

WHAIA TE MANA MOTUHAKE
IN PURSUIT OF MANA MOTUHAKE

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Report on the Māori Community Development Act Claim

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The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known

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Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Te Ururoa Flavell
Minister for Māori Development
The Honourable Michael Woodhouse
Minister of Police
Parliament Buildings
WELLINGTON

5 December 2014

Tēnā kōrua e ngā Minita e noho mai nā i runga i ō kōrua tūnga tiketike. He tokomaha ngā rangatira o Te Kaunihera Māori kua ngaro ki te pō ā, kua kore e kitea i te tirohanga kanohi. He kaupapa tēnei nā ratou i poipoi, i whiriwhiri, i wānanga. No reira ka aroha atu ki a rātou, tae atu ki te hunga nā rātou i tautoko te kaupapa i nga tau kua hipa. Moe mai koutou. Anei rā te pūrongo a Te Roopu Whakamana i Te Tiriti o Waitangi, kua puta mai ki te awatea. Kua tukuna atu ki a kōrua, otirā ki ngā Minita katoa o Te Whare Paremata. Tēnā koutou.

Please find enclosed the Waitangi Tribunal's report on the claim filed on behalf of the New Zealand Māori Council under section 6(1) of the Treaty of Waitangi Act 1975 alleging that the Crown, through Te Puni Kōkiri (TPK), in reviewing the Māori Community Development Act 1962 and the role of Māori Wardens, has acted in a manner inconsistent with the principles of the Treaty of Waitangi. The claimants further claimed that in developing and administering the Māori Wardens Project (MWP) TPK breached Treaty principles by diminishing or excluding the authority of the NZMC and District Māori Councils (DMCs) to administer Māori Wardens in terms of the 1962 Act and in terms of the compact to which that Act gives effect.

In reaching our findings on the claim, we have considered the relevant principles of the Treaty of Waitangi. We are also one of the first Tribunals

Level 7, 141 The Terrace, Wellington, New Zealand. Postal: DX SX11237
Fujitsu Tower, 141 The Terrace, Te Whanganui-ā-Tara, Aotearoa. Pouaka Poutāpeta: DX SX 11237
Phone/Waea: 04 914 3000 Fax/Waea Whakaahua: 04 914 3001
Email/E-mēra: information@waitangitribunal.govt.nz Web/Ipurangi: www.waitangitribunal.govt.nz



to be asked to consider how, if at all, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has informed those Treaty principles, and we give our opinion on the articles of the UNDRIP where relevant.

We have largely upheld the claim and we have concluded, after a full historical review, that the Māori Community Development Act 1962 and its amendments embody a compact that gave statutory recognition and powers to institutions established by the Māori people for their own self-government. This compact was negotiated between 1959 and 1963 by Māori leaders and the Crown. It reflects Crown recognition that Māori rangatiratanga or Māori autonomy and self-government must be protected and provided for at all levels (that is, local, regional and national), as required by article 2 of the Treaty of Waitangi.

We have also traversed the history of the Māori Wardens, and their unique position in the New Zealand legal system prior to and post the 1962 Act. We consider them to be an integral operational component of this system of Māori self-government. But the system of administering the wardens as outlined in the 1962 Act is dated and needs amendment. It has not worked well in all regions. We consider that if the wardens' opinions and perspectives are not given significant weighting in any review, there is little hope of finding a durable solution to the difficult issues that currently face the Māori Wardens movement. They have, in our view, earned the right to some operational autonomy and that should be accommodated.

In chapters 6 to 9 of our report, we have assessed the claimants' specific allegations in light of Treaty principles. We draw your attention in particular to three of our findings.

First, we have found that the Māori Wardens Project was a laudable attempt to provide resources and training for wardens, but that since early 2011 the project has been run without any Māori community oversight. That is clearly inconsistent with the Treaty and has prejudiced the claimants. Also, the project's funding decisions have been made without any input or oversight by Māori. This too is inconsistent with the Treaty.

Secondly, we have found that the Crown has allowed systemic failure in the appointment and reappointment of Māori wardens for many years, and has even accepted unlawful nominations rather than carry out its Treaty obligation, which is to review and repair the system in partnership with the NZMC.

Thirdly, we have found that the Crown breached Treaty principles

when it decided in 2013 to proceed with a TPK-led review of the 1962 Act. We note that the Crown and claimants now agree, as they said at our hearing, that any review and reform of this Act must be Māori-led. But the parties do not agree as to who among Māori should lead the review.

While we have largely upheld the claim, we were struck by the changing nature of the representational landscape for Māori. Many iwi and urban authorities have through the settlement process, achieved a degree of self-government, most limited to their settlement or community assets and members, but others reaching into local and regional government participation and decision-making. Alongside the NZMC, there are other national Māori organisations such as the Iwi Chairs Forum. Despite that, Māori consulted in 2013 during the review of the 1962 Act by TPK, continued to press for there to be a national Māori organisation, be that a modified NZMC or otherwise.

The NZMC should review and refine its role as a result of the changes in Māori representation, so that it continues to complement rather than compete with iwi and urban Māori autonomy. The Crown's role in relation to such a review would be to resource the review process and reach a collaborative agreement on the draft legislation produced by the NZMC, after assuring itself that all relevant representational interests have been consulted and their views adequately captured by the NZMC. We have made some suggestions for the NZMC to consider. In particular, we think that the NZMC should hold a national hui to elect an independent working group, which would then consult the necessary Māori groups and institutions and develop recommendations for the NZMC on the basis of that consultation. The NZMC, we propose, would then draft a Bill and funding proposals for negotiation and collaborative agreement with the Crown.

Finally, we note that for much of its existence the NZMC has been said to be a 'bird without feathers'. Funding is clearly needed. The history of the Māori pursuit of mana motuhake or Māori self-government and autonomy is a long one, but it has often foundered on the rocks of poverty due to lack of adequate support and funding by the Crown.

Therefore, we make the following primary recommendation that:

The Crown accepts that the recognition of Māori self-government and Māori self-determination reflected in the Māori Community Development Act 1962 must remain in legislation, and should underpin all future administration, policy development, and law reform in this area. This is a core feature of the 1962 Act and it should not be detracted from or omitted in any subsequent reforms, only enhanced.

The Tribunal further recommends regarding the NZMC that:

- ▶ any reform of the 1962 Act should be NZMC-led and negotiated with the Crown;
- ▶ should the NZMC determine to do so within the next 12 months, the Crown should agree to fund the development of a strategic direction and consultation process to underpin the NZMC's review of the 1962 Act, including the role of the NZMC and District Māori Councils in light of current understandings of the Māori representational landscape, and to provide technical assistance if sought;
- ▶ following receipt of a draft Bill and the NZMC's report on the consultation, the Crown should satisfy itself that the information provided by the NZMC demonstrates a robust consultation process and suffices for it to fulfil its obligations to the Māori groups that may be affected by the NZMC's proposals, seeking any additional information or assurances through the good offices of the NZMC;
- ▶ the NZMC will lead that process and the Crown (and indeed both Treaty partners) must act reasonably and in accordance with the principle of good faith and cooperation, leading to a collaborative agreement between them on the draft Bill;
- ▶ the Crown should agree that implementation of the consultation process should commence following the triennial elections in 2015 to give the NZMC time to organise all the District Māori Councils; and
- ▶ that the Crown should commit to legislative amendment and funding, as far as is reasonable, to give effect to the resulting strategic direction and to constitute and maintain the structure of whatever national body by consensus is arrived at following the consultation round.

The Tribunal also recommends for the Māori Wardens that:

- ▶ Until the NZMC reports on its strategic direction and the results of its consultation process, and any new legislation is enacted, an interim advisory group or governance board should be established to oversee the operations of the Māori Wardens Project. It would be for this group to decide how best to provide for Māori community oversight of funding, centrally delivered training, and all other aspects of the MWP.
- ▶ This advisory group be comprised of representatives from the NZMC, the New Zealand Māori Wardens Association, and the Te Puni Kōkiri Māori Wardens Project Team.

- ▶ The Māori Wardens Project continue but in collaboration with the NZMC and the New Zealand Māori Wardens Association through the newly constituted advisory group.
- ▶ The Crown urgently negotiate a collaborative agreement with the NZMC and the NZMWA to put in place a temporary warranting regime. This may require the parties to agree on methods of validating invalid warrants, and on the process for appointments and renewal of warrants, until permanent solutions can be found as part of the NZMC's national consultation and review of the Act. An interim legislative amendment may be required to put this temporary regime in place until the scheme for revising the Act as a whole has been negotiated between the Crown and the NZMC. Resourcing will likely be required to ensure an efficient and speedy warranting process.

We hope that the Crown and claimants will be able to reach a collaborative agreement on the basis of our recommendations but we have given leave for the parties to return if further guidance is required.



Deputy Chief Judge Caren Fox
Presiding Officer
Heoi anō, tēnei te mihi,
Nā Te Rōpū Whakamana i te Tiriti o Waitangi

PREFACE

This is a pre-publication version of the Waitangi Tribunal's report *Whaia Te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim*. As such, all parties should expect that in the published version headings and formatting may be adjusted, typographical errors rectified, and endnotes checked and corrected where necessary. Photographs and additional illustrative material will be inserted. The Tribunal's findings and recommendations will not change.

ABBREVIATIONS

AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
CA	Court of Appeal
ch	chapter
CNI	central North Island
comp	compiler
CYFS	Child, Youth, and Family Services
DMC	District Māori Council
doc	document
ed	edition, editor
ETITO	Electrotechnology and Telecommunications Industry Training Organisation
fol	folio
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IT	information technology
ltd	limited
MCDA	Maori Community Development Act 1962
MMP	mixed-member proportional
MSEAA	Maori Social and Economic Advancement Act 1945
MWEO	Māori War Effort Organisation
MWP	Māori Wardens Project
MWWAC	Māori Wardens Warranting Administration Committee
n	note
no	number
NUMA	National Urban Māori Authority
NZLR	<i>New Zealand Law Reports</i>
NZMC	New Zealand Māori Council
NZMWA	New Zealand Māori Wardens Association
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages
para	paragraph
pt	part
QMS	quota management system
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
SC	Supreme Court
sec	section (of this report, a book, etc)
SOE	State-owned enterprise
TAG	Training Advisory Group
TPK	Te Puni Kōkiri
Te TAI	Te Tira Ahu Iwi
UNDRIP	United Nations Declaration on the Rights of Indigenous People
vol	volume
Wai	Waitangi Tribunal claim
WINZ	Work and Income New Zealand
WIR	<i>West Indian Law Reports</i>

CHAPTER 1

TE WERO / THE CHALLENGE

*Introduction to this Urgent Inquiry into the
Māori Community Development Act Claim*

1.1 INTRODUCTION

This report is the result of an urgent inquiry into a claim about the Crown's review of the Māori Community Development Act 1962, and its administration of the Māori Wardens Project, launched in 2007. The 1962 Act gave statutory recognition and powers to Māori self-government institutions: local Māori Committees and regional Māori Executive Committees, District Māori Councils (DMCs), and – at the top of the structure – the New Zealand Māori Council (NZMC), a national body comprising delegates from DMCs. Since 1969, DMCs have had exclusive powers to administer and control the Māori Wardens, voluntary community workers who have existed in some form since the nineteenth century.

In 2009, the Minister of Māori Affairs initiated a comprehensive review of the 1962 Act, including into the current statutory arrangements for Māori Wardens. Among the options canvassed in the review was the disestablishment of the NZMC structure and the transfer of authority over wardens to a new governing body. Two years earlier, the Ministry of Māori Development Te Puni Kōkiri (TPK) launched its Māori Wardens Project (the MWP), a scheme intended to provide training and funding to support the voluntary work of the Māori Wardens. The MWP was run out of TPK and was intended as an interim measure only. Once the question of the future governance arrangements for the Māori Wardens had been resolved, TPK envisaged control over the scheme would be handed over to Māori. Today, seven years after the MWP's establishment, this transfer has not yet occurred, and responsibility for the project remains with TPK. This was of great concern to the claimants in our inquiry.

On 27 September 2013, representatives of the New Zealand Māori Council and several District Māori Councils filed the Wai 2417 claim with the Waitangi Tribunal. In this claim, they challenged the Crown's right to conduct a review of the 1962 Act, and alleged that its administration of the Māori Wardens Project was undermining

the Māori self-government institutions protected by the 1962 Act. They lodged their claim on behalf of themselves as well as ‘Māori generally.’¹

The essence of the claimants’ position in this inquiry is that the 1962 Act represented an historic self-government compact between Māori and the Crown. In passing the Act, the claimants believe, the Crown granted official recognition to the ongoing search of the Māori people for tino rangatiratanga or self-determination, and the right of Māori to govern themselves through their own chosen institutions. The 1962 Act, the claimants maintain, was ‘no ordinary statute’, but has ‘constitutional status’ as a ‘rangatiratanga/self-government “agreement” between Māori and the Crown.’² According to the claimants, Māori Wardens, under the exclusive control and supervision of DMCs since 1969, form an integral part of the self-government compact that, in their view, the 1962 Act represents.³ This special status of the 1962 statute, the claimants contend, has implications for how any reform of the 1962 legislation should be conducted. The claimants believe that as ‘Māori institutions’, given statutory recognition under the 1962 Act, any review of the Māori Council and the Māori Wardens must be Māori-led. More specifically, it is the claimants’ view that any review of the 1962 legislation must be conducted by the NZMC.⁴ Anything less than a Māori-led process headed by the Council, the claimants state, would amount to a breach of the 1962 Act compact and thus an infringement of Treaty principles and of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In addition, the claimants believe that any Crown actions that sever or otherwise diminish the relationship of the Māori Wardens to the New Zealand Māori Council would also amount to a breach of the 1962 Act agreement, and, by extension, the Treaty principles and the UNDRIP.

