievances. Eventually, in 1879, a Royal Commission on Middle Island Native Land Purchases (the Smith-Nairn commission) was appointed. The Royal commission was authorised to investigate whether there remained any unfulfilled promises arising from various purchases from Ngai Tahu. In addition it was to ascertain whether all reserves provided for in the various sale agreements had in fact been made. The commission sat over a two year period, 1879-1880, and reported early in 1881. It travelled extensively and heard voluminous evidence from many of those, both Maori and European, who were parties to the agreements and present at the discussions which

led up to them. Much of the commission's record of evidence was submitted as evidence to the tribunal. Mr Walzl, for the Crown, produced and analysed all the evidence from those actually present at the making of the promises, that is, Mantell and various Ngai Tahu chiefs. Mr Walzl produced two tables summarising the evidence relating to promises of schools and hospitals made during the Kemp and Murihiku negotiations. Rather than reproduce extensive passages from the witnesses' evidence, we propose to state the main points which emerge from Mr Walzl's analysis, which we believe adequately reflects the import of the evidence.

Ngai Tahu evidence

19.2.11 In addition to Mantell, five leading Ngai Tahu chiefs gave evidence in respect of his promises during the Kemp purchase negotiations (R7:64A). They were Waruwarutu, Tiramorehu, Te Uki, Patuki and Naihira. Whereas Mantell testified that he made the promises at various times in many places throughout the negotiations and one of the Ngai Tahu rangatira agreed with him, the other four chiefs indicated that the promises were made once only, at Akaroa, after Mantell returned from a visit to Wellington. Mantell said that he used the promises to overcome opposition to the purchase while three of the chiefs said they were given after Ngai Tahu complained about the inadequacy of the purchase price. In addition, Tiramorehu claimed that the promises followed argument over the boundaries and the size of the reserves. All five men agreed that the promises were explained by Mantell who, in evidence, said schools were to be provided in every major kaika, and that three or four hospitals would also be provided. One of the Ngai Tahu chiefs said schools and hospitals would be established in all places within the boundaries of the land sold; another, that schools were to be provided throughout all the districts, and two were silent on this question. Only Tiramorehu said that Kemp had also promised schools and hospitals. As to the importance of the promises made, Waruwarutu, Tiramorehu and Patuki all alleged, in effect, that but for these promises (including a final payment also said to have been promised), the negotiations would not have succeeded.

In the case of Mantell's promises of schools and hospitals during the negotiations for the Murihiku block, the commission only heard evidence from Ngai Tahu. No doubt Mantell would have given evidence had the commission's warrant not expired. Mr Walzl again very usefully summarised the evidence of 13 chiefs who testified on this topic (R7:87A). He pointed out that the evidence of these witnesses was not always clear, with many lapses in their recollection of events. He was also critical of other aspects. Nevertheless he conceded that there was an overall consistency in the Murihiku Ngai Tahu evidence concerning the promises. Almost all 13 witnesses testified that the promises were made after dissatisfaction had been expressed by Ngai Tahu at the small sum being offered for the land. Several witnesses went on to say, in effect, that the promises had played a significant role in their agreeing to the purchase.

The Smith-Nairn commission reports

19.2.12 The Smith-Nairn commission reported to the governor on 31 January 1881. In doing so it adverted to the fact that in July 1880 further proceedings of the Royal commission were suspended by Native Minister Bryce, who refused to make further funds available. Accordingly, the commissioners were unable to present a detailed report. Instead, they outlined the opinions they had formed during the inquiry so far as

it had proceeded (M15:194). {FNREF|0-86472-060-2|19.2.12|37} As to Mantell's promises during the 1848 Kemp purchase negotiations, the commission said:

It cannot be supposed that, with respect to the promises to establish schools and hospitals, and to promote their welfare generally, it was understood that these promises were to be completely and finally fulfilled immediately on the cession of their land; that hospitals and schools would be built and established forthwith; and that other provision for their needs would be then made as promised. It must have been meant and understood that these promises were only to be completely fulfilled in the future; that is, as the settlement of the land by the pakeha advanced, and funds accrued from its sale to European settlers...

We think it must be admitted that those promises remain unfulfilled. (M15:195) {FNREF|0-86472-060-2|19.2.12|38}

In respect to the Murihiku purchase, the commission noted that its inquiry was not complete. But it felt able to say:

It would...appear that similar promises [to those made by Mantell in the Kemp purchase] with respect to schools, hospitals and other advantages were made to the sellers for the purpose of inducing them to part with their land. (M15:197) {FNREF|0-86472-060-2|19.2.12|39}

The commission proposed that a fund be established, the income from which could be used in supplying medical aid, establishing and supporting schools and other forms of assistance to Ngai Tahu (M15:196). {FNREF|0-86472-060-2|19.2.12|40}

