

# Ngai Tahu Land Report

## 22 Ngai Tahu's Search for Redress and the Crown's Response--An Overview

### 22.1 Introduction

Chapter 22

NGAI TAHU'S SEARCH FOR REDRESS AND THE CROWN'S RESPONSE - AN OVERVIEW

#### 22.1. Introduction

In chapters 5 to 16 the tribunal reviewed the eight Crown purchases from Ngai Tahu. We concluded that these resulted in the near total denial of Ngai Tahu's rangatiratanga, their confinement to a handful of totally inadequate reserves, and the inevitable tribal disintegration and impoverishment of a proud and loyal tribe. In chapter 17 the tribunal has found that the Crown failed to take appropriate measures to preserve and protect Ngai Tahu's mahinga kai and to provide sufficient reserves to allow Ngai Tahu to participate in the developing economy.

In chapters 18 to 21 we have investigated the consequences of the purchases for Ngai Tahu, their unremitting search for redress and the Crown's response to Ngai Tahu's pleas for justice-for the Crown to honour its obligations under the various purchases.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 22.2 The Crown's Response

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22.2.1 How did the Crown respond? In 1872 the first parliamentary select committee met, came to no final conclusion and called for further inquiry. From then on through to 1920 at least 17 inquiries were held into Ngai Tahu grievances as to unfulfilled promises or their landless state. Most of these inquiries were carried out by parliamentary select committees, in some instances joint committees of both Houses. In only one case, in 1910, did a parliamentary select committee make a recommendation that government accord a Ngai Tahu petition favourable consideration. No action was taken by the Crown on that recommendation for 10 years, and then only to constitute another inquiry. In all other cases the select committees either rejected Ngai Tahu's grievances or proposed that a commission of inquiry investigate them further. It is a story of seemingly endless delay and procrastination.

22.2.2 The Smith-Nairn Royal commission was appointed in 1879. In 1880, after carrying out an extensive investigation, its funds were cut off. Its attenuated report recommending substantial relief to Ngai Tahu was completely ignored by the Crown. Its evidence was left to gather dust in Parliament's vaults.

In 1886 the first Mackay Royal commission was appointed. Judge Mackay made a thorough investigation and wrote a comprehensive and persuasive report. He found grave injustice had been done to Ngai Tahu. He recommended substantial relief. His report was ignored; none of its recommendations were implemented. Notwithstanding this, in 1891 Judge Mackay was again appointed a Royal commissioner to inquire further into the condition of the Ngai Tahu people and to ascertain if any of them had insufficient land. This he had already done in 1886-87.

Mackay reported that 44 per cent of Ngai Tahu had no land, 46 per cent had insufficient, and only 10 per cent had sufficient land, that is, 50 acres or more. Mackay confirmed the views and recommendations he had made in his 1887 Royal commission report for a substantial endowment and significant grants of additional land for the Canterbury and Murihiku people.

The Crown's response to this was to appoint yet another commission, comprising Judge Mackay and Surveyor-General Smith, to compile a list of landless Maori and assign sections of up to 50 acres to them within government allocated blocks. This took nearly 12 years, partly because of the size and complexity of the task, but more importantly because the commissioners were obliged to do virtually all the work in

their own time, outside official hours. Such was the low priority assigned by the Crown to this work. The result was the South Island Landless Natives Act 1906.

Unfulfilled promises as to schools, hospitals and general welfare

22.2.3 The tribunal proposes briefly to consider the outcome of each of the three broad heads of Ngai Tahu grievances. We look first at the promises made on behalf of the Crown as to schools, hospitals and general welfare. The evidence shows that such promises were made to Ngai Tahu by at least Mantell, in respect of both the Kemp and Murihiku purchases.

Schools

22.2.4 Detailed evidence from Crown witness Dr Barrington, a university reader in education, catalogued the history of neglect and occasional partial compliance with its obligations in the provision of schools for Ngai Tahu. The tribunal has concluded that it is not possible to find the Crown's record in this respect, in the three decades following the Kemp and Murihiku purchases, as being consistent with good faith and honourable dealing with its Treaty partner.

Health

22.2.5 Another Crown witness, historian Tony Walzl, provided a detailed account of government health measures for Ngai Tahu over the period 1850 to 1890. In response to a claim on behalf of the claimants that the Crown's record was "half-hearted" at best, Mr Walzl commented that despite the short-term benefit which Ngai Tahu gained, "the Crown efforts in both education and health were woefully inadequate" (R7:122). The tribunal subscribes to this view.

General welfare

22.2.6 In an appendix to his main report, Professor Ward discussed Lord John Russell's 1841 instructions to Hobson to ensure there was a fund for Maori purposes of not less than 15 per cent, or more than 20 per cent, of the revenue from the sale of Crown lands. It was this fund which paid the costs of the protectorate until its abolition by Grey in 1846. The Crown historian Mr David Armstrong later provided details of the Crown's policy with regard to endowments in the period 1840 to 1860. This was followed by a commentary by Mr Tony Walzl on how this policy related to Ngai Tahu purchases. This and related topics have been discussed by the tribunal in chapter 5. As we have indicated, the figures provided to us, although far from complete, suggest an expenditure directly on Ngai Tahu of œ4 in 1850, œ10 in 1851 and œ17 in 1852. Only in the year 1859-60 was a significant sum spent on the tribe, with 1058 being of direct benefit to Ngai Tahu (X6:appendix 2:table 5). These expenditures were for welfare matters other than schools and hospitals. It is a sorry record. And yet, as we showed in our discussion of schools and hospitals, Governor Browne in 1857 informed the British colonial secretary Labouchere, 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. (O21:58){FNREF|0-86472-060-2|22.2.6|1}

22.2.7 Just as the Crown failed to meet its obligations in respect of schools, hospitals and other medical services, so it largely failed to honour its promises to care for the general welfare of Ngai Tahu and offer them its protection. The tribunal reiterates its finding (19.5) that the Crown in acquiring land from Ngai Tahu was obliged by the Treaty to honour promises made by the Crown's representatives to induce them to sell their lands. Such promises should have been fulfilled by the Crown and fulfilled promptly. Good faith, fair dealing and the honour of the Crown required no less. Infrequent and long-delayed efforts were made partially to meet the Crown's obligations. But to this day Ngai Tahu have not been compensated for the failure of the Crown to meet its Treaty obligations in respect of these various promises.