By contrast, the Crown stresses that its latest proposals are forward-looking. Rather than debating the origins and intent of the 1962 Act or the conduct of the review to date, the Government states that its focus is on assessing how the provisions of the Act relating to Māori Wardens might be updated to better fit the changing needs of Māori communities in the early twenty-first century. TPK denies accusations that it entered into consultations on the 1962 Act with a fixed agenda or predetermined view as to their outcome. Rather, it argues, its objective has simply been to seek out the views of as wide a range of Māori as possible. The Crown conceded, in the course of our inquiry, that the NZMC and the Māori Wardens are ‘Māori institutions’ and that any review of the 1962 Act should be Māori-led.⁵ However, the Crown maintains that it would be inappropriate for the NZMC alone to lead a review of its own Act. This is largely because of changes in what the Crown terms the ‘landscape of Māori representation’ since the NZMC’s establishment in the 1960s, and because TPK believes that Māori Wardens should have equal status and involvement in any review of the Act as it relates to them. According to the Crown,

1. Claimant counsel, statement of claim, 27 September 2013 (paper 1.1.1)
2. Claimant counsel, memorandum in support, 2 October 2013 (paper 3.1.2), pp 5, 10
3. Claimant counsel, statement of claim (paper 1.1.1), p 1
4. Claimant counsel, statement of claim (paper 1.1.1), p 1; claimant counsel, memorandum in support (paper 3.1.2), pp 7–8
5. Michelle Hippolite, brief of evidence, 28 February 2014 (doc B18), pp 2–3

the shifting terrain of Māori representation, particularly with the rise of iwi representative groups over the past few decades, means that a broader range of Māori organisations than just the NZMC ‘have a stake’ in leading any future reform of the 1962 Act.⁶ The questions of who should lead the ongoing review of the 1962 Act, as well as whether the Crown’s ongoing administration of the Māori Wardens Project amounts to breaches of Treaty principles and the UNDRIP, form the crux of the differences between the parties in this inquiry.

1.2 THE PARTIES IN THIS INQUIRY

The claimants are all members of the NZMC or DMCS, or both. Cletus Maanu Paul is one of the co-chairs of the NZMC and is also the chair of the Mataatua DMC. Sir Edward Taihakurei Durie is the other co-chair of the NZMC and also the chair of the Raukawa DMC. Desma Kemp Ratima is the chair of the NZMC’s Māori Wardens committee. Anthony Toro Bidois is the chair of the Te Arawa DMC.

The lead agency for the Crown in this inquiry is Te Puni Kōkiri – the Ministry of Māori Development. TPK was established in January 1992 under the Ministry of Māori Development Act 1991. Under the Act, TPK is given statutory responsibility for promoting increases in Māori achievement in the areas of education, training, employment, health, and economic development, as well as monitoring the performance of other government agencies in these areas.⁷

The emergence of interested parties in the lead-up to hearings is described in section 1.6.6.

1.3 ESSENTIAL BACKGROUND INFORMATION

At its core, the Wai 2417 claim is about the long struggle for mana motuhake, Māori self-determination and autonomy. In the Treaty of Waitangi, as we shall discuss in chapter 2, the Crown promised to recognise and protect te tino rangatiratanga, Māori authority over their own affairs. Ever since 6 February 1840, when Māori promised for their part to recognise the Crown’s authority, tribal leaders have sought ways and means to assert their tino rangatiratanga and obtain legal recognition of it from the Crown. In the nineteenth century, they took British institutions such as committees and councils and turned them into Māori self-government institutions, combining Māori values and tikanga with Pākehā powers and procedures to create uniquely Māori institutions. The establishment of a Māori King in the 1850s, and of a Māori Parliament in the 1890s, were major events in the pursuit of mana motuhake on the national stage. Colonial governments were often hostile and made few concessions in respect of according legal recognition and statutory powers to these Māori self-government institutions.

High points in this history included the Māori Councils Act of 1900 and the Māori Social and Economic Advancement Act of 1945, where the Crown agreed

6. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3), pp 4, 7

7. Ministry of Māori Development Act 1991, s5

to recognise Māori institutions – but only at the local level. The Māori Social and Economic Advancement Act 1945 provided statutory authority to a network of tribal committees and tribal executives set up by Māori during the Second World War to assist with the war effort. During the 1950s, Māori leaders organised their own district councils and made representations to government to give statutory recognition to these councils and to a Dominion Māori Council. In 1961, the government reached a formal agreement with Māori leaders to establish a Dominion or New Zealand Māori Council, which was given effect by the Māori Social and Economic Advancement Amendment Act of that year. These statutory powers were provided for a second time in the Māori Welfare Act 1962, after the Government decided that it was timely to overhaul and modernise the 1945 Act.

The 1962 Act retained the existing Tribal Committees and Tribal Executive Committees, renaming them Māori Committees and Māori Executive Committees, as well as affording statutory powers to District Māori Councils and to a New Zealand Māori Council. Under the 1962 Act, the New Zealand Māori Council and its constituent bodies received broad powers, including to ‘consider and discuss such matters as appear relevant to the social and economic advancement of the Māori race’, to ‘make such representations to the Minister or other person or authority as seem to it advantageous to the Māori race’, and to ‘apply and maintain the maximum possible efficiency and responsibility in their local self-government’.⁸ The Māori Welfare Act was renamed the Māori Community Development Act in 1979.⁹

Under the 1962 Act, the Māori Committees also received exclusive powers to control and supervise the Māori Wardens or wātene Māori, community volunteers who can trace their origins back to the nineteenth century. Māori Wardens first gained statutory powers under the 1945 Act, under which they were empowered to control ‘unruly’ or ‘riotous’ behaviour by any Māori person, to request that the owner of any licensed establishment cease selling alcohol to any Māori individual whom the Māori warden judged was ‘intoxicated’ or ‘likely to become so’, and to enter any ‘gathering of Māoris’ and search for and seize any ‘intoxicating liquor’. These statutory powers of Māori Wardens were transferred to the 1962 Act with only minor amendments.¹⁰ In 1969, the exclusive powers to control and supervise Māori Wardens, and to assign duties to wardens consistent with the 1962 Act, was given to the District Māori Councils.¹¹

Today, Māori Wardens carry out a wide range of community and welfare functions. These include school truancy patrols, supporting young offenders at court appearances, providing advocacy for Māori whānau dealing with government agencies such as Work and Income New Zealand, patrolling the streets at night, and providing security assistance at large public events such as Waitangi Day and the Rugby World Cup. Māori Wardens’ ability to respond to community needs has

8. Māori Welfare Act 1962, s 18

9. Māori Purposes Act 1979, s 19(1)

10. Māori Welfare Act 1962, ss 30, 31, 33, 35; Māori Social and Economic Advancement Act 1945, ss 39, 40

11. Māori Purposes Act 1969, s 13

recently been demonstrated in the aftermath of natural and human disasters such as the Christchurch earthquakes of 2010 and 2011 and the wrecking of the *MV Rena* off the Tauranga coast.

While statutory authority over the Māori Wardens has remained with the DMCS since 1969, since the 1950s and 1960s Māori Wardens have also formed their own local and district wardens' associations. In 1966, a New Zealand Māori Wardens Association (NZMWA) was established under the auspices of the NZMC to provide support and assistance to Māori Wardens. The NZMWA ceased to exist as a national organisation during the mid-1970s, but was re-established as a national body in 1979 and remains in existence today. Māori Wardens affiliated with the Association attended our hearings and a number made submissions as interested parties.

Māori Wardens have always been, and remain, unpaid volunteers who have carried out their valuable community work on minimal resources. In 2005, Winston Peters reached a confidence and supply agreement with the Labour Government to create a dedicated fund to support the voluntary work of Māori Wardens in their communities. During 2007, TPK and the Police established the Māori Wardens Project to provide a temporary structure to administer funding and training for wardens. At the time of the MWP's establishment, Ministers and officials felt that such an interim structure was necessary due to their concerns at the apparent dysfunction and lack of financial accountability within some DMCS. Thus the decision was made that TPK would administer the funds as an interim measure, with the aim of handing control back to a Māori organisation once the Crown's planned review of the governance arrangements for Māori Wardens had identified a suitable body to receive the funding.

At the same time as it launched the Māori Wardens Project as a temporary measure to administer funding and support for wardens, TPK formed a Māori Wardens Advisory Group comprising members of the NZMC, NZMWA, and other Māori community organisations. The aims of the group were to give input on future governance options for the project (and for Māori Wardens more generally), as well as to provide a means for Māori community oversight of the operation of the Māori Wardens Project. However, no agreement had been reached within the Advisory Group on future governance options when it was dissolved in 2009. Later that year, the Minister of Māori Affairs asked the Māori Affairs Select Committee to begin an inquiry into the Māori Community Development Act 1962.

The Māori Affairs Committee's report was tabled in Parliament in December 2010. It recommended, among other things, that urgent action was needed in relation to the current governance arrangements for Māori Wardens but that any changes would need to be preceded by 'comprehensive consultation'. In February 2011, Cabinet agreed that further consultation should take place on the review of the Act, and instructed TPK to report back to Cabinet with draft consultation material and a consultation programme.¹² Delays in 2011, and failed attempts to reach agreement with the NZMC during 2012 and 2013, meant that the planned consultation

12. Cabinet Social Policy Committee, 'Summary of Government Response to the Report of the Māori Affairs Committee on the Inquiry into the Māori Community Development Act 1962', 7 February 2011 (doc A4), pp 1–2

would not take place until the second half of 2013. The consultation was conducted through a series of hui around the country in September 2013. Near the end of that month, the claimants lodged their claim with the Waitangi Tribunal, and several days later, filed an application for an urgent hearing.

1.4 THE CLAIM

In their statement of claim of 27 September 2013, the claimants set out the basis for three claim issues, as follows.

In respect of their first issue, the claimants argued that the Crown's approach to its ongoing consultation process and its review of the 1962 Act was inconsistent with Treaty principles and the UNDRIP. In particular, they argued that the current Crown-led process for reviewing the Act failed to recognise the special status of the 1962 Act as a self-government compact between Māori and the Crown. Rather, the claimants argued, the New Zealand Māori Council and the Māori Wardens are 'Māori institutions' and 'of such significance as to call for direct Crown and Māori negotiations'.¹³

The second issue related to the Crown's administration of the MWP since 2007. The claimants argued that TPK's ongoing administration of the project amounts to a breach of the principles of the Treaty, 'by diminishing or excluding the authority of the NZMC to administer the Wardens in terms of the Act'.¹⁴ TPK's continuing involvement in the MWP, the claimants suggested, had adversely impacted upon 'the capacity of the NZMC and the Wardens to exercise self-government and to maintain community self-government into the future'.¹⁵ In addition, the claimants set out the basis for a number of more specific allegations relating to the Crown's administration of the Māori Wardens Project: these concerned the Crown's alleged mishandling of the administration of the warrants that give Māori Wardens their statutory authority to operate, and the claimants' belief that, under TPK's administration of the Māori Wardens, the accountability of the Māori Wardens to their communities had been compromised.¹⁶

The third issue related to the timing of the Crown's 2013 consultations on its proposed review of the 1962 Act, which the claimants alleged had been prejudicial to the NZMC's conduct of its Water Claim (Wai 2358) before the Waitangi Tribunal, thus amounting to a lack of good faith on the part of the Crown.

In between the claimants' submission of their statement of claim of 27 September 2013 and an amended statement of claim filed on 17 January 2014, several developments occurred. The first of these was an announcement by Cabinet in the lead up to the Tribunal's decision on urgency that the scope of the Crown's ongoing review of the 1962 Act would no longer include a review of the Māori Council. Instead, the

13. Claimant counsel, statement of claim (paper 1.1.1), p 1

14. Claimant counsel, statement of claim (paper 1.1.1), p 2

15. Claimant counsel, statement of claim (paper 1.1.1), p 2

16. Claimant counsel, statement of claim (paper 1.1.1), p 2

Crown's continuing review of the Act would be more narrowly focused upon the statutory arrangements for the Māori Wardens.¹⁷

On 24 December 2013, the Tribunal granted an urgent hearing on the basis of the first and second parts of the claim, but declined urgency in respect of the third.¹⁸

The claimants' amended statement of claim of 17 January 2014 provided further detail in respect of the first and second parts of their claim, as well as an elaboration of their position on how the review of the 1962 Act should be conducted in future. They argued that any 'Crown led and controlled process for reform of the Māori institutions provided for in the 1962 Act' would be inconsistent with the Treaty of Waitangi and the UNDRIP. Instead, they argued, the special nature of the 1962 Act (and the compact) demanded 'a Māori-designed and led process, with Māori first consulting with Māori on changes required and then reaching agreement with the Crown as the other side of the 1962 compact'.¹⁹

1.5 THE CURRENT LEGISLATIVE REGIME

In this section, we set out the provisions of the 1962 Act. The claimants have alleged that TPK is not acting in accordance with the Act in various ways, and so it is necessary to describe the provisions in some detail. The full text of the Act is provided in appendix I.

The Māori Welfare Act 1962 as it was originally enacted provided for a governance and management structure made up of Community Officers, Māori Wardens, Māori Committees, Māori Executive Committees, District Māori Councils, and the New Zealand Māori Council. It was an Act that envisaged integrated relationships between these several tiers of self-government, with the New Zealand Māori Council at the apex. Since it was enacted, it has been amended several times (as we discuss in chapters 3 and 4). Now known as the Māori Community Development Act 1962, the Act came into force on 1 January 1963.

According to the Long Title of the 1962 Act, it is an Act to provide for the constitution of Māori Associations and to define the powers and functions of those associations and to consolidate and amend the Māori Social and Economic Advancement Act 1945. Thus, the history of that legislation remains relevant to the manner in which the 1962 Act should be interpreted (see chapter 3).