19.2.13 The long and arduous inquiries of the Smith-Nairn commission, which traversed the lengthy evidence that we, more than 100 years later, have again had to go over, were to no avail. Their recommendations languished and during the 1880s we find the same melancholy outcome as in the preceding decade: endless debates and procrastination by the appointment of further parliamentary select committees and Royal commissions, none of which resulted in any remedial action or compensation in respect of the unfulfilled promises. We can refer only briefly to the sorry history of the failure of successive governments to face up to their obligations and to act in accordance with the principles of the Treaty of Waitangi and the partnership it represented. Thus, on 25 August 1882, the Native Affairs Committee reported on a petition of H K Taiaroa and I Tainui, holding that schools and medical attention had been supplied since 1868 fully and, since 1865, partially. But, it said, there were two places, Arowhenua and Moeraki, where Ngai Tahu refused schools in case their acceptance would interfere with their claims. The committee admitted that prior to 1868 there was insufficient attention to the matter and there ought to be some recompense for that.

The first Mackay Royal commission

19.2.14 Four years later, on 12 May 1886, the government appointed Alexander Mackay, by now a judge of the Native Land Court, to be a Royal commissioner to inquire into all cases of "landless natives" and the adequacy of reserves set aside for Maori in the South Island. In addition, Mackay was to ascertain whether any Ngai

Tahu interested in the Smith-Nairn commission were willing to accept a grant of land in final settlement of all claims for the non-fulfillment of any terms and conditions of the purchases in question, and of any promises made in connection with such purchases. Mackay's report of 5 May 1887 is both comprehensive and informative (B3:7/1). {FNREF|0-86472-060-2|19.2.14|41} It discusses many of the central issues and refers to much material which we, over 100 years later, have yet again traversed. We refer more fully to this valuable report in the following chapter (20.2). For the present we note Mackay's findings in respect of the unfulfilled promises as to schools and hospitals.

Mackay found that:

It was meant and understood at the time that the promises were made to the Natives re the establishment of schools and hospitals that special provisions would be made with all reasonable diligence for the establishment of these institutions, and not that they would have to wait until the requirements of the European community rendered them necessary. (B3:7/1:7){FNREF|0-86472-060-2|19.2.14|42}

He concluded that:

seventeen years had elapsed before medical aid was provided or an officer specially appointed to administer Native affairs in the South, and that nineteen years after the date of the purchase the first systematic attempt was made to establish schools. (B3:7/1:8){FNREF|0-86472-060-2|19.2.14|43}

Later he spoke of a misconception on the part of the Native Affairs Committee of 1882:

with regard to schools and medical attendance having been supplied in the past, but especially as regards education, as the schools now in operation in the South Island were conducted (before the Education Act of 1877) under the general scheme of education that obtained in the colony under "The Native Schools Act, 1867," and cannot be considered as special institutions in fulfilment of the original promise, as the Natives would have gained the advantage derivable therefrom even if they had received a more advanced price for their land. The amount spent for medical aid in the southern provinces up to the 31st March 1882, a period of nearly thirty-four years since the date of the first purchase, and twenty-nine years since the date of the second, only amounted to œ2,559 18s. 8d. (B3:7/1:10){FNREF|0-86472-060-2|19.2.14|44}

Among other recommendations Mackay proposed that 100,000 acres be set apart as an endowment to promote the welfare of Ngai Tahu.

Further parliamentary inquiries

19.2.15 Next followed the inevitable parliamentary consideration of the Royal commissioner's 1887 report. This time it was to be by a joint committee of both chambers. The committee began by investigating Kemp's purchase. On 22 August 1888 it reported:

in consequence of the extensive range of inquiry necessitated by the nature of the case, the voluminous documentary evidence affecting it, and the fact that the labours of the Committee did not begin until the 23rd June, it has been found impossible to enter upon the investigation of the Otakou, Murihiku and Akaroa purchases...

As it is impossible to do justice to the importance of the inquiry during the remaining part of the present session, with which the functions of the Committee end, the Committee recommend that at the beginning of the next session of Parliament a similar Committee should be appointed, so that the inquiry into the Ngaitahu case may be completed, and the other cases also undertaken. (A9:9:1){FNREF|0-86472-060-2|19.2.15|45}

In an "epitome" to the Ngai Tahu (Kemp's purchase) case it detailed the numerous earlier hearings and inquiries concluding with Mackay's 1887 comprehensive report. Despite its admitted inability to complete its inquiry into the Kemp purchase it concluded its epitome by saying that:

The foregoing review of the question seems to establish that no reserves of land have been made which have not been fulfilled, and that at the negotiations no promises of tenths were made or held out. (A9:9:5){FNREF|0-86472-060-2|19.2.15|46}

In coming to this conclusion the committee virtually dismissed Mackay's report. The joint committee recited the history of promises regarding schools and hospitals but reached no conclusion on the question of their non-fulfillment. Mackay, by contrast, had come to a very clear view on this matter and had made appropriate recommendations. These appear not to have been considered by the joint committee.