### Landless Ngai Tahu

22.2.8 The tribunal has chronicled the long, frustrating, and in the end largely unrewarding record of the Crown to make some amelioration of the distressing situation of so many Ngai Tahu rendered landless by the Crown. When, finally, the South Island Landless Natives Act was passed in 1906, it was found that the landless and near landless Ngai Tahu had been allocated land in some of the remotest areas of the South Island; land substantial parts of which was unsuitable for settlement. Little if any of such land was viable in lots as small as 50 acres. The climate was excessively wet and access in some areas virtually impossible. No wonder so few Ngai Tahu took up the land. Yet the Crown, while well aware of all this, persisted with what had every appearance of a hollow gesture. Nor, when the Gilfedder and Haszard commission of inquiry in 1914 demonstrated the unsuitability of much of the land, did the Crown take remedial action. In the tribunal's view the facts speak for themselves. The tribunal is unable to reconcile the Crown's action (or inaction) with its duty to act in the utmost good faith towards its Treaty partner. The South Island Landless Natives Act 1906 and its implementation cannot be reconciled with the honour of the Crown. The Crown's Treaty breach has yet to be remedied.

### Wider grievances of Ngai Tahu

22.2.9 In our preceding chapter on parliamentary select committees, Royal commissions and commissions of inquiry we considered how the Crown had addressed Ngai Tahu's wider grievances. In particular the tribunal was concerned with the failure of the Crown to ensure Ngai Tahu were left with ample reserves for their present and future needs; their claim for tenths; their grievance that lands they sought to retain were acquired by the Crown; their claim to mahinga kai; and their dispute over certain boundaries and related matters.

As with schools and hospitals and provision for landless Ngai Tahu, so with these grievances the Crown's response was characterised by a series of inconclusive hearings, often by parliamentary select committees. These led in turn to first the Smith-Nairn Royal commission in 1879-81, and then the two Mackay Royal commissions in 1887 and 1891 respectively, whose recommendations for substantial relief were totally ignored by the Crown.

The Crown similarly ignored the favourable recommendation of the Native Land Committee in 1910. It did nothing for 10 years when it referred the 1909 petition of Tiemi Hipi and 916 other Ngai Tahu to yet another body, this time the 1920 commission of inquiry, chaired by the chief judge of the Native Land Court, R N Jones. The commission's favourable recommendation, which related solely to Kemp's purchase, was not acted upon for a further 24 years and then only in part. In all, 35 years had elapsed since Tiemi Hipi petitioned the House of Representatives and the Crown sponsored legislation in 1944. The tribunal has carefully considered but not been persuaded by a submission from the Crown that the claimants are in some way estopped from further relief by the Ngaitahu Claim Settlement Act 1944.

22.2.10 As we have said (21.3.2) the tribunal cannot reconcile the Crown's failure for more than 140 years to meet its obligations to Ngai Tahu with its duty to act towards its Treaty partner reasonably and with the utmost good faith. We reiterate that its record of prevarication, neglect and indifference over so long a period cannot be reconciled with the honour of the Crown. While the payments under the 1944 Act and its subsequent amendment constitute in small measure a recognition of the Crown's obligation to Ngai Tahu, it is no more than that. And in respect of one purchase, albeit the largest, only.

22.2.11 Crown counsel and the several historians and other witnesses called by the Crown made a major contribution through extensive and rigorous research to uncover the facts. Crown counsel and various witnesses freely conceded that the Crown was in default both in its Treaty obligations in respect of the various purchases, especially on the question of inadequate reserves, and in its failure adequately to respond to legitimate post-purchase grievances by Ngai Tahu. The record shows that Ngai Tahu time and time again sought relief for the grave injustices it had incurred at the hands of the Crown, the last occasion being a petition in 1979 on behalf of the Otakou people. Time and time again, Ngai Tahu were rebuffed by the Crown. Yet another unproductive inquiry would be called for. Decade after decade have passed. Generation after generation of Ngai Tahu, largely landless, impoverished, their rangatiratanga unprotected, have sought relief with little success.

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### 22.3 Conclusion

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This tribunal, with the help of counsel and a great many witnesses, an extensive historical record, and lengthy submissions, has attempted to conduct a comprehensive, fair and objective inquiry into Ngai Tahu's grievances. They are not new grievances. They have their origin in the failure of the Crown to treat fairly and honourably with Ngai Tahu both at the time of the purchases and subsequently over almost a century and a half. With the exception of the disputed boundaries Ngai Tahu have established their major land and associated grievances. They are entitled to speedy and generous redress if the honour of the Crown is to be restored. The tribunal would urge, in the interest of all New Zealanders, that the Crown at long last repays its debts to Ngai Tahu. Surely Ngai Tahu have waited long enough.

#### References

{FNTXT|0-86472-060-2|22.2.6|1}1 T Browne to Labouchere, 9 February 1857, G1/43, NA, Wellington

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