The Minister of Māori Affairs is responsible for the administration of the Act, and the powers conferred under the Act are conferred under the general direction and control of the Minister.²⁰

The Act provides for four categories of Māori Associations: The New Zealand Māori Council, District Māori Councils, Māori Executive Committees, and Māori Committees.²¹ Each of these associations is a body corporate²² holding specified

17. Crown counsel, memorandum, 11 December 2013 (paper 3.1.8), p 1

18. Waitangi Tribunal, decision on urgency application, 24 December 2013 (paper 2.5.8)

19. Claimant counsel, amended statement of claim, 17 January 2014 (paper 1.1.1(a)), pp 15–17

20. Māori Community Development Act 1962, s 3

21. Māori Community Development Act 1962, s 2

22. Māori Community Development Act 1962, s 37

functions. The general functions for the majority of these associations are set out in section 18(1):

- (a) to consider and discuss such matters as appear relevant to the social and economic advancement of the Māori race;
- (b) to consider and, as far as possible, give effect to any measures that will conserve and promote harmonious and friendly relations between members of the Māori race and other members of the community;
- (c) to promote, encourage, and assist Māoris—
 - (i) to conserve, improve, advance and maintain their physical, economic, industrial, educational, social, moral, and spiritual well-being;
 - (ii) to assume and maintain self-reliance, thrift, pride of race, and such conduct as will be conducive to their general health and economic well-being;
 - (iii) to accept, enjoy, and maintain the full rights, privileges, and responsibilities of New Zealand citizenship;
 - (iv) to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and
 - (v) to preserve, revive and maintain the teaching of Māori arts, crafts, language, genealogy, and history in order to perpetuate Māori culture;
- (d) to collaborate with and assist State departments and other organisations and agencies in—
 - (i) the placement of Māoris in industry and other forms of employment;
 - (ii) the education, vocational guidance, and training of Māoris;
 - (iii) the provision of housing and the improvement of the living conditions of Māoris;
 - (iv) the promotion of health and sanitation amongst the Māori people;
 - (v) the fostering of respect for the law and law-observance amongst the Māori people;
 - (vi) the prevention of excessive drinking and other undesirable forms of conduct amongst the Māori people; and
 - (vii) the assistance of Māoris in the solution of difficulties or personal problems.

1.5.1 The New Zealand Māori Council

The New Zealand Māori Council was constituted under the 1962 Act. The members of the New Zealand Māori Council of Tribal Executives established under section 13E of the Māori Social and Economic Advancement Act 1945 that were in office at the commencement of the 1962 Act continued in office as members of the NZMC when the new Act came into force.²³ The NZMC ‘meets three or four times a year with an executive that meets as required.’²⁴

The current NZMC consists of members appointed by District Māori Councils. Each DMC may appoint three members to the NZMC.²⁵ Those members continue

23. Māori Community Development Act 1962, s17(4)

24. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p16

25. Māori Community Development Act 1962, s17(2), (3)

in office until 31 May in an election year.²⁶ Elections for Māori Committees (at the grassroots level of the system) are required to be held on a triennial basis, which then results in the elected Māori Committees appointing some of their members to the Māori Executive Committees (and so on up the chain to the NZMC).²⁷

In addition to the functions listed above and reflected in section 18(1) of the 1962 Act, the NZMC is required to consult with other Māori Associations 'on such matters as may be referred to it by any of those bodies or as may seem necessary or desirable for the social and economic advancement of Māori, and it may make such representations to the Minister of Māori Affairs or others as may seem to it to be advantageous to Māori.'²⁸

The NZMC is also responsible for declaring DMC areas and for overseeing the operations of DMCS.²⁹ It may alter the boundaries of any Māori Council District or amalgamate two or more districts, or constitute a new district over a part of an existing one. To do so, the NZMC must simply pass a resolution to that effect.³⁰

The NZMC has the ability to receive funds by donations and by requiring each District Māori Council to make a contribution for its administrative costs and expenses.³¹ Each year, the NZMC is paid out of Parliamentary funds such sum as the Minister approves.³² It may also be subsidised with the approval of the Minister out of Parliamentary funds at a rate not exceeding \$1 for \$1, and this subsidy may be extended to any organisation or body or persons approved by the Minister whose principal object is the promotion of the welfare of Māori.³³ The NZMC is required to submit audited statements of its annual accounts to the Chief Executive of TPk.³⁴

1.5.2 District Māori Councils

District Māori Councils are located in each Māori Council District area.³⁵ At the time the 1962 Act was enacted, the eight original districts coincided with the seven districts of the Māori Land Court, with an additional district for the city of Auckland.³⁶ The claimants advised that the number of DMCS has increased from the original eight districts to 16 districts to provide for greater representation at the national level and to accommodate urbanisation in Wellington and Auckland.³⁷

At the time the 1962 Act was enacted, the members of a DMC appointed under section 13 of the Māori Social and Economic Advancement Act 1945 continued in

26. Māori Community Development Act 1962, s 20(4)

27. Māori Community Development Act 1962, s 21(3)

28. Māori Community Development Act 1962, ss 18(2), (3)

29. Māori Community Development Act 1962, ss 14(1), 16(2)

30. Māori Community Development Act 1962, s 14(4)

31. Māori Community Development Act 1962, ss 24, 26(1)

32. Māori Community Development Act 1962, s 25(3)

33. Māori Community Development Act 1962, s 25; Māori Community Development Regulations 1963 reg 10(2). The 1962 Act still states that the rate of subsidies is one pound per one pound. The Māori Community Development Regulations set it at one dollar per one dollar after the introduction of decimal currency.

34. Māori Community Development Act 1962, s 28(f)

35. Māori Community Development Act 1962, s 15(1)

36. Claimant counsel, closing submissions (paper 3.3.5), p 16

37. Claimant counsel, closing submissions (paper 3.3.5), p 16

office. Now members are persons appointed by the Māori Executive Committee within their area.³⁸ Each Māori Executive Committee is entitled to nominate two members to their DMC, and, where there is fewer than five Māori Executive Committees in a Māori Council District, each of those committees is entitled to nominate three persons.³⁹ Members hold office until 30 April in an election year.⁴⁰ In each May of an election year a meeting of the DMC is held to appoint members to the NZMC.⁴¹

DMCs have the same functions as the NZMC under section 18(1) and are responsible for supervising Māori Executive Committees and Māori Committees within their district.⁴² They also have exclusive power and authority to control and supervise the activities of Māori Wardens carrying out duties within their district. This power over Māori Wardens may be delegated by notice in writing to any Māori Committee or Executive Committee within its district, and the delegation can be revoked at any time.⁴³ This section of the Act is particularly important because the claimants argue that the Māori Wardens Project interferes with the DMCs' ability to exercise this power and even usurps this exclusive power, and is therefore in breach of this section of the Act (see chapters 7–8). Each DMC is also subject in all things to the control of the NZMC and must act in accordance with all directions, general or special, given to it by the national body.⁴⁴ They are required to submit annual reports of their activities to the NZMC.⁴⁵

DMCs have the power to establish Māori Executive Committee and Māori Committee areas.⁴⁶ They can approve the direct representation of a Māori Committee on their DMC. If the latter happens then the Māori Committee becomes subject to the control of the DMC as if it were a Māori Executive Committee.⁴⁷ This is important because we understand it to have now become the norm, and that very few (if any) Māori Executive Committees still exist. In addition, any DMC may recognise any Māori society as having the status of a Māori Committee with the right to appoint members to the DMC. Equally, such recognition may be withdrawn at any time.⁴⁸ One of the points of debate in our inquiry was as to whether or not a Māori Wardens' Association could be recognised in this way. A 'Māori Society' is defined under the 1962 Act as:

any club, board, society, committee, or other group or body of Māoris, whether incorporated or not, which in the opinion of the District Māori Council is comprised of members of, or democratically represents, or is involved with, any Māori tribe,

38. Māori Community Development Act 1962, s15(2)

39. Māori Community Development Act 1962, s15(3)

40. Māori Community Development Act 1962, s20(3)

41. Māori Community Development Act 1962, s21(3)

42. Māori Community Development Act 1962, s16(3)

43. Māori Community Development Act 1962, s16(6), (7)

44. Māori Community Development Act 1962, s16(2)

45. Māori Community Development Act 1962, s16(4)

46. Māori Community Development Act 1962, ss 8(2), 11(2)

47. Māori Community Development Act 1962, s10A

48. Māori Community Development Act 1962, s15A(2)

subtribe, community, marae, religious congregation, school or other teaching institution, or has as members a significant number of Māori people having some common interest or interests.⁴⁹

DMCs may raise funds by accepting donations or by requiring Māori Executive Committees in their district to make a contribution for their administrative costs and expenses.⁵⁰ They may also be subsidised with the approval of the Minister out of Parliamentary funds at a rate not exceeding \$1 for \$1, and this subsidy may be extended to any association or body or persons approved by the Minister whose principal object is the promotion of the welfare of Māori.⁵¹ DMCs are required to submit audited statements of their yearly accounts to the Chief Executive of TPK.⁵²

1.5.3 Māori Executive Committees

Māori Executive Committees are located in each Māori Executive Committee area.⁵³ The original areas were formally Tribal District areas under the Māori Social and Economic Advancement Act 1945.⁵⁴ Members are persons appointed by the Māori Committees within the relevant area.⁵⁵ Each Māori Committee is entitled to nominate two members each and where there are less than four Māori Committees in a Māori Executive Committee area, each of those committees is entitled to nominate three persons.⁵⁶ A Māori Executive Committee member holds office until 31 March in each year in which an election is held.⁵⁷ A Māori Executive Committee is required in April of the same year to hold a meeting to appoint its members to the District Māori Council for their area.⁵⁸

The functions of a Māori Executive Committee are the same as above reflected in section 18(1) of the 1962 Act. These committees are subject in all things to the control of the DMCs within whose district they fall, and they must act in accordance with all directions, general or special, given by their respective DMCs.⁵⁹

A Māori Executive Committee may raise funds by accepting donations or by requiring Māori Committees in its district to make a contribution to its administrative costs and expenses.⁶⁰ It may also be subsidised with the approval of the Minister out of Parliamentary funds at a rate not exceeding \$1 for \$1.⁶¹ Committees are required to submit audited statements of their annual accounts to the DMCs in whose district they fall.⁶²

49. Māori Community Development Act 1962, s 15A(1)

50. Māori Community Development Act 1962, ss 24, 26(2)

51. Māori Community Development Act 1962, s 25(1), (2)

52. Māori Community Development Act 1962, s 28(f)

53. Māori Community Development Act 1962, s 12(1)

54. Māori Community Development Act 1962, s 11(1)

55. Māori Community Development Act 1962, s 12(2)

56. Māori Community Development Act 1962, s 12(3)

57. Māori Community Development Act 1962, s 20(2)

58. Māori Community Development Act 1962, s 21(2)

59. Māori Community Development Act 1962, s 13(2)

60. Māori Community Development Act 1962, ss 24, 26(3)

61. Māori Community Development Act 1962, s 25(1)

62. Māori Community Development Act 1962, s 28(f)

While these provisions remain in the legislation, the reality is (as we have said) that there have been no Māori Executive Committees operative in recent times. Effectively, the DMCs bypass them in favour of directly recognising other Māori Committees under section 10A of the 1962 Act. The claimants advised that this section has been used since 1971 and it effectively means that the system of self-government has been reduced from four tiers to three.⁶³

1.5.4 Māori Committees

Māori Committees are located in each Māori Committee area established under the Māori Social and Economic Advancement Act 1945 as a Tribal Committee area or constituted by the DMC within whose district they fall.⁶⁴ Each committee consists of seven members.⁶⁵ Elections of Māori Committee members must be held in February every three years, which starts the process of the triennial elections for each level of the council system.⁶⁶ These elections commenced in 1964 under regulation 3 of the Māori Community Development Act Regulations 1963. Notices of these elections are advertised in a newspaper or by other means.⁶⁷ The details for the conducting of the elections and for the general administration of Māori Committees are contained in the 1963 regulations (which are reproduced in our report as appendix IV). These provisions are particularly important because of the Crown's contention that a DMC remains in office if no Māori Committee elections are held in an election year. This was the subject of dispute between the Crown and claimants in respect of the council system's democratic credentials and the power to nominate Māori Wardens (see chapter 9).

All Māori persons over 20 years of age who reside in a Māori Committee area are entitled to vote for members of the Māori Committee for that area. Māori and non-Māori over 20 are eligible for election as members of the Māori Committee for their area. If a Māori Committee member has been elected less than six months prior to the triennial election, they can continue in office. A Māori Committee member holds office until their successor is elected.⁶⁸ A Māori Committee must, in the month of March in which a triennial election is required, hold a meeting to appoint its members to the Māori Executive Committee for their area.

In addition to the general functions of the committees under section 18(1), Māori Committees may also give out permits for having liquor on premises within their area where a Māori gathering, other than a dance, may take place.⁶⁹

Additionally, where a Māori Committee is satisfied an offence has been committed by a Māori in terms of sections 30, 32, 33, and 35 of the Act, it may authorise that proceedings be taken under the Criminal Procedure Act 2011 or impose a

63. Claimant counsel, closing submissions (paper 3.3.5), p 16

64. Māori Community Development Act 1962, s 8(1), (2)

65. Māori Community Development Act 1962, s 9(2)

66. Māori Community Development Act 1962, s 19(1)

67. Māori Community Development Regulations 1963, reg 3(1)

68. Māori Community Development Act 1962, ss 19(3), (4), (6), 21(1)

69. Māori Community Development Act 1962, ss 10(1), 33(8)

penalty not exceeding \$20.⁷⁰ Procedures for dealing with notices of charges, dates for hearings, evidence to be heard, sequence of the hearing and penalties are provided for in the Māori Community Development Regulations 1963.⁷¹ A person must be advised of the nature of the charge against them and their right to elect proceedings under the Criminal Procedure Act 2011. A person cannot be both charged and have a penalty imposed on them. An offender must be given an opportunity to be heard prior to a penalty being imposed. The penalty is recoverable as a debt in the District Court.⁷² Penalties are payable to the relevant Māori Committee and form part of its funds.⁷³ As we shall see in chapter 6, the question of whether these provisions are consistent with the New Zealand Bill of Rights Act 1990 became a point of debate leading up to the present review of the 1962 Act.