19.2.16 In June 1889 a further joint committee of both legislative chambers was appointed to report on claims as to unfulfilled promises in respect of reserves actually made, and further reserves promised; schools, hospitals and constant solicitude for Ngai Tahu welfare. In its report of 10 September 1889 it concluded that more land should be provided where the present holdings were insufficient to provide Maori a livelihood (M17:I:2:1-10).{FNREF|0-86472-060-2|19.2.16|47} It continued:

The Committee are satisfied that the educational provision is now, and has been for a number of years, sufficient for the children of Ngaitahu, and that, however much it may be regretted that the provision for the education of the tribe was not begun earlier, it is impossible to assess pecuniary loss arising from failure to fulfil assurances under this head.

As regards hospitals, the Committee find that separate hospitals have never been provided for Ngaitahu, but that the public hospitals are open to Natives equally with Europeans. Medical attendance for Ngaitahu appears to have begun prior to 1864, and has continued to a greater or less extent to the present time.

For a number of years Ngaitahu was looked after on behalf of the Government by specially-qualified persons. The condition of the Natives during that period was at any time easy of ascertainment.

This arrangement was practically ended in 1880 as regards resident officers, and entirely so in 1884; and, although it appears that cases of distress would be more or less relieved if brought under the notice of the Native Office, there cannot be said to be any inspection or any regular means of knowing whether distress exists or not. As a matter of fact, the Native Department is ignorant of the condition of the Ngaitahu, and under existing circumstances can only know of it in the most accidental manner. (M17:I:2:2){FNREF|0-86472-060-2|19.2.16|48}

The committee then put forward suggestions for a "final settlement" of the case. It concluded that the only practical and effective solution would be for a careful inquiry to be made into:

the condition of the Ngaitahu Natives; and, if it be found that any have not sufficient land to enable them to support themselves by labour on it ... to make further provision by way of inalienable reserve to meet such cases. (M17:I:2:2){FNREF|0-86472-060-2|19.2.16|49}

The committee also called for the appointment of suitable officers to report to government from time to time on the condition of Maori, and submit appropriate recommendations. Such reports to be laid before Parliament.

As to Murihiku, the committee found it to be clear that assurances of schools, hospitals and other advantages had been given. They therefore considered their recommendation regarding Ngai Tahu in the Kemp block should also be applied to Murihiku Ngai Tahu.

So yet another investigation was called for. The committee appeared to ignore evidence from the under-secretary of the Native Department that special medical arrangements were by 1889 confined to three part-time medical officers who were inaccessible to many Ngai Tahu. The new inquiry proposed side-stepped the issue of unfulfilled promises as to schools and hospitals.

The second Mackay Royal commission

19.2.17 Following the various joint committee reports, none of which in themselves gave any relief to Ngai Tahu, Judge Alexander Mackay was asked yet again to make an investigation and report. However his warrant as Royal commissioner expressly limited his inquiry to the claims of those who were unprovided with land. In his report of July 1891 (A9:II:7){FNREF|0-86472-060-2|19.2.17|50} Mackay pointed out that because of his very narrow terms of reference it would be necessary for him to furnish a supplementary report dealing (yet again) with long-standing and unmet Ngai Tahu grievances including those relating to unfulfilled promises of schools and hospitals. The commissioner's supplementary report was made on 16 July 1891 (C2:17:3). {FNREF|0-86472-060-2|19.2.17|51} In this report Mackay referred to Ngai Tahu's complaint that the recommendations of neither the 1879 Smith-Nairn Royal commission nor the 1887 Mackay Royal commission had yet been fully considered. He further pointed out that the making of provision for landless members of the Maori community did not comprise all they were entitled to expect in fulfillment of past promises. Later in his report Mackay discussed the reasons for Ngai Tahu's poverty:

The settlement of the country by the Europeans in the early days was looked on with considerable satisfaction by the Natives in the South Island, as it relieved them from the constant dread of hostile attack from the northern Natives; but long experience has proved to them that the colonization of the country is not an unmixed blessing, as it has deprived them of all their privileges and forced them to adopt a mode of life unsuited to their former habits, and under circumstances that keep them in a chronic state of poverty. Formerly they could obtain readily all the food and clothing they required; now they are obliged on scanty means to eke out a precarious livelihood; while the Europeans, who have possessed themselves of the territory that was once theirs, are living in affluent circumstances as compared with themselves. It is no wonder, therefore, that they feel disappointed and dissatisfied with their lot. (C2:17:5) {FNREF|0-86472-060-2|19.2.17|52}

The commissioner also found that "The medical aid afforded the Natives has also been of a partial character, many of the settlements not participating in the advantage" (C2:17:5). {FNREF|0-86472-060-2|19.2.17|53} Examples were given of heavy expenses incurred by Ngai Tahu in obtaining medical aid away from the principal towns. Problems of schooling were also noted. Not surprisingly, given the parlous condition of the people which his report discloses, Mackay again recommended, as he had done in his major 1887 report, that adequate land be set aside as an endowment for Ngai Tahu, to relieve their condition and assist in meeting unfulfilled promises. His recommendation has never been implemented.

Ngai Tahu fail to secure redress

19.2.18 We recall that the first (inconclusive) inquiry into Ngai Tahu grievances about unfulfilled promises was made by a parliamentary select committee in 1872. We have chronicled the long series of subsequent inquiries, over 20 years, none of which resulted in any relief to Ngai Tahu. Is it any wonder that 100 years later Ngai Tahu should again seek from the Crown some recompense for the deprivation and sustained marginalisation which has resulted from the failure of the Crown to honour promises made 150 years ago? Promises of course, which relate not merely to the provision of schools, hospitals and other assistance, but to the totally inadequate reserves left Ngai Tahu as a result of the Crown's failure to honour the terms of various deeds of purchase, or to ensure the provision of adequate land for the present and future needs of the Ngai Tahu people.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Land Report

19 Schools and Hospitals

19.3 The Nature and Extent of the Promises

19.3. The Nature and Extent of the Promises

19.3.1 There can be no real doubt that promises that the Crown would provide schools, hospitals and general assistance to Ngai Tahu were made by at least Mantell in respect of both the Kemp and Murihiku purchases. The tribunal's lengthy recital of the numerous investigations of parliamentary select committees, Royal commissions and commissions of inquiry put this beyond dispute. But the question was raised by Mr Walzl in the course of well-researched and exhaustive evidence, as to just what was promised by Mantell in 1848 and 1852. Mr Walzl suggested that, over the years, the nature of the promises and their significance had undergone a change in the minds of both Mantell and Ngai Tahu. To substantiate this the evidence of both Mantell and the Ngai Tahu chiefs was closely analysed by Mr Walzl.

As earlier indicated, the claimants have made only one specific claim as to schools and hospitals, and that within the context of the Murihiku claim. But the Smith-Nairn commission evidence of both Mantell and Ngai Tahu, as Mr Walzl himself demonstrated, clearly extended to the making of such promises in respect of the Kemp purchase.

Counsel for the claimants submitted that the promises were made as part of the transaction: being collateral warranties or collateral agreements (W1:207). But counsel for the Crown argued that it had not been proved that definite contractual promises were made and were deliberately broken. We could spend much time traversing the detailed analysis of the evidence given over the span of some 40 years on the nature and extent of the promises, but we doubt if it would prove profitable.

Instead we will start by citing certain conclusions reached by Mr Walzl:

The answer to the problem of where the promises featured in the Ngai Tahu land purchases probably lies somewhere between Mantell's later descriptions and informal Government welfare policies. The promises may not have been part of the contractual negotiations as such, merely general inducements for land-selling which became promises at a later period when the lack of Government action in the South Island became apparent. Or they may have been general comments on the benefits that the European settlement would bring subsequent to the sale, benefits which, for Ngai Tahu, did not arrive. (O20:46)

19.3.2 Before commenting on these observations we should recall the manner in which, as we have demonstrated elsewhere in this report, Mantell conducted his negotiations with Ngai Tahu. He conceded by way of reserves not an acre more than he felt compelled to do. He denied many of the legitimate requests of Ngai Tahu. In

the case of Kemp, he met constant complaint as to the nominal purchase price of £2000 for 20,000,000 or so acres; in the case of Murihiku he settled on a price of £2600 for some 7,500,000 acres, again against the legitimate hopes and aspirations of Ngai Tahu for a more realistic price. It is difficult to believe that Mantell was not genuine when he told the Smith-Nairn commission that, "whenever difficulties arose on the part of the natives", he constantly repeated to them the assurance he had received from Lieutenant-Governor Eyre, that the "main consideration" that they would receive for their lands was not the small amount of money given them by the government, but would consist in the enhanced value of their reserves, and the schools and hospitals which the government would establish for them (R7:37-38). {FNREF|0-86472-060-2|19.3.2|54} In the light of this evidence the tribunal is unable to accept Mr Walzl's last-mentioned suggestion that Mantell's promises may have been simply "general comments on the benefits that the European settlement would bring subsequent to the sale".

Having said that, the tribunal does not find it necessary to decide whether, as the claimants argued, the promises were part of the contractual arrangements as such, or alternatively, in Mr Walzl's terms, "merely general inducements for land-selling which became promises at a later date when the lack of government action in the South Island became apparent". In our view it is sufficient if the promises were in the nature of inducements to Ngai Tahu to consummate the respective purchases. There is a very real danger of cloaking this discussion with legal concepts and fine semantic distinctions which, at the time the promises were made, would not have been in the minds of either Mantell or the Ngai Tahu participants. We remind ourselves of Lord Normanby's instructions of 14 August 1839 to Captain Hobson that:

All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern [his] transactions with them for the recognition of Her Majesty's sovereignty in the Islands. (A8:I:15){FNREF|0-86472-060-2|19.3.2|55}

The tribunal cannot accept that Ngai Tahu, to whom these promises were made by an accredited Crown commissioner acting on behalf of the Queen's representative, would have had in mind fine distinctions between collateral warranties or conditions on the one hand, and inducements on the other. The very concepts would be foreign to them. We cannot believe that Mantell's promises, given the minimal price and minuscule reserves which he insisted on, were not influential in the minds of Ngai Tahu. Indeed the tribunal is satisfied that they were intended to be influential. So much was recognised at an early stage by Governor Browne in his statement to Labouchere, colonial secretary, of 9 February 1857:

I am satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial government have been held out to the Natives to INDUCE THEM TO PART WITH THEIR LAND. (O21:57-58){FNREF|0-86472-060-2|19.3.2|56} (emphasis added)

Clearly Browne accepted that Mantell's promises were made as inducements to Ngai Tahu to persuade them to part with their land. He was close in time to these events.