Māori Committees are subject in all things to the control of the Māori Executive Committees within whose district they fall and they must act in accordance with all directions, general or special, given by their respective Māori Executive Committees.⁷⁴

A Māori Committee may raise funds by donations or by subsidy paid with the approval of the Minister out of Parliamentary funds at a rate not exceeding \$1 for \$1.⁷⁵ Committees are required to submit audited statements of their annual accounts to the DMCS in whose district they fall.⁷⁶

1.5.5 Community Officers

Section 4 of the Act provides for the appointment of public servants with the title of 'Community Officers'.⁷⁷ Their functions are subject to the control of the Chief Executive of TPK, and they are to advise and assist Māori in their general welfare including areas of health, housing, education, vocational training and employment, and also to collaborate and assist and advise Māori Associations.⁷⁸ We understand that no community officers have been employed under these provisions since 1993.⁷⁹

70. Māori Community Development Act 1962, s 36(1); Māori Community Development Regulations 1963, reg 8(7)

71. Māori Community Development Regulations 1963, reg 8

72. Māori Community Development Act 1962, s 36(1)-(4)

73. Māori Community Development Act 1962, s 36(5)

74. Māori Community Development Act 1962, s 10(2)

75. Māori Community Development Act 1962, ss 24, 25(1); Māori Community Development Regulations 1963, reg 10(2)

76. Māori Community Development Act 1962, s 28(f)

77. Māori Community Development Act 1962, s 4

78. Māori Community Development Act 1962, s 6

79. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Mereana Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 18)

1.5.6 Māori Wardens

The Minister may appoint Māori Wardens in respect of any Māori Council District.⁸⁰ A Māori Warden must be nominated for appointment by the relevant DMC.⁸¹ They are appointed by the Minister of Māori Affairs under section 7(1) of the 1962 Act.

Each warden is appointed for three years and may be reappointed by the Chief Executive of TPK on the recommendation of a DMC.⁸² An appointment may also be cancelled by the Chief Executive upon the recommendation of the DMC.⁸³ However, before making such a recommendation, the warden concerned must be given notice of the Council's intent and the opportunity to oppose the recommendation to cancel.⁸⁴ A Māori Warden may also resign in writing to the Minister.⁸⁵ These sections relating to the appointment and reappointment of Māori Wardens were controversial in our inquiry, and the claimants argued that the Crown was appointing wardens on the nomination of bodies which had no statutory power to make the nomination, and that it was reappointing wardens by a needlessly slow and cumbersome process involving the Minister as well as the Chief Executive (see chapter 9).

Māori Wardens' powers are those conferred by the 1962 Act and its regulations.⁸⁶ These include regulation 11 of the Māori Community Development Act Regulations 1963, which requires that in carrying out their functions, Māori Wardens must work in close association with the Māori Committees and any subcommittees having jurisdiction in their areas and they must assist the officers of such committees 'to the best of their ability.'⁸⁷ They must also maintain a 'close association with the Police and traffic officers having jurisdiction in their areas so as to ensure the maximum cooperation with all such officers.'⁸⁸ They must endeavour to promote 'respect amongst Māori people for the standards of the community and to take appropriate steps where possible to prevent any threatened breach of law and order.'⁸⁹ Such powers are subject to the control and supervision and directions of the relevant DMC or any relevant Māori Association to whom a DMC has delegated responsibility.⁹⁰ Māori Wardens are voluntary workers but a Māori Association may pay any warden in its area remuneration or allowances for their services.⁹¹ It was this provision which the claimants alleged, in particular, that the Crown had breached by providing funding directly to wardens in the MWP (see chapter 8).

Māori Wardens also have functions that relate to the control of alcohol consumption. For example, a Māori Warden may enter any licensed premises in any area

80. Māori Community Development Act 1962, s 7(1)

81. Māori Community Development Act 1962, s 7(2)

82. Māori Community Development Act 1962, s 7(3)

83. Māori Community Development Act 1962, s 7(4)

84. Māori Community Development Act 1962, s 7(4)

85. Māori Community Development Act 1962, s 7(4)

86. Māori Community Development Act 1962, s 7(5)

87. Māori Community Development Regulations 1963, reg 11(2)

88. Māori Community Development Regulations 1963, reg 11(3)

89. Māori Community Development Regulations 1963, reg 11(4)

90. Māori Community Development Act 1962, s 7(5)

91. Māori Community Development Act 1962, s 7(6)

where he or she is authorised to carry out his or her duties. The wardens may then warn the licensee or employee ‘to abstain from selling or supplying liquor to any Māori who in the opinion of the Warden is in a state of intoxication, or is violent, quarrelsome, or disorderly, or is likely to become so.’ If the licensee on the same day supplies liquor to that Māori, they commit an offence against the Act.⁹²

A Māori Warden may also enter any licensed premises or Māori gathering place (including a marae) within their area and order any Māori who appears to be intoxicated or partly intoxicated, or who is violent, quarrelsome, or disorderly, to leave the premises.⁹³ If the Māori refuses or fails to leave any licensed premises, he commits an offence. The warden may request any member of the Police to expel the Māori from the premises.⁹⁴ If any Māori or any other person attempts to supply or has any alcohol at any Māori gathering place, they may commit an offence under the 1962 Act.⁹⁵ Any Māori Warden who has reason to suspect that there is any breach by any person in or nearby a meeting place where a Māori gathering is taking place, may without warrant enter the meeting place, and search for alcohol and may seize and remove any such alcohol.⁹⁶ However, a Māori Warden does not have the power to enter any dwelling house without a warrant unless the person in lawful occupation consents to the entry.⁹⁷

If a Māori Warden is of the opinion that any Māori is unable to drive a motor vehicle by reason of physical or mental condition, however arising, he may forbid that Māori to drive the motor vehicle or ask for the keys. Alternatively, the warden can render the motor vehicle immobile or remove it to a place of safety.⁹⁸ This power extends to non-Māori who are in the vicinity of a meeting place or Māori gathering place.⁹⁹

The claimants have advised that over time the activities of the Māori Wardens have widened to include community development.¹⁰⁰ We heard much evidence on this point, and we discuss the current roles and functions of Māori Wardens in chapter 5.

1.5.7 General administrative provisions

Elections and appointments of members for every Māori Association are required to be held on a triennial basis. The Associations may appoint such officers as they need to carry out their functions, including a secretary or a treasurer, which must be notified to the Chief Executive of TPK.¹⁰¹

92. Māori Community Development Act 1962, s 31

93. Māori Community Development Act 1962, ss 32(1), 33(1)

94. Māori Community Development Act 1962, s 32(2)

95. Māori Community Development Act 1962, s 33(2), (3)

96. Māori Community Development Act 1962, s 33(5)

97. Māori Community Development Act 1962, s 33(7)

98. Māori Community Development Act 1962, s 35(1)

99. Māori Community Development Act 1962, s 35(2)

100. Claimant counsel, closing submissions (paper 3.3.5), pp 21–22

101. Māori Community Development Regulations 1963, reg 7(1), (2)

Any member may be removed from office where the relevant Māori Association is satisfied that there is an inability to perform, neglect of duty, or misconduct.¹⁰² Members may resign from office by written notice to the relevant Association.¹⁰³ Where a vacancy exists, the position may be filled in the same manner in which the election or appointment of the vacant role was made.¹⁰⁴ A person so appointed to fill a vacancy holds office for the unexpired term of their predecessor and is eligible for reappointment.¹⁰⁵ Importantly, the powers of any Māori Association are not affected by any vacancy in the membership thereof, or because of any person continuing to act as a member after he or she has ceased to hold office, or for any reason of defect or illegality in the appointment of any member.¹⁰⁶

Each Māori Association is to hold meetings and conduct its functions in accordance with the 1962 Act and the 1963 regulations.¹⁰⁷ The chairperson of each Māori Association is to appoint the time and place of a meeting and preside over the meeting.¹⁰⁸ The chairperson is elected by the Māori Association.¹⁰⁹ A quorum of not less than half the members of the relevant Māori Association is required to transact business.¹¹⁰ Where a member cannot attend, the association may appoint another member as a proxy in that person's place.¹¹¹ Questions are determined on a majority of members' present, with the chairperson having the casting vote.¹¹² Every Māori Association is also required to keep minutes of the meetings and may otherwise, subject to the Act and Regulations, regulate its procedures.¹¹³

Māori Associations can receive donations from any persons or bodies.¹¹⁴ All moneys must be paid into the relevant Māori Association bank account and cannot be withdrawn without the consent of either two members as signatories or one member and the secretary of the Māori Association.¹¹⁵ Every Māori Association must keep true and proper accounts of all money received and paid and the purposes for which money has been received or paid.¹¹⁶ Those accounts should be available for inspection by any member of that Māori Association.¹¹⁷ Financial statements must be compiled within five months of the end of each financial year and such statements must be audited.¹¹⁸ In addition, Māori Associations may enter into

102. Māori Community Development Act 1962, s 22(a)

103. Māori Community Development Act 1962, s 22(a)

104. Māori Community Development Act 1962, s 22(b)

105. Māori Community Development Act 1962, s 22(c)

106. Māori Community Development Act 1962, s 22(d)

107. Māori Community Development Act 1962, s 23; Māori Community Development Regulations 1963, regs 4, 5, 6, 7, 9, 12

108. Māori Community Development Act 1962, s 23(a), (c)

109. Māori Community Development Act 1962, s 23(b)

110. Māori Community Development Act 1962, s 23(e)

111. Māori Community Development Act 1962, s 23(d)

112. Māori Community Development Act 1962, s 23(f)

113. Māori Community Development Act 1962, s 23(g), (h)

114. Māori Community Development Act 1962, s 24

115. Māori Community Development Act 1962, s 27

116. Māori Community Development Act 1962, s 28(a)

117. Māori Community Development Act 1962, s 28(b)

118. Māori Community Development Act 1962, s 28(d), (e)

contracts duly signed and in written form and under the seal of the association.¹¹⁹ All documents purported to be issued by a Māori Association must also be signed in the appropriate manner.¹²⁰ Māori Associations may acquire land or an interest in land and may also dispose of such land or interest.¹²¹ No member of a Māori Association is personally liable for acts done or omitted in good faith.¹²²

If a Māori Committee ceases to function that must be notified by the Māori Executive Committee to the DMC and the Chief Executive and gazetted accordingly. Likewise, if a Māori Executive Committee is dissolved the DMC must notify the Chief Executive. Thereupon, the assets shall vest in the relevant Māori Executive Committee or DMC as the case may be.¹²³

THE ELECTION SEQUENCE FOR MĀORI ASSOCIATIONS

The 1962 Act and 1963 regulations prescribe the following election sequence for Māori associations:

- ▶ On the final Saturday in February of a triennial election year, or within seven days before or 14 days after the final Saturday in February, Māori Committee elections take place.
- ▶ In March of an election year, Māori Committees meet and appoint their delegates to the Māori Executive Committees.
- ▶ In April of an election year, Māori Executive Committees meet and appoint their delegates to the District Māori Council.
- ▶ In May of an election year, District Māori Councils meet and appoint their delegates to the New Zealand Māori Council.
- ▶ In June or July of an election year, the New Zealand Māori Council would normally hold the inaugural meeting of its three-year term in office, although this date is not prescribed by law.

Source: Māori Community Development Act 1962, ss 19(1)–(2), 21(1)–(3). For inaugural meetings, see NZMC, minutes, 28–29 June 1962, 21–23 July 1967 (NZMC Minute book (doc C3), pp 1, 252); ‘Looking Backward, Looking Forward’, NZMC Newsletter, vol 1, no 10 (June 1964) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 71.

119. Māori Community Development Act 1962, s 38(1)

120. Māori Community Development Act 1962, s 39(1)

121. Māori Community Development Act 1962, s 40

122. Māori Community Development Act 1962, s 41

123. Māori Community Development Act 1962, s 29

1.6 EVENTS LEADING UP TO THE URGENT INQUIRY

1.6.1 Procedural background

The claim was registered on 1 October 2013 as Wai 2417: the New Zealand Māori Council Māori Community Development Act 1962 claim. On 2 October 2013, the Tribunal received an application for an urgent hearing from the Wai 2417 claimants.¹²⁴

On 4 October 2013, the chairperson of the Waitangi Tribunal directed the Crown and any interested parties to file submissions in response to the application by 1 November 2013. He delegated the task of determining the application to Deputy Chief Judge Caren Fox.¹²⁵

The Crown filed a submission in response as directed, accompanied by the affidavit of Kim Ngārimu, former TPK employee and senior government official responsible for overseeing the consultations on the reform of the 1962 Act. On 7 November 2013, Deputy Chief Judge Fox directed the applicants to file a reply by 15 November, which was filed as directed.¹²⁶

On 14 November 2013 Deputy Chief Judge Fox advised that a judicial conference would take place on 16 December 2013 to hear from parties on the application for urgency, and she directed the Crown to file further papers relevant to the application. These were filed as directed.¹²⁷

In memorandum-directions of the chairperson dated 18 November 2013, Miriama Evans, Ronald Crosby, and Tania Simpson, Tribunal members, were appointed to assist Deputy Chief Judge Fox to determine the application.¹²⁸

1.6.2 Application for adjournment

On 11 December 2013, the Crown filed a memorandum suggesting an adjournment of the relevant aspects of the application for an urgent hearing and the vacating of the judicial conference set down for 16 December 2013 in light of announcements made by the Minister of Māori Affairs.¹²⁹ The Crown advised that Cabinet had decided that no changes would be made to the Act in respect of the NZMC; that TPK would undertake further engagement with key stakeholders to develop final proposals for Māori Wardens; and that Cabinet had invited the Minister of Māori Affairs to report back to the Cabinet Social Policy Committee with final proposals for the Māori Wardens in April 2014.¹³⁰

The Crown submitted that, on the basis of the Cabinet decisions, the application for urgency in respect of the consultation process and consultation timing as it related to the NZMC structure was ‘no longer live’ and that there could be ‘no significant and irreversible prejudice nor any need to consider alternative remedies’

124. Claimant counsel, application for urgent hearing, 2 October 2013 (paper 3.1.1)

125. Waitangi Tribunal, memorandum-directions, 4 October 2013 (paper 2.5.1)

126. Crown counsel, memorandum opposing urgency, 1 November 2013 (paper 3.1.3); Waitangi Tribunal, memorandum-directions, 7 November 2013 (paper 2.5.2)

127. Waitangi Tribunal, memorandum-directions, 14 November 2013 (paper 2.5.3)

128. Waitangi Tribunal, memorandum-directions, 18 November 2013 (paper 2.5.4)

129. Crown counsel, memorandum, 11 December 2013 (paper 3.1.8)

130. Crown counsel, minute of decision of Cabinet Social Policy Committee, 4 December 2013 (paper 3.1.8(a))

in light of Cabinet's decision not to make any legislative change in relation to the NZMC.¹³¹

The Crown accepted that the application, so far as it relates to the Māori Wardens and the MWP, remained live. However, as noted above, TPK was to 'establish a process for further engagement with key stakeholders.' The Crown submitted that on this basis there would be little utility in holding a judicial conference to determine any remaining elements of the application at that point.¹³²

On 11 December 2013, counsel for the claimants filed a memorandum in reply opposing any adjournment of the application.¹³³ Counsel submitted that the Crown's proposal for 'further engagement' by TPK remained inconsistent with the UNDRIP. This was because, in the claimants' view, the fundamental flaw in the reform process created by the Crown 'continuing to determine and lead the process for development/reform . . . cannot be "cured" short of the Crown ceding the authority to design and lead the . . . process to Māori, on Māori terms.'¹³⁴ On this basis, counsel submitted that the application for urgency should proceed as planned.

On 12 December 2013 the presiding officer issued a memorandum advising that the judicial conference would proceed.¹³⁵ It took place at the Waitangi Tribunal offices on 16 December 2013.

1.6.3 Decision on urgency

In deciding an application for urgency, the Tribunal has regard to a number of factors. Of particular importance are whether:

- ▶ the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
- ▶ there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- ▶ the claimants are ready to proceed urgently to a hearing.

Other factors that the Tribunal may also take into account in considering an urgent application include whether the claim challenges an important current or pending Crown action or policy, whether an injunction has been issued by the courts on the basis that the claimants have applied to the Tribunal, and whether any other grounds for justifying urgency have been made out.¹³⁶

On 24 December 2013, the Tribunal granted the claimants' application for urgency in respect of the first and second issues (see section 1.4).

In its decision, the Tribunal indicated that these aspects of the claim merited urgent inquiry due to their 'unique nature' in addition to 'the history of the legislation and its recognition of the right of Māori to self-government, the unique nature

131. Crown counsel, memorandum (paper 3.1.8), pp 1–2

132. Crown counsel, memorandum (paper 3.1.8), p 2

133. Claimant counsel, memorandum in reply, 11 December 2013 (paper 3.1.9)

134. Claimant counsel, memorandum in reply (paper 3.1.9), pp 1–2

135. Waitangi Tribunal, memorandum-directions, 12 December 2013 (paper 2.5.6)

136. Waitangi Tribunal, *Waitangi Tribunal Practice Note: Guide to the Practice and Procedure of the Waitangi Tribunal* (Wellington: Waitangi Tribunal, 2012), p 5

1.6.4 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

of the Council system and the inextricable link and development of the Māori Wardens under the agency of Māori communities and the District Councils'. It also noted that the Crown had, to date, provided no assurances that it would defer its review of the Act's provisions pertaining to DMCs and Māori Wardens. Any reform to the Act, said the Tribunal, risked undermining the current statutory regime and could not 'be justified without the proper engagement of the Crown's Treaty partner, which in this context is the NZMC and its District Councils'.¹³⁷

Claimants were then ordered to file any evidence in support of their claim by 21 February 2014, with Crown evidence to be filed by 28 February.¹³⁸ On 16 January 2014, the Tribunal's chairperson appointed Deputy Chief Judge Fox as the presiding officer for the Wai 2417 inquiry. Miriama Evans, Tania Simpson, Ronald Crosby, and Dr Grant Phillipson were appointed as panel members.¹³⁹ On 14 March 2014, Sir Hirini Moko Mead was appointed as an additional panel member.¹⁴⁰

1.6.4 Statement of issues

On 3 February 2014, counsel for the Crown and claimants filed a joint statement of issues.¹⁴¹ After reviewing the statement, the Tribunal kept the issues identified jointly by the parties and added two additional issues for essential context and to address the extent and remedy for potential prejudice. The final statement of issues, dated 17 February 2014, is reproduced in full below:

Essential Context

- a) What were the origins and intent of the Māori Community Development Act 1962?

First Claim

- b) What is the role of Māori in the review and reform of the Māori Community Development Act 1962?
 - i. How are Treaty principles applied in determining that Māori role?
 - ii. How is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) relevant to the interpretation and application of Treaty principles in answering question (b)?
- c) What is the role of the Crown in the review and reform of the Māori Community Development Act 1962?
 - i. How are Treaty principles applied in determining that Crown role?
 - ii. How is UNDRIP relevant to the interpretation and application of Treaty principles in answering question (c)?
- d) In light of the answers to question (b) and (c) above, is the current review of the Māori Community Development Act 1962 consistent with Treaty principles?

137. Waitangi Tribunal, decision on urgency application (paper 2.5.8), p 16

138. Waitangi Tribunal, memorandum-directions, 29 January 2014 (paper 2.5.10)

139. Waitangi Tribunal, memorandum-directions, 16 January 2014 (paper 2.5.9)

140. Waitangi Tribunal, memorandum-directions, 14 March 2014 (paper 2.5.18)

141. Crown and claimant counsel, joint statement of issues, 3 February 2014 (paper 1.4.1)

Second Claim

- e) How does the Māori Wardens Project relate to the Māori Community Development Act 1962 regime in respect of Māori Wardens?
- f) In light of the answer to question (e) above, is the Māori Wardens Project consistent with Treaty principles?

Prejudice

- g) If the Tribunal finds that there is a breach of Treaty principles, what is the prejudice to the claimants and what recommendations should the Tribunal make to remedy it?

1.6.5 Developments following the granting of urgency

On 28 February 2014, the Tribunal received the affidavit of Michelle Hippolite, Chief Executive of TPK. In it, Ms Hippolite set out a proposal by the Crown on the ongoing review of the 1962 Act and the respective roles of Māori and the Crown in such a review. We quote her affidavit at length below as it was crucial to our inquiry:

the New Zealand Māori Council and Māori Association structure, and the Māori Wardens, are Māori institutions and not Crown institutions.

The Crown does, however, currently have an interest in these institutions owing to a) their being provided for in public legislation that is administered by the Minister of Māori Affairs, with support from Te Puni Kōkiri; b) the powers conferred by the Act being, by virtue of section 3 of the Act, under the general direction and control of the Minister; and c) public funds being appropriated by Parliament for the use of the New Zealand Māori Council and Māori Wardens.

Having said this, upon reflection, and having considered the submissions made as part of the review and evidence filed by the claimants in this matter, the Crown confirms that Māori should be free to consider for themselves and develop reforms to their own institutions, and to the extent that legislative reform might be required or public funding sought, to come to the Crown as Treaty partner to discuss and negotiate desired reform.

When saying that ‘Māori’ should be free to consider what changes, if any, should be made to their own institutions, the Crown means ‘Māori’ in the widest sense and considers that a cross section of Māori representative bodies and groups should be involved.

As any proposals for reform are likely to result in legislative change and the Crown will continue to be responsible for review funding, it considers it to be reasonable and appropriate that the Crown put forward a process for facilitating the continuing review of the Act by Māori. To that end, the Crown’s proposal is to put the following process in place for the continuing review of arrangements for Māori Wardens.

- ▶ Two reference groups be established, one comprised of New Zealand Māori Council representatives and the other of Māori Warden representatives.
- ▶ Those reference groups to engage with other stakeholders such as iwi, the Iwi Chairs Forum, the Māori Women’s Welfare League, Māori authorities, and Te Kōhanga Reo Trust.

1.6.5 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

- ▶ Reference group members and stakeholders will be free to engage with their own constituencies as they see fit.
 - ▶ The reference groups and stakeholders will advise their views and proposals to the Crown.
- Key elements of the proposed approach are:
- ▶ The Crown will merely facilitate the establishment of the two reference groups. These groups themselves will be free to operate and engage with their stakeholders and others as they see fit subject to agreement by the Crown as to Crown funding and timing matters.
 - ▶ The members of the New Zealand Māori Council reference group would be selected by the New Zealand Māori Council. Nominations for the Māori Wardens reference group will be sought from a cross section of groups representing Māori Wardens including the New Zealand Māori Council and the Māori Wardens Association.
 - ▶ In recognition of wider Māori interests, the reference groups should seek advice from other stakeholders such as iwi, the Iwi Chairs Forum, the Māori Women's Welfare League, Māori authorities, and Te Kōhanga Reo Trust to ascertain their views. The Crown will also seek the advice from these wider stakeholders when considering the proposals of the reference groups.
 - ▶ In assessing any proposals for reform that involve legislative reform or have public funding implications, the Crown too would be free to undertake its own research, receive its own advice and itself consult relevant stakeholders.
 - ▶ The Crown will then engage in good faith as Treaty partner with the reference groups in relation to any proposals that require legislative change or for which public funding is sought.¹⁴²

On 7 March 2014, NZMC co-chair Sir Edward Taihakurei Durie filed a statement setting out the NZMC's response to Ms Hippolite's proposal:

The New Zealand Māori Council welcomes Ms Hippolite's willingness to reconsider the review process and the recognition that "Māori should be free to consider for themselves and develop reforms to their own institutions". The New Zealand Māori Council is also willing to engage on the need for reform. However, Ms Hippolite's proposal does not comply with the 1962 Act and thus with the agreement that exists between Māori and the Crown. There must first be compliance with the 1962 Act.

In support of that position, I first note that the Crown's alleged failure to comply with the 1962 Act, and thus with the 1962 agreement with Māori was a major factor giving rise to the claim.

It is now for the Crown to comply with the 1962 Act before proposing reform. In Treaty terms there is an issue of good faith and it is a matter of public policy (and indeed constitutional law) . . . that all must comply with the law and must be seen as complying with the law.

To put it simply, the Crown must work through the New Zealand Māori Council for the administration of the wardens, it must do so now, and it must do so before

142. Michelle Hippolite, brief of evidence (doc B18), pp 2-3

considering the appropriate process for reform. The Crown cannot bring about reforms on the basis of anomalies which the Crown itself has created.

My second point is that the reform process proposed by the Chief Executive of Te Puni Kōkiri itself must comply with the law. Under the current law, the New Zealand Māori Council is the democratic body appointed to advise the Crown on issues affecting Māori, not the wardens. The wardens are an arm of the New Zealand Māori Council, each of its members are bound to the structures of the 1962 Act and through that they are subject ultimately to the New Zealand Māori Council's direction. Having regard to their statutory relationship with the New Zealand Māori Council, they cannot stand as an independent reference group. Of course they may make submissions, and some may collectivise for that purpose, but Ms Hippolite's proposal cannot give the wardens a status or role which they do not have in terms of the legislation and which is inconsistent with the legislation.¹⁴³

1.6.6 Emergence of interested parties

In the months leading up to the March 2014 hearing, the Tribunal received applications from a number of individuals or groups wishing to be represented as interested parties in the inquiry.

On 26 November 2013, counsel for Te Tai Tokerau DMC filed a memorandum in support of the claimants' application for urgency, and sought permission to file further evidence as an interested party in the claim.¹⁴⁴

On 13 December 2013, counsel for the Consultancy Advocacy and Research Trust, a Wellington-based Māori organisation, as well as Eugene Ryder and three other individuals, filed an affidavit in support of the claimants.¹⁴⁵

On 11 March 2014, the Tribunal received an affidavit in support of the claim from Lady Emily Latimer on behalf of Te Tai Tokerau DMC.¹⁴⁶

On 14 March 2014, the Tribunal received a request from Jordan Winiata Haines, a Māori Warden and representative of the Raukawa District Māori Wardens Association, to appear before the Tribunal to present evidence as an interested party in the claim.¹⁴⁷

Having received notice that further wardens' groups wished to be represented as interested parties, the presiding officer directed all such parties to file affidavits by 16 March 2014. Following this direction, the Tribunal duly received affidavits from Clare Matthews on behalf of the Rotorua Māori Wardens Sub-Association, Haki Wihongi, a Te Tai Tokerau Māori Warden affiliated with the North Kaipara Māori Wardens and the Tai Tokerau District Māori Wardens Association, and Tangihaere Gloria Hughes, of the Rotorua Wardens Sub-Association, the Waiariki District Māori Wardens Association, and the NZMWA.¹⁴⁸

143. Sir Edward Taihakurei Durie, statement in reply, 7 March 2014 (doc B24), pp 1–3

144. Claimant counsel, memorandum, 1 November 2013 (paper 3.1.6)

145. Claimant counsel, memorandum, 13 December 2013 (paper 3.1.10)

146. Lady Emily Latimer, affidavit, 11 March 2014 (doc B27)

147. Jordan Winiata Haines, affidavit, 13 March 2014 (doc B28)

148. Clare Matthews, affidavit, not dated (doc B29); Haki Wihongi, affidavit, 13 March 2014 (doc B30); Tangihaere Gloria Hughes, affidavit, not dated (doc B31)

On 18 March 2014, the first day of hearing, the Tribunal received the unsigned affidavit of Linton Sionetali.¹⁴⁹

1.6.7 Other pre-hearing matters

After receiving the claimants' historical report,¹⁵⁰ the Tribunal considered that it would be assisted by more information about the origins of the New Zealand Māori Council, the Māori Community Development Act 1962, and on the role and place of the Māori Wardens under the 1962 Act structure. The tight timeframes of the urgent inquiry meant that there was insufficient time to commission a report, so the Tribunal commissioned staff members Craig Innes and Ann Beaglehole to compile a bibliography and document bank of primary and published material relating to the origins of the 1962 Act and the place of Māori Wardens under that Act. This document bank was tabled on the Wai 2417 Record of Inquiry on 12 March 2014 and will hereafter be referred to in this report as the first Waitangi Tribunal document bank.