The tribunal is unable to dissent from his informed view; indeed it would be wrong and capricious for us to do so.

19.3.3 Ngai Tahu were anxious to become involved in the new economy which would result from settlement; the provision of schools and hospitals would clearly assist them. We find that the honour of the Crown and the requirement of good faith required it to honour the unfulfilled promises. Successive parliamentary committees and commissions of inquiry recognised an obligation on the Crown to do so. Judge Alexander Mackay was surely right when he proposed in 1887, and reiterated in 1891, that the Crown should make a substantial and permanent endowment of land, the income from which would be used to ameliorate the distressing condition of Ngai Tahu, a condition which was the result, in part at least, of the failure on the part of the Crown over several decades to honour the promises made to Ngai Tahu in 1848 and 1852.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Land Report

19 Schools and Hospitals

19.4 The Extent to Which the Promises were Met

19.4. The Extent to Which the Promises were Met

19.4.1 It is apparent from our earlier discussion that Mackay was satisfied as late as 1891 that the Crown had failed to compensate Ngai Tahu for its unfulfilled promises. But it is desirable that we should now refer briefly to the detailed evidence which we received, from Crown witnesses in particular, as to the extent to which schools, hospitals and medical aid were in fact provided for Ngai Tahu in the first 40 or so years after the Kemp and Murihiku purchases.

Schools

19.4.2 In 1847 an Education Ordinance was passed by the New Zealand Legislative Council on Grey's initiative. It was applicable to both races although Grey proposed initially to apply it chiefly to the education of Maori and half-caste children (M20:6). {FNREF|0-86472-060-2|19.4.2|57} Funds were made available to the Anglican, Roman Catholic and Wesleyan churches. Dr Barrington, a Reader in Education called by the Crown, told us that all the activity under the 1847 Ordinance took place in the North Island except for some assistance to a school at Motueka in 1852. Ngai Tahu received no benefit at all from the Ordinance.

From the coming into force of the Constitution Act 1852 early in 1853, the six provincial councils assumed responsibility for education. But Dr Barrington testified that there was little evidence that the Canterbury or Otago provincial governments took specific steps to provide for the education of Maori children in those provinces (M20:14). He cited the following passage from a memorandum of 9 March 1868 by the superintendent of the Otago Province to the colonial secretary:

The question of providing schools for the Maori population HAVING BEEN REPEATEDLY BROUGHT UNDER THE NOTICE OF THE GENERAL EDUCATION BOARD OF THIS PROVINCE, and understanding there is a rate for the General Assembly at the disposal of the colonial government available for this purpose-I have the honour to submit on behalf of the Education Board its willingness to undertake the administration of this fund for the establishment of schools at the Native villages of Taieri, Otago Heads and Moeraki. I may state that the Education Board has the control of upward of sixty schools throughout the province and that it should be entrusted with the establishment and management of schools for the Maori population. Such schools will participate in the same successful administration which has hitherto characterized the education system of the Province. (M20:15){FNREF|0-86472-060-2|19.4.2|58} (emphasis added)

As Dr Barrington noted this still represented, as late as 1868, only an intention to provide schools for Maori pupils on the part of the provincial council (M20:15). Settler prejudice denied access to some Maori children living close to provincial schools and in some cases this was aggravated by Maori indifference to education (M20:16). In May 1868 the secretary to the Otago Education Board told the provincial secretary that:

nearly all the Native settlements are beyond the reach of our ordinary district schools and I am hopeful that by and by the Native Department will establish schools at Otago Heads, Taieri and Waikouaiti. (M20:16) {FNREF|0-86472-060-2|19.4.2|59}

19.4.3 Dr Barrington's investigations did not reveal any involvement by the New Zealand government in assisting Maori education between 1848 and 1858. In 1858 the Native Schools Act was passed. This Act granted an annual sum of £7000 for a term of seven years for Maori education. Assistance was, however, limited to schools run by religious bodies. The effective operation of the Act was between 1858-65, after which the New Zealand wars closed the schools. But all of the schools which received assistance under this Act were situated in the North Island. The sum of £200 was, however, granted by Governor Browne towards a school for Maori purposes at Kaiapoi. This was later supplemented by a further grant of £200 from central government, £250 from the provincial government and £50 from Ngai Tahu's Kaiapoi road compensation money. In addition, materials and labour equivalent to £50 were given. Dr Barrington recorded that this government assistance to the Kaiapoi school is the only real example of central government assistance to Maori education in the South Island prior to 1868 (M20:18-19). Sporadic efforts were made by missionaries or other well-disposed private citizens to operate schools for Ngai Tahu children, but by 1868 Mackay was still reporting extensive failure to provide for the education of Ngai Tahu children (M20:20-21). In 1874 Mackay confirmed that in the South Island "no schools were established until 1868, excepting one at Kaiapoi" (M20:22). {FNREF|0-86472-060-2|19.4.3|60}

19.4.4 The Native Schools Act 1867 provided for the development of a national system of Maori state primary schools under the control of the Native Department. Under this Act, Maori were to provide the school site, of not less than one acre, and in addition to meet:

- half the total expenditure on buildings and repair;
- a quarter of the teacher's salary; and
- a quarter of the cost of school books.

Dr Barrington pointed out that in many parts of New Zealand the Maori desire for schools was not being met. He cited an inquiry made by Alexander Mackay to the under-secretary, Native Department, on 22 January 1868:

May I beg to inquire what action the Government contemplates taking with regard to the payment of fees in these schools (Arowhenua, Waimatimati, Waikouaiti), whether it is proposed to be guided entirely by the 1867 Act or whether, in consideration of the promise held out to the Natives of the Southern Provinces, in the

cession of their lands to the Crown, the Government will be required to pay the entire cost of the education of their children. I would beg to point out, while on the subject that the Natives themselves, as a rule, are too poor to contribute for the education of their children with any degree of certainty, and if the payment of the Government subsidy is to be based on their complying with the conditions of the Act, it will be tantamount to a breakdown of the whole scheme. (M20:26) {FNREF|0-86472-060-2|19.4.4|61}

The inability of many Maori to make the substantial contribution to the establishment and running of their schools resulted in an amendment in 1871 to the 1867 Act. This gave the governor-in-council authority to vary the financial contribution of Maori depending on local circumstances.

It is clear from the foregoing discussion that for 20 years at least, following the Kemp purchase in 1848, apart from the single instance of Kaiapoi, central government failed completely to honour the promises of schooling for Ngai Tahu. Moreover, settler hostility continued after 1867 to the admission of Maori children into public schools (M20:28-30). This prejudice was increasing in 1915 (M20:47).

19.4.5 We turn now to the development of Maori schools after 1867. School sites for South Island Maori were obtained in various ways. Dr Barrington found that some sites were declared Crown land. Others were part of Maori reserve land. Others were gifted by Maori to the Crown. Others again were purchased from Maori ownership (M20:31-32).

By 1878 eleven state Maori schools had been established in the South Island under the 1867 Act, at Rakiura (Stewart Island), Molyneux, Riverton, Otago Heads, Waikouaiti, Kaiapoi, Wakapuake, Wairau, Waikawa, Arahura and Wairewa. But local Ngai Tahu in many cases made a substantial contribution. We cite a few examples:

- At Otago Heads Ngai Tahu built both the school and the school house on a church reserve. Later the sum of œ286 was granted towards the house and additions and improvements to the school (M20:32-33).
- At Riverton the school, opened in 1868, was originally a church built at the joint expense of government and Ngai Tahu, the former paying œ120 and the latter the cost of the materials. A later addition was provided by government (M20:36).
- At Port Molyneux Ngai Tahu provided land for a school and erected the school house, described in 1879 as a "mud-walled building, thatched with rushes, about 15 ft x 10 ft...". {FNREF|0-86472-060-2|19.4.5|62} On 19 March 1880 government offered to pay three quarters of the cost up to œ100 for a new building. The teacher reported that the Maori considered the government "under a promise to provide the whole amount for school buildings". On 6 April 1880 the secretary to the Otago Board of Education described the school as a "most wretched clay hovel utterly unfit for a school or for the shelter of any living animal". A new school was erected in 1880 (M20:37-38).
- At Arahura the school was opened in October 1874. The whole of the cost was borne not by government, but by the Greymouth native reserve fund. The government

contributed only half the teacher's salary leaving the balance to be paid out of the Native Reserve Fund.

While in some cases, such as the Little River school, the government appears to have borne the whole cost of erecting the school, it is apparent that in others Ngai Tahu, despite promises made up to 30 years earlier, had been obliged to make a substantial contribution towards the capital cost of the buildings, and in some cases towards the teacher's salary. Dr Barrington advised us that:

Even after the passing of the 1871 Amendment to the 1867 Act, right up to and even beyond the passing of the 1877 Education Act which established free, compulsory (except for Maori) and secular state [primary] education, Maori parents were frequently required to make a variety of financial contributions to the development of schools. The amount often seemed to depend on the discretion of the Inspector; he attempted to estimate the capacity of the people to pay and then set fees or contributions to the building of schools accordingly.

What I do find extraordinary is that even after 1877, Maori parents were still sometimes asked to make financial contributions to the cost of new school buildings (See Port Molyneux 1880). Indeed the requirement that Maoris wishing to have a school in their community should 'make such contribution in money or in kind towards the cost of school buildings as the Minister may require', was preserved in the Native School Code, 1880.