1.7 THE HEARING

The hearing into the New Zealand Māori Council claim took place at Pipitea Marae in Wellington before a gathering of approximately 150 over three days between 18 and 20 March 2014.¹⁵¹ The hearing was well attended by Māori Wardens and members of DMCS and the NZMC.

The claimants were represented by Matthew Smith as counsel and Donna Hall as solicitor. Appearing for the Crown were Jason Gough and Virginia Hardy. Gerrard Sharrock appeared on behalf of the Tai Tokerau District Māori Council as an interested party in this claim.

Day one of the hearing opened with Maanu Paul, presenting on behalf of the claimants. Mr Paul was followed by the first of the technical witnesses for the claimants, psychologist Dr Aloma Parker on behalf of herself and her co-author Dr Marion Mare. Dr Parker spoke to their report on the history of the NZMC. Next, we heard from Des Ratima, on behalf of the claimants, accompanied by Tākitimu wardens, and claimant witness Owen Lloyd, of Te Tairāwhiti District Māori Council. Our first day of hearing concluded with the evidence of Dr Claire Charters, technical witness for the claimants. Dr Charters, a lecturer at the University of Auckland specialising in the area of indigenous peoples in international law, spoke on the obligations of governments towards indigenous peoples under the UNDRIP.

Day two of the hearing opened with evidence from witnesses for the claimants Diane Ratahi and Wilma (Billie) Mills of the Aotea District Māori Council, accompanied by wardens Te Reo Hemi, Mauriri Haines Winiata, and Celia Boyd. We also heard from claimant witness Titewhai Harawira of the Auckland District Māori

149. Linton Sionetali, affidavit, not dated (doc B34)

150. Marian Mare and Aloma Parker, 'Comments on the Review of the Māori Community Development Act 1962', December 2013 (doc A9)

151. Transcript 4.1.1

Council, followed by Noelene Smiler of the Wellington District Māori Council and Bruce Aranga, who presented in place of Millie Hawiki. Next, Diane Black of the Tāmaki ki Te Tonga District Māori Council spoke as a witness for the claimants, supported by South Auckland wardens including Anne Kendall, Richard Noble, and Sandy Turei. Next, the Tribunal heard the evidence of claimant witnesses Melanie Mark Shadbolt and Angelia Tahameto Teotoria, of the Ōtautahi Māori Committee, and Karen Waterreus, Secretary of the NZMC. Following this, we heard from two Te Tai Tokerau witnesses: Mere Mangu, appearing on behalf of Lady Latimer, and Rihari Dargaville. These two speakers were supported by a group of Te Tai Tokerau wardens. Ms Mangu then formally presented the Tribunal with the taonga of the early minute books of the NZMC on Lady Latimer's behalf. Day two's evidence concluded with the evidence of the first witness for the Crown, Chief Executive of TPK Michelle Hippolite.

In the first session of day three, we heard from Sir Edward Taihakurei Durie, claimant and co-chair of the NZMC. Following the conclusion of his evidence, Jordan Winiata Haines, warden and member of the Raukawa District Māori Wardens Association, appeared as an interested party, supported by Raukawa wardens. Next, we heard from Crown witness and warden Paiharehare Whitehead, supported by wardens from the Tairāwhiti district. Crown witnesses Kim Ngārimu, former TPK Deputy Secretary, and Te Rauhuia Clarke, head of the MWP project team at TPK, concluded the evidence presented on the third and final day of our hearing.

Due to time constraints, the Tribunal was unable to hear from all witnesses and interested parties who wished to present at the hearings, and the presiding officer directed that questions for these individuals be put in writing.

In addition, the closing submissions for the Crown were directed to be delivered to the Tribunal a week after the circulation of the official transcript of the hearings, with the closing submissions of claimant counsel and counsel for interested parties due a week after the Crown's. On 17 April 2014, Deputy Chief Judge Fox directed that Crown closing submissions be filed by 6 May 2014, with claimant and interested party closing submissions to follow on 20 May 2014.¹⁵²

1.8 POST-HEARING DEVELOPMENTS

Following the completion of hearings, it became apparent that further primary evidence was required in several areas: on the history of the NZMC system from 1962 until the present day and on the history of the Māori Wardens. Accordingly, the presiding officer directed that Tribunal staff identify relevant primary evidence on these topics and that copies of the resulting evidence be entered on the record of inquiry and provided to parties in advance of closing submissions. This evidence was entered on the record of inquiry on 22 April 2014 and will hereafter be referred to as the second Waitangi Tribunal document bank.

152. Waitangi Tribunal, memorandum-directions, 17 April 2014 (paper 2.7.4)

On 6 May 2014, Crown counsel filed a memorandum seeking an extension to the deadlines for closing submissions to 13 May 2014 for the Crown and 27 May 2014 for the claimants and interested parties, in light of this large volume of material filed after the hearings. The Crown advised that claimant counsel had agreed to such an extension.¹⁵³ On 12 May 2014, the presiding officer issued a memorandum granting the requested extensions.¹⁵⁴

Closing submissions for the Crown were subsequently received, as directed, on 15 May 2014, followed by the closing submissions on behalf of the Tai Tokerau District Māori Council on 27 May 2014 and closing submissions for the claimants on 28 May 2014.¹⁵⁵

On 10 June 2014, the presiding officer issued a memorandum notifying the parties that the estimated timeframe for the Tribunal to produce a pre-publication version of its report would be four to five months and encouraging the parties to continue with discussions concerning ‘a possible way forward’ in the meantime.¹⁵⁶

On 3 October 2014, the Tribunal sought additional information from the claimants (as to the DMCS validly in office after the February 2012 elections) and the Crown (as to the date at which the MWP Governance Board, which replaced the Advisory Group, ceased to meet). The claimants and Crown filed the requested information on 17 October 2014, but in doing so the claimants also provided evidence about recent, post-hearing interactions between the NZMC and TPK. The Tribunal posed follow-up questions to the NZMC (again, on the question of DMCS validly in office), which were answered by Ms Karen Waterreus on 28 October 2014. In addition, the Crown responded to Ms Waterreus’ post-hearing evidence by filing evidence of its own from Te Rauhuia Clarke, the MWP team leader.¹⁵⁷

1.9 OUR REPORT

Our report is structured as follows:

- ▶ Chapter 2 sets out the relevant Treaty principles pertinent to this inquiry and the role of the UNDRIP in informing these Treaty principles.
- ▶ Chapter 3 discusses the origins and significance of the 1962 Act and offers the Tribunal’s assessment of the claimants’ argument that this Act might be viewed as a ‘compact’ between Māori and the Crown.
- ▶ Chapter 4 recounts the history of the NZMC and its relationship with the Crown from 1962 until the 2000s, setting the scene for later chapters.

153. Crown counsel, memorandum, 6 May 2014 (paper 3.4.6)

154. Waitangi Tribunal, memorandum-directions, 12 May 2014 (paper 2.7.5)

155. See Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3); counsel for Te Tai Tokerau District Māori Council, closing submissions in support, 4 April 2014 (paper 3.3.4); claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5).

156. Waitangi Tribunal, memorandum-directions, 10 June 2014 (paper 2.7.6), p1

157. Waitangi Tribunal, memorandum-directions, 3 October 2014 (paper 2.7.7); Karen Waterreus, brief of evidence, 17 October 2014 (doc c22); Crown counsel, memorandum, 17 October 2014 (paper 3.4.10); Waitangi Tribunal, memorandum-directions, 20 October 2014 (paper 2.7.8); Karen Waterreus, brief of evidence, 28 October 2014 (doc c24); Te Rauhuia Clarke, brief of evidence, 28 October 2014 (doc c25); claimant counsel, memorandum, 28 October 2014 (paper 3.4.12)

- ▶ Chapter 5 focuses on the history of the Māori Wardens from the nineteenth century through to the end of the twentieth century, adding further historical context to the findings of later chapters.
- ▶ Chapter 6 provides the Tribunal's analysis of the Crown's conduct in its review of the 1962 Act, addressing the first part of the claim.
- ▶ Chapter 7 contains our discussion of the policy and 'bigger picture' issues relating to the second parts of the claim in respect of the Māori Wardens Project.
- ▶ Chapter 8 addresses the claimants' allegations in relation to the funding of the Māori Wardens via the Māori Wardens Project.
- ▶ Chapter 9 provides the Tribunal's assessment of the claimants' allegations relating to Māori Wardens' warrants.
- ▶ Chapter 10 presents a summary of the Tribunal's overall findings and provides our recommendations on future directions.

CHAPTER 2

TE TIRITI ME TE WHAKAPUTANGA O NGĀ MANA O IWI TAKETAKE / THE TREATY AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

2.1 INTRODUCTION

In this chapter, we discuss and determine the Treaty principles that are relevant to the issues we consider in this inquiry. We begin by considering the texts of the Treaty and their application to the claim issues as formulated at the outset of our inquiry. We review the parties' submissions on how we should approach the issues in Treaty terms, following which we discuss and set out each of the principles we have identified as being of relevance to our deliberations.

In the second part of the chapter, we consider in what manner those principles are informed by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which the claimants put to us as being relevant to our inquiry and which was affirmed in April 2010 by the New Zealand Government.

2.2 THE TREATY OF WAITANGI

In 1840, the Treaty of Waitangi (the Treaty) was signed by the Crown and Māori, establishing a formal relationship between two peoples.

In establishing the principles that apply in our inquiry we are charged with reconciling the differences between the English and Māori texts of the Treaty. It is well established in this jurisdiction that the Māori text is not a direct translation of the English text. In a series of reports since the 1980s the Waitangi Tribunal has consistently recognised the differences between the two texts. The official English text states that the Chiefs of New Zealand cede sovereignty in exchange for the guarantee of full, exclusive, and undisturbed possession of lands, estates, forests, fisheries, and other properties. By contrast, the Māori text conveyed the right of government (kāwanatanga) to the Crown; in exchange, Māori would retain full authority (tino rangatiratanga) over their lands, villages, and all those things important to them.¹

1. See, for example, Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), pp 188–189.

THE TREATY OF WAITANGI

The official Māori and English texts of the Treaty of Waitangi are replicated in the first schedule of the Treaty of Waitangi Act 1975. We reproduce them below in full. The Māori text reads:

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) William Hobson,
Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

The English text reads:

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long

as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W HOBSON

Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

It was the Māori text that was for the most part presented to and signed by Māori. The Waitangi Tribunal has recently issued its report on stage 1 of the Te Paparahi o Te Raki (Northland) inquiry, *He Whakaputanga me Te Tiriti / The Declaration and the Treaty*. In it, the Tribunal records that British explanations at Waitangi of the Treaty's purpose focused on asserting government control over settlers and protecting Māori authority over their own affairs.² That Tribunal concluded from the historical evidence that the rangatira did not cede their sovereignty on 6 February 1840, but it (the Tribunal) noted that it 'say[s] nothing about how and when the Crown acquired the sovereignty that it exercises today'.³

2. Waitangi Tribunal, *He Whakaputanga me Te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wellington: Legislation Direct, 2014), pp 515–517, 524

3. Waitangi Tribunal, *He Whakaputanga me Te Tiriti*, p 527

For our purposes, our urgent Māori Community Development Act inquiry deals with Crown actions or omissions that have occurred since 1992. In common with previous Tribunals which have considered contemporary claims, we interpret the Treaty as a living document applicable to present circumstances. We agree with the Motunui–Waitara Tribunal’s view that ‘[i]t was not intended to merely fossilise a status quo, but to provide a direction for future growth and development’; and that ‘the Treaty is capable of a measure of adaptation to meet new and changing circumstances provided there is a measure of consent and an adherence to its broad principles.’⁴ We turn now to discuss the principles which we consider to apply to the issues raised in this inquiry.

2.3 THE TREATY’S APPLICATION TO THE ISSUES

The Wai 2417 claim is largely premised on the right to autonomy, or self-government – a right which, the claimants say, derives from the pre-existing political status held by Māori before they signed the Treaty of Waitangi, and which was affirmed by the Treaty’s guarantee of tino rangatiratanga. This right, they say, entitles them to a significant role in deciding on the form of their institutions of self-government, and to lead any development of those institutions. The Crown, they allege, has intruded on their exercise of self-government in initiating institutional reform.

In this chapter, we explore the fundamental tension in the Treaty of Waitangi between the Crown’s right of kāwanatanga and the right of Māori to self-government and autonomy through their own cultural or political institutions (or both). This requires us to establish the extent of Māori rights to national representation and the role they have in developing policy and law in that regard, and the extent of the Crown’s responsibilities for developing policy for law reform that affects Māori self-government institutions.

In this chapter, we ask one overarching question:

What are the relevant Treaty principles to be applied in determining the respective roles of the Crown and Māori in the review and reform of the Māori Community Development Act 1962 (the 1962 Act) and how is UNDRIP relevant to the interpretation and application of Treaty principles?

We ask in subsequent chapters whether the Māori Wardens Project is consistent with Treaty principles.

2.4 TREATY PRINCIPLES RELEVANT TO OUR INQUIRY

2.4.1 Introduction

The claimants and the Crown have raised the following principles of the Treaty as relevant to their claims:

4. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim* (Wellington: Waitangi Tribunal, 1983), p 52

- kāwanatanga – the right to govern and exercise good government;
- tino rangatiratanga – the right to self-government and autonomy;
- partnership;
- active protection, informed decision-making, and the duty to consult; and
- equity.

To this, we would add the principle of development, as we explain below. Crown witness Kim Ngārimu also raised the principle of options, but this was not addressed by either party in our inquiry. We explain this principle and discuss its application in chapter 6, where we deal with Ms Ngārimu's evidence on the matter.

We next discuss each of these principles in turn.

2.4.2 The Treaty exchange: kāwanatanga and rangatiratanga

(1) *Parties' arguments*

The claimants contend that the Māori Community Development Act 1962 is no ordinary statute and that it must be seen in the context of a century-old search for rangatiratanga/self-government.⁵ It is an agreement or compact, they say, to recognise a structure that contributes to the exercise of tino rangatiratanga or self-government.⁶ Essentially, it is because of Māori that the New Zealand Māori Council (NZMC) was established with the intention of taking the lead in advancing Māori self-government. Māori, through the NZMC, should thus lead a review of the 1962 Act and any reform of its District Māori Councils (DMCs) and their role vis-à-vis Māori Wardens. That is because Māori Wardens are not a Crown institution but a Māori one.⁷ The claimants contend that the Crown is using its kāwanatanga power to exclude or diminish the NZMC's and DMCs' authority in the review and reform process for the 1962 Act and the Māori Wardens Project.⁸ It has also taken it upon itself to lead and shape the reform of the administrative arrangements for Māori Wardens through the Māori Wardens Project.⁹

The claimants say in terms of the reform of the 1962 Act that the Treaty guarantee of rangatiratanga can require the Crown, in developing policy, to reach a negotiated agreement with Māori rather than developing policy on its own and legislating unilaterally.¹⁰ This must be 'especially so' where the context is Māori self-government.¹¹ They say in this setting that the principle of rangatiratanga requires the Crown to facilitate cooperative governance.¹²

The Crown submits in response that it has an interest in the review and reform of Māori Associations to the extent that they are provided for under the 1962 Act, because they are under the general discretion and control of the Minister, and

5. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p 1

6. Claimant counsel, closing submissions (paper 3.3.5), p 1

7. Claimant counsel, closing submissions (paper 3.3.5), p 20

8. Claimant counsel, closing submissions (paper 3.3.5), p 1

9. Claimant counsel, closing submissions (paper 3.3.5), p 1

10. Claimant counsel, closing submissions (paper 3.3.5), p 26

11. Claimant counsel, closing submissions, p 26

12. Claimant counsel, closing submissions, p 63

public funds are appropriated for those institutions.¹³ It also argues that the structures being reviewed are provided for in legislation and therefore the Ministers and departments responsible for administering that legislation must be involved in the engagement process.¹⁴

The Crown submits that by its actions it has sought to seek a balance between the Crown's *kāwanatanga* interests and the *rangatiratanga* interests of *iwi*, Māori, the NZMC and Māori Wardens.¹⁵ It argues that Māori have a role to play in the review and reform of their own institutions, and the Crown's role is in respect of agreeing to and promoting legislative reform and in funding.¹⁶ These roles are provided for within the spirit of the Treaty.¹⁷ The Crown's proposals for the future, as put by the Chief Executive of Te Puni Kōkiri (TPK), seek to actively protect the interest of Māori communities, including *iwi*, by creating an environment where the relevant Māori groups and Māori communities have an opportunity to contribute to the reform of Māori institutions.¹⁸

Thus the Crown agrees that the NZMC and the Māori Wardens are Māori institutions, not Crown institutions, and that Māori should be free to consider for themselves and develop reforms to their own institutions.¹⁹

The Crown denied that either the 2009–13 review of the legislation or the Māori Wardens Project breached the principle of *rangatiratanga*, on the grounds that the Crown has a responsibility to ensure that the interests of all parties are considered and taken into account. The Crown, when referring to the Māori role in the review, means that Māori in the broadest sense should be involved in designing and proposing reform to Māori institutions within the framework of the 1962 Act, and that would include Māori Wardens and their associations.²⁰

The Crown acknowledges that the NZMC is central to discussions on the future of Māori Wardens but submits that Māori Wardens themselves and Māori communities generally, including *iwi*, also have a central role.²¹

(2) *Our view*

The fundamental Treaty exchange – '*kāwanatanga katoa*' for '*tino rangatiratanga*' – has been variously interpreted in previous Tribunal reports that have considered contemporary claims. The right of *kāwanatanga* today has been described as the right to govern the country. Governance includes the power to make laws for peace and good order, phrases that can be found in the preamble of the English text.²² The Tribunal has also recognised that *kāwanatanga*, in a modern context, bestows upon

13. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3), p 7

14. Crown counsel, closing submissions (paper 3.3.3), p 13

15. Crown counsel, closing submissions (paper 3.3.3), p 9

16. Crown counsel, closing submissions (paper 3.3.3), p 7

17. Crown counsel, closing submissions (paper 3.3.3), p 7

18. Crown counsel, closing submissions (paper 3.3.3), pp 7–8

19. Crown counsel, closing submissions (paper 3.3.3), p 7

20. Crown counsel, closing submissions (paper 3.3.3), p 7

21. Crown counsel, closing submissions (paper 3.3.3), pp 8–9

22. Waitangi Tribunal, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington: Legislation Direct, 2013), p 65

any Government the right to pursue the policy agenda upon which it was elected to office.²³ It is a given that as part of the right to govern, it is the Crown's responsibility to comply with its own laws. This is an essential element of good government.

However, the Tribunal has also found that the Crown's right to govern has never been an absolute and exclusive right. That is because of the *quid pro quo* of the Treaty: that the right to govern was in exchange for the Crown's protection of Māori authority. In other words, in exchange for *kāwanatanga*, the Crown solemnly promised that Māori rights, including the right to exercise *tino rangatiratanga*, would be protected.²⁴ As has been reiterated in numerous Tribunal reports, article 2 of the Treaty guaranteed Māori their *tino rangatiratanga* over their land, resources, and people, in return for Māori recognition of the Crown's right to govern and its right of pre-emption.

Tino rangatiratanga has been interpreted as absolute authority and can include freedom to be distinct peoples; the right to territorial integrity of their land base; the right to freely determine their destinies; and the right to exercise autonomy and self-government. As the Central North Island Tribunal noted, that guarantee of Māori autonomy and self-government extends, *inter alia*, to:

- ▶ the right of Māori to constitutional status as the first people (*tangata whenua*);
- ▶ the right of Māori to manage their own policy, resources, and affairs within the minimum parameters necessary for the operation of the State;
- ▶ the right of Māori to enjoy cooperation and dialogue with the Government; and
- ▶ the right of Māori to regulate autonomously their own internal affairs according to their *tikanga*, and to establish, maintain and develop their own legal and political institutions.²⁵

The Treaty exchange of *kāwanatanga* for *rangatiratanga* establishes the rights of the Crown and Māori to exercise authority in their respective spheres. Where they overlap, striking a practical balance between the Crown's authority and the authority of Māori should be a matter for negotiation, conducted in the spirit of cooperation and tailored to the circumstances. It is from this need to strike a balance that the principle of partnership is derived, which we discuss further below.

Both the claimants and the Crown agree that the NZMC is a Māori institution not a Crown institution and that Māori should be free to consider for themselves and develop reforms to their own institutions. Where they differ is that the Crown considers that the Māori Wardens have the right, as a separate community of interest recognised under the 1962 Act, to be consulted on how they should be administered.²⁶ Crown counsel notes that the Māori Wardens' participation in any review of

23. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, p 322

24. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed 4 vols (Wellington: Legislation Direct, 2008), vol 4, p 1237

25. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 403

26. Crown counsel, closing submissions (paper 3.3.3), pp 8–9

the legislation is not subject to the express direction of DMCS.²⁷ Thus, in the Crown's view, it is not unreasonable to expect that Māori Wardens should have a central role in the review of the legislative provisions that govern their organisation and operation.²⁸

We note that the right to govern resides with the Crown but the position adopted by the Crown and some members of the New Zealand Māori Wardens Association represented before us, raises the question of where tino rangatiratanga resides in this case.

The answer simply is that it resides in Māori communities and their leaders. While legal structures may be established or appropriated by Māori groups, they merely 'reflect or approximate the locus of rangatiratanga, and the legal structure should not be mistaken for the community.'²⁹ Rather, such structures tend to be the conduits through which communities can be accessed or under which they operate.³⁰ This point of principle is explicit in the 1962 Act and, most importantly, it remains the only piece of legislation where the Crown has expressly recognised Māori have the right to exercise self-government.

It does so by according to the NZMC, District Councils, and Executive Committees the general function of promoting, encouraging, and assisting Māori to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings.³¹ They must all promote, encourage and assist Māori Committees and their communities in this manner, as well as in accordance with the requirements in section 18(1)(d) by collaborating with and assisting relevant Government agencies in fostering respect for the law and law-observance (and in terms of crowd and alcohol control at Māori gatherings). Wardens are an integral part of the system designed to help meet these important functions. The wardens do not, however, have the right either to exercise rangatiratanga or to represent it.

That is because, as we discuss in chapter 3, the 1962 Act and its various amendments reflects a consensus reached over the period 1959 to 1963 among the tribes, and Māori communities generally, that they would achieve self-government via the system of Māori Associations, not the wardens, constituted under the 1962 Act. That system was pervaded by a form of tino rangatiratanga derived from the Māori communities upon which it was sourced, resulting in several different tiers of self-government reaching from the local and regional to the national level. The Māori Wardens are an operational aspect of that system. The NZMC and the District Councils have recognised that wardens should have a high degree of operational autonomy, as we discuss in chapter 5, but do not want them removed from under the administration of the District Councils. In the claimants' view, this would remove the accountability of wardens to their communities.

27. Crown counsel, closing submissions (paper 3.3.3), p 9

28. Crown counsel, closing submissions (paper 3.3.3), p 9

29. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 25; Waitangi Tribunal, *Matua Rautia*, p 66

30. Waitangi Tribunal, *Matua Rautia*, p 66

31. Māori Community Development Act, s 18(1)(c)(iv)

2.4.2(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

It is through the support and consent of its constituency that the NZMC has achieved the right to represent these different levels of the system at the national level. That right was not solely derived from the 1962 Act or its various amendments, as that Act merely gave expression to the understanding that Māori themselves achieved. Rather, its derivation arose from the right and desire of Māori to exercise their tino rangatiratanga by determining for themselves their own representative institutions.

Thus the NZMC could not in 1962 and 1963 claim tino rangatiratanga per se, but could give expression to that tino rangatiratanga as the chosen representative institution for Māori.

Today, there are multiple entities that make up the local, iwi, regional or national Māori representational landscape. It is this multiplicity of entities that contributes to Māori development. Therefore, today the NZMC has difficulty claiming a national mandate to be the representative institution for all Māori. However, it can claim that it is the chosen representative institution for Māori Associations and communities of interest recognised and actively participating under the 1962 Act, and as such it is inextricably linked to the tino rangatiratanga of that constituency.

The Māori Wardens could not, and still cannot, claim tino rangatiratanga or the right to represent the Māori Associations, even though they may be able to claim that they have some recognised operational autonomy. Māori Wardens, while chosen by those communities, cannot claim to represent them, other than as an operational arm of their local self-government.

The quality of the relationship that the NZMC now enjoys with DMCS, Māori Committees, and Māori Wardens, however, is pertinent in establishing whether it has maintained the right to represent their interests at the national level so as to determine on their behalf matters of policy concerning their status under the 1962 Act, their regulation, and their funding by the Crown. That is because, just as the Crown has no absolute rights, neither does the NZMC.³² The Council also has duties and one aspect of those duties is the obligation to appropriately represent its constituency by holding their confidence and a mandate to act. As was noted by the Wai 262 Tribunal:

We have said that rangatiratanga conveys concepts of authority and control – but, in truth, there is more to rangatiratanga than this. Its root word is rangatira, meaning tribal leader – literally, one who weaves together (ranga) a group of people (tira). So rangatiratanga carries expectations about right behaviour, appropriate priorities, and ethical decision-making that are deeply embedded in Māori culture. For example, rangatira would be expected to value kinship, respect the tapu and mauri of the natural elements surrounding the community, and above all be the embodiment of kai-tiakitanga. Rangatira who behave in this way are said to have great mana. Thus rangatiratanga is imbued with ‘proper’ values.³³

32. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p1238

33. Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, vol 1, p 80

Although speaking of the community context, we consider the behaviour required of the NZMC's leadership to be the same when they purport to represent their constituency at the national level. It is simply not enough to rely on a Crown statute such as the 1962 Act and its amendments to claim the right to continue to represent the Associations and communities of interest recognised under that legislation, without the NZMC itself conducting its affairs appropriately. That requires at the least refreshing or reforming its organisation and administration so as to conform with its own legislation, particularly where the NZMC and DMCS have, at least for a period of time, been dysfunctional.

It also requires applying tikanga, or values, and exercising appropriate behaviour in decision-making. That is because tikanga can be elevated as high as law and ethics require, depending on the circumstances.³⁴ Such values include mana whakahaere (respect for those who hold governing authority or mandate),³⁵ mana whenua (respect for those with authority over land),³⁶ whakahuihui tangata (tikanga that apply to social groupings including the need to respect tangata whenua),³⁷ manaakitanga (obligation to appreciate and nurture relationships, looking after others and being careful how they are treated), whanaungatanga (obligation to acknowledge and respect a shared origin, to support the collective in return for support of the individual)³⁸ and aroha (respect for the differing but complementary roles played by each as against the other, and respect and accommodation for any difference of views).³⁹

2.4.3 Partnership

(1) Parties' arguments

The claimants argue that the 1962 Act embodies an agreement between the Crown and Māori as to what Māori self-government and autonomy should be.⁴⁰ The principle of partnership imposes a 'duty to act reasonably and in the utmost good faith' and requires that Māori (in this case, the NZMC) and the Crown both recognise and respect the laws validly enacted by Parliament.⁴¹ The claimants say that the Act forged a partnership between the two, in which they had to act towards each other with the utmost good faith and cooperation. Māori authority was to be autonomous in terms of the full range of their affairs.⁴²

The claimants contend that the principle of partnership supports the empowerment and enablement of Māori during any review and reform of the 1962 Act, and the necessity to develop a consensus which represents the views and enhances the

34. Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Wellington: Huia, 2003), ch 2, 3

35. Mamari Stephens and Mary Boyce, ed, *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (Wellington: LexisNexis, 2013), p 38

36. Stephens and Boyce, *He Papakupu Reo Ture*, p 38

37. Mead, *Tikanga Māori*, ch 13

38. Mead, *Tikanga Māori*, pp 28–29

39. Mead, *Tikanga Māori*, pp 28–29, ch 13

40. Claimant counsel, closing submissions (paper 3.3.5), p 24

41. Claimant counsel, closing submissions (paper 3.3.5), p 23

42. Claimant counsel, closing submissions (paper 3.3.5), p 24

rangatiratanga of all Māori.⁴³ It is for Māori to develop and draft any reforms of the legislation and then for the Crown to reflect the option chosen in legislation.⁴⁴

The Crown recognises that both Māori and the Crown have an appropriate role in the review of the 1962 Act. As detailed above, it notes that Māori in the broadest sense have a role to play in the review and reform of their own institutions.⁴⁵

The Crown's role, it argues, is in respect of agreeing to and promoting legislative reform and in terms of funding.⁴⁶ The Crown submits that both these roles can be provided for in the spirit of partnership, with Māori considering and proposing reform of their institutions and then coming to the Crown to discuss and negotiate desired reform where legislative change is required and/or funding is sought.⁴⁷

The Crown submits that the Māori Wardens Project should be considered as an example of partnership, with the Government responding to calls from Māori wardens for assistance for administration, uniforms, transport, and training. The Crown claims that it is complying with the principle of partnership by engaging and responding to requests for assistance by Māori Wardens.⁴⁸

(2) *Our view*

In its previous reports the Tribunal has provided extensive guidance on how the principle of partnership applies in a range of circumstances. At a fundamental level, the Treaty signifies a partnership between the Crown and the Māori people, and the compact between them rests on the premise that each partner will act reasonably and in the utmost good faith towards the other, and that in turn requires consultation.⁴⁹ As is so often noted in this jurisdiction, it was a basic object of the Treaty that two peoples would live in one country and that their relationship should be founded on reasonableness, mutual cooperation, and trust.⁵⁰ It is in the nature of the partnership forged by the Treaty that the Crown and Māori should seek arrangements which acknowledge the wider responsibility of the Crown while at the same time protecting Māori tino rangatiratanga.⁵¹

The concept of partnership in the Treaty context serves to define how Māori and the Crown should relate to each other.⁵² Partnership in that context describes a relationship where each party to the Treaty must respect the other's status and authority in their respective spheres.⁵³ Under this principle, Māori must recognise those things that reasonably go with good governance just as the Crown must

43. Claimant counsel, closing submissions (paper 3.3.5), p 26

44. Claimant counsel, closing submissions (paper 3.3.5), p 68

45. Crown counsel, closing submissions (paper 3.3.3), p 7

46. Crown counsel, closing submissions (paper 3.3.3), p 7

47. Crown counsel, closing submissions (paper 3.3.3), p 7

48. Crown counsel, closing submissions (paper 3.3.3), p 17

49. Waitangi Tribunal, *Report on the Orakei Claim*, p 207; Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wellington: Brooker and Friend Ltd, 1990), p 42

50. Waitangi Tribunal, *Māori Electoral Option Report* (Wellington: Brooker's Ltd, 1994), p 15

51. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1238

52. Waitangi Tribunal, *The Mokai School Report* (Wellington: Legislation Direct, 2000), p 14

53. Waitangi Tribunal, *Te Whānau o Waipareira Report*, pp 27–28

recognise those things that reasonably go with being Māori.⁵⁴ Overlaps between the two should be resolved by negotiation and agreement.⁵⁵ At the same time, Māori have to recognise and obey the Crown's authority, within the minimum parameters necessary for the effective operation of the State.⁵⁶

Neither Treaty partner can claim monopoly rights when it comes to making policy and law in the realm where their respective interests overlap. Therefore, they both owe each other a duty of good faith and a commitment to cooperate and collaborate where the circumstances require it.⁵⁷ This means that the Crown does not have an unqualified right to govern or to determine how all legislation is to be reviewed. Nor does the NZMC have an unqualified right to represent its constituency. Much depends upon the circumstances: in this case, how crucially the legislation affects Māori and how the particular Act relates to their self-government; and whether the council leaders have retained authority to represent the Associations and communities of interest which they officially represent.

Furthermore, if the Crown is to keep its promise to guarantee tino rangatira-tanga, including autonomy and self-government over those things guaranteed to Māori by the plain terms of the Treaty, then it should obtain their consent through dialogue and negotiation in an effort to reach agreement.⁵⁸ It should demonstrate a willingness to share a substantial measure of responsibility, control and resource with its Treaty partner. In essence, the Crown must share enough so that Māori own their own vision, while at the same time ensuring its own logistical and financial support assists Māori capacity to achieve that vision.⁵⁹ The Crown has a duty to protect Māori and an obligation to strengthen Māori to strengthen themselves.⁶⁰ This Treaty principle is often described as one that creates responsibilities analogous to fiduciary duties, such as those which exist between a trustee and beneficiary.⁶¹

An additional aspect of the principle of partnership is that there should be a sense of shared enterprise and mutual benefit. Each partner must take account of the needs and legitimate interests of the other.⁶²

In this case, we consider in chapter 3 whether the various negotiations, agreements, and legislative enactments from 1959–1963 forged an agreement in the nature of a compact between the Crown and Māori. In chapter 6 we consider the Crown's approach to the review and reform of the 1962 Act.

54. Waitangi Tribunal, *Te Whānau o Waipareira Report*, p 29; Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p 23

55. Claimant counsel, closing submissions (paper 3.3.5), p 26; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 191

56. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 191

57. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 58; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 173

58. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 423

59. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 161

60. Waitangi Tribunal, *Te Whānau o Waipareira Report*, p 16

61. *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641, 664; Waitangi Tribunal, *The Offender Assessment Policies Report* (Wellington: Legislation Direct, 2005), p 12

62. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 19–20

At a general level, we can say that the Crown has obligations to assist Māori communities and their representatives in establishing and strengthening institutions of self-government. If, after examining the evidence, we find in chapter 3 that these elements combined to form a compact, we can state here as a matter of principle that, after enacting the legislation, the Crown became obliged to recognise the NZMC as the representational body of Māori for the important matters covered in that Act, and for those Māori communities which chose to avail themselves of the self-government institutions given statutory recognition in the Act.

If we were to make a finding in chapter 3 that there was no compact, we consider as a matter of principle that the 1962 Act and its amendments make the NZMC the Crown's Treaty partner on proposals to review its functions and administrative arrangements under that Act. In other words, such an approach would be required by the Treaty and is implicit from the nature of the role of the NZMC under section 18(2) of the 1962 Act.

For its part, the NZMC was obliged to ensure that it maintained a mandate to represent the rangatiratanga of the Māori communities which elected the Associations recognised under the 1962 Act. Where the NZMC becomes actively engaged in a period of review and restructuring, as happened in 2012, the Crown should assist the NZMC to strengthen itself and the Associations under the Act, so that they may competently represent their respective communities and the latter's rangatiratanga or right to self-government.

Thus, when dealing with Māori institutions given statutory powers, the Crown's kāwanatanga authority is constrained by the obligation upon it to respect and give effect to those institutions in representing their constituencies. Conversely, the Crown is entitled to hold those institutions accountable for fulfilling their functions. This is one aspect of the Crown's broader duty to have regard to the interests of all Māori. If it has any concerns regarding whether an institution does indeed continue to hold the confidence of its constituency, the Crown should in the first instance seek to exercise its kāwanatanga powers in partnership with that institution. If the Crown is concerned that the views of Māori communities of interest are being marginalised by the representative body, it should ensure that appropriate agreements and compromises between the respective spheres of authority are accommodated so as to elicit those views.⁶³

2.4.4 Active protection, informed decision-making, and the duty to consult

(1) Parties' arguments

The claimants argued that the Crown needs to be transparent about its policies and their effectiveness.⁶⁴ It should provide adequate time for Māori consultation processes to occur.⁶⁵ Failure to give affected Māori a reasonable opportunity to formally

63. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 207

64. Claimant counsel, closing submissions (paper 3.3.5), pp 26–27

65. Claimant counsel, closing submissions (paper 3.3.5), pp 26–27

discuss, *kanohi ki te kanohi* (face to face), proposed changes to policy and legislation that affects them can lead to a breach of Treaty principles.⁶⁶

The Crown has submitted that there has been a good faith effort by the Crown to ensure that policy processes were provided in response to repeated calls for reform of the governance of Māori Wardens and for funding through the Māori Wardens Project.⁶⁷

The claimants also contend, in respect of the Māori Associations and the Māori Wardens recognised under the 1962 Act, that the principle of active protection requires the Crown to provide the operational funding necessary to actively protect these Māori institutions.⁶⁸ The Crown agrees with this principle as far as is reasonable and notes that in terms of funding the Māori Wardens Project, that project ensures funding reaches the intended recipients.⁶⁹

(2) *Our view*

The Treaty of Waitangi obliges the Crown not only to recognise the Māori interests specified in the Treaty but to actively protect them.⁷⁰ Active protection requires honourable conduct by, and fair processes from, the Crown. Crown conduct that aims or serves to undermine *tino rangatiratanga* cannot be consistent with the principle of active protection.⁷¹

The duty of active protection applies to all the interests guaranteed to Māori under article 2 of the Treaty, including the right to exercise *tino rangatiratanga* or self-government. It follows that an omission in failing to provide that protection is as much a breach of the Treaty as a positive act that removes those rights.⁷² This view is reinforced by the express reference in section 6(1) of the Treaty of Waitangi Act 1975 (as amended in 1985) to any act done or omitted at any time on or after 6 February 1840 or proposed to be done or omitted by or on behalf of the Crown.⁷³

There are several important elements to the duty of active protection, including the need to ensure that Māori are not unnecessarily inhibited by legislative or administrative constraints from exercising their Treaty rights. They should also be protected from the actions of others which impinge upon their *tino rangatiratanga*.

In this case, the Crown, through TPK, knows or ought to have known that the Māori Community Development Act 1962 is the only statute that explicitly recognises Māori rights to self-government, providing for a multilayered system from

66. Claimant counsel, closing submissions (paper 3.3.5), pp 26–27

67. Crown counsel, closing submissions (paper 3.3.3), p 17

68. Claimant counsel, closing submissions (paper 3.3.5), p 24

69. Crown counsel, closing submissions (paper 3.3.3), pp 5–6, 23

70. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 515–517; Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 53; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* (Wellington: Government Printer, 1985), p 70; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim* (Wellington: Government Printer, 1986), p 1; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 250

71. Waitangi Tribunal, *Te Urewera Pre-publication, Part 11* (Wellington: Waitangi Tribunal, 2010), p 200

72. Waitangi Tribunal, *Report on the Manukau Claim*, p 70; Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992* (Wellington: Brooker and Friend, 1992), p 269

73. Waitangi Tribunal, *Report on the Orakei Claim*, p 191

the operational level through to the national level. In such a circumstance, the Treaty duties must be directed to the protection of Māori rights generally.⁷⁴ In line with this, other Tribunals have found that the duty of active protection extends to aspects of Government policy.⁷⁵

The claimants argue that the Crown needs to adequately inform itself of Māori rights and interests before it takes action which will or may prejudice Māori, through in particular ‘kanohi ki te kanohi dialogue.’⁷⁶ That is because a vital facet of the Treaty partnership is that the Crown should consult with Māori on issues of major concern.⁷⁷ In this manner the Crown may discharge its duty to inform itself of the views and wishes of Māori.⁷⁸ That consultation must be less than hollow and more extensive where the features of a case warrant such an approach.⁷⁹ However, we also note that consultation with Māori will not always suffice to fulfil the Crown’s Treaty obligations.⁸⁰ Both parties need to consult on matters of mutual concern and they should strive to reach agreement.⁸¹

In some instances, the Crown may have sufficient information in its possession to adhere to the Treaty principles without any other specific consultation.⁸² But in other instances, the principle of active protection has been extended by the Waitangi Tribunal to include the duty to obtain the full, free, and informed consent of Māori in certain settings.⁸³ Where the respective spheres of authority held by the Crown and Māori overlap, the extent of what is needed to actively protect Treaty rights may need to be the subject of negotiation and compromise.⁸⁴ The principle of active protection should be applied so as to reflect the appropriate level of Māori authority.⁸⁵ As we noted earlier, so long as its mandate remains, that authority is held by the NZMC as the representative institution of the Crown’s Treaty partner in respect of this Act and its Māori institutions.

We also consider that the communities of interest who agree to systems of self-government are relevant stakeholders, which include marae, hapū, and iwi. That is clear from the history of the 1962 Act. Clearly by the 1960s there was some concern that with the rapid urbanisation of the Māori population, tribal authority or tribal identity in the cities would diminish, and so tribal structures were replaced by