There [were] also occasions, (such as at Rapaki in 1877) where the Government remained reluctant to provide the expenditure required for school construction. I doubt very much if a similar reluctance would have been tolerated or accepted in relation to the educational needs of a similar number of Pakeha children ('30-40' according to the Maoris; 'upwards of 20' according to Stack). (M20:55)

It is not possible to find the Crown's record in the provision of schools for Ngai Tahu in the three decades following the Kemp and Murihiku purchases as being consistent with good faith and honourable dealing with its Treaty partner.

Hospitals and medical aid

19.4.6 Mr Walzl, for the Crown, gave carefully researched evidence of government health measures for Ngai Tahu. He dealt first with the Dunedin hospital and then with other health provisions (O20:49-76).

Dunedin hospital

19.4.7 During his visit to the new settlement of Dunedin in November 1850, Governor Grey pledged central government support for a hospital in Dunedin. The promise, according to Resident Magistrate A Chetham-Strode, was made to Ngai Tahu in response to an urgent request from them. Whether this request, and Grey's response, were a result of Mantell's 1848 promises is not known. As Grey also provided funds for hospitals in Auckland, New Plymouth and Wellington in the North Island, this may have been part of his then policy. Early in 1853 a Dr Williams, the district coroner, was appointed provincial surgeon, to the annoyance of the Otago Settlers'

Association. The association complained that if a hospital was to be for Ngai Tahu it ought to be on one of their own reserves and not in Dunedin (O20:52).

In 1856, in response to demands by the Otago Provincial Council, the hospital was formally taken over by the province, the central government to pay for the cost of any Ngai Tahu patients. Over the next three years such payment amounted to all of œ5 (O20:54). {FNREF|0-86472-060-2|19.4.7|63} In January 1856 Tiramorehu wrote to Governor Browne asking that Dr Williams be appointed doctor for all Maori from Murihiku to Waitaki. In July and September 1857, in letters to Mantell, Ngai Tahu urged the building of a hospital. Mr Walzl observed that they obviously did not feel part of the system and the fragmentary evidence shows only a low level of usage by Ngai Tahu of the Dunedin hospital. Two patients were admitted in 1860 (O20:54-55). Later, general hospitals were built at Invercargill and Riverton which were also used by Ngai Tahu, but to what extent is not known.

Other Ngai Tahu health measures 1860-1890

19.4.8 Before 1860 medical assistance for Ngai Tahu was limited. At the mission stations at Ruapuke and Kaiapoi it is likely that the clergy administered some medical assistance, but Mr Walzl stated that no formal or regular government measures were made for Ngai Tahu before 1860. When Mantell became native minister in July 1861, however, he requested a report from Walter Buller on what medical arrangements could be made for Ngai Tahu in Canterbury (O20:57). In 1862 two part-time medical officers were appointed to visit Kaiapoi and Banks Peninsula respectively. But no medical officers were appointed for Otago or Southland Ngai Tahu during this period (O20:58-59). Mr Walzl pointed out that Mantell's request in 1861 was for proposals for medical aid, not the provision of hospitals. Whereas in FitzRoy and Grey's time hospitals had been seen as the chief means of meeting Maori health needs, the remoteness of many Maori kainga from European settlements led to an emphasis on a medical officer system.

From 1860 through to 1890 the provision of medical assistance to Ngai Tahu by central government varied considerably from time to time depending on the political whim or concern of the government of the day. And governments changed frequently. Thus, when Mantell again became native minister in 1864, he stimulated further action. During his ministry, part-time medical officers were appointed at Timaru and Riverton. The Timaru doctor was to visit Arowhenua weekly and Waimatamate on urgent cases. In 1865 Hunter Brown recommended a hospital at Waikouaiti and a single sick room at Otago Heads. But with Mantell's departure from office a new period of Maori policy would seek the dismantling of the Native Department and the limited services it provided. This trend was to continue for the next three and a half years (O20:63). The three ministers who succeeded Mantell; FitzGerald, Russell and Richmond, all participated in allowing the department to run down. Mr Walzl reported that they were notably successful in reducing medical officers available to Ngai Tahu. Dismissals and salary reductions were put in place. During the period of three and a half years no more doctors were appointed to assist Ngai Tahu in Canterbury, Otago or Southland (O20:64). An exception occurred at Invercargill. In 1868 the government agreed to a request from the provincial hospital at Invercargill for a subsidy for Maori patients treated there. It seems some Ngai Tahu were using the hospital (O20:65).

19.4.9 In June 1869 Donald McLean became native minister. Unlike his three immediate predecessors he was an activist. He reversed the policy of curtailing the provision of medical aid to Maori, including Ngai Tahu. This brought some improvement to Ngai Tahu's situation. The services of a doctor at Riverton continued and in addition central government made a regular contribution of œ50 to Invercargill hospital (plus a payment of œ100 arrears) to meet Ngai Tahu needs for hospital treatment. Even the Reverend Wohlers at Ruapuke was given a œ15 allowance for drugs.

In 1870 subsidies were paid to doctors to attend Ngai Tahu at Timaru, Arowhenua and Waimatamate, replacing the single doctor at Timaru who had resigned. However the rest of Canterbury did not fare so well. It seems that through much of the 1870s no subsidised medical assistance was available on Banks Peninsula (O20:66). Likewise, in Kaiapoi, the Reverend Stack was paid œ50 to meet half the cost of Ngai Tahu medical bills, unless they were in real need. During the McLean period, which came to an end late in 1876, no Maori hospitals were erected.

19.4.10 In October 1877 John Sheehan, who replaced Daniel Pollen as native minister, reversed Pollen's retrenchment of the department. He reinstated some medical officers. Under Bryce, who became native minister in 1879, Ngai Tahu health measures did not suffer. Mr Walzl suggested this may have been, in part at least, because the Smith-Nairn Royal commission commenced hearings in 1879, and unfulfilled promises were within their terms of reference. But by 1883 it appears there was only one government subsidised doctor in Canterbury, and no hospital contributions were now being made (O20:69-70). In Otago, an area which had been neglected by government for some time, the subsidy of œ50 was paid to a doctor, and this arrangement continued until 1885. In Southland, where Mr Walzl considered there had been, since the mid-1860s, "rather good coverage in terms of medical attendance", the position changed. Although the Riverton appointment was maintained, the Reverend Wohler on Ruapuke lost his drug subsidy, and subsidies to Riverton and Invercargill hospitals ceased. Under Ballance, from 1884-1887, subsidised health schemes for Ngai Tahu were further reduced or refused (O20:71). Mr Walzl noted that the 1891 Middle Island Land Commission (the second Mackay commission) revealed that other areas of Ngai Tahu were similarly deprived which resulted in great hardship (O20:72).

19.4.11 It is clear from the foregoing that Ngai Tahu received no government assisted medical aid until 1861, and then only in varying degrees until the turn of the century. Apart from the relatively benign situation at Riverton, which occurred at a comparatively late period, it is apparent that Mantell's promises were not adequately honoured by the Crown. In response to a claim made on behalf of the claimants, that the government's record on the provision of medical services to Ngai Tahu was "half-hearted at least", Mr Walzl commented:

despite the short-term benefits which Ngai Tahu gained, the Crown efforts in both education and health were woefully inadequate. (R7:122)

The tribunal entirely agrees with this assessment of successive governments' performance over the three to four decades following Mantell's promises in 1848 and 1852. They were indeed woefully inadequate.

Ngai Tahu Land Report

19 Schools and Hospitals

19.5 Conclusions

19.5. Conclusions

19.5.1 It remains for us to state our conclusions on Ngai Tahu's grievance, that the Crown failed adequately to fulfill Mantell's promises as to schools and hospitals. We have found that these promises were made by Mantell to induce Ngai Tahu to part with their land in the Kemp and Murihiku purchases. We have further found that, given the grave dissatisfaction of Ngai Tahu chiefs both with the price and the totally inadequate extent of the reserves proposed or insisted on by Mantell, that the prospect of the provision of schools, hospitals and other government assistance constituted material inducements to Ngai Tahu to sell their lands, many millions of acres in extent.

In our earlier discussion of relevant Treaty principles we emphasised that when exercising its pre-emptive right to purchase Maori land, all such dealings were to be conducted on the basis of sincerity, justice and good faith (4.7.8).

Ngai Tahu willingly acceded to the Treaty of Waitangi. The Treaty signifies a partnership and requires the Crown and Maori partners to act towards each other reasonably and with the utmost good faith. The honour of the Crown lies at the heart of the Crown's Treaty relationship with its Maori partner. Mr Justice Richardson has pointed out that:

Where the focus is on the role of the Crown and the conduct of the Government that emphasis on the honour of the Crown is important. {FNREF|0-86472-060-2|19.5.1|64}

Findings as to grievance no 5 (Murihiku)

19.5.2 We find that the Crown, in acquiring land from Ngai Tahu was obliged by the Treaty of Waitangi to conduct its dealings on the basis of sincerity, justice and good faith. Promises made by the Crown's representative to Ngai Tahu to induce them to sell their lands should have been fulfilled by the Crown, and fulfilled promptly. Good faith, fair dealing and the honour of the Crown required no less. But, as we believe the evidence overwhelmingly shows, the Crown failed to meet these tests. Intermittent and long-delayed efforts were made partially to meet the Crown's obligations. To this day Ngai Tahu have not been compensated for the failure of the Crown adequately to meet its Treaty obligations in respect to the promises of schools and hospitals. In those early years, when the provision of these amenities would have made a significant contribution to the advancement of Ngai Tahu, they were left, over a considerable period, largely neglected and forgotten, or ignored. It is not too late for this omission to be repaired. We believe that the remedy proposed as long ago as 1887, by Royal Commissioner Judge Mackay, that a substantial endowment of land be secured to Ngai Tahu, would go far to right so many years of neglect.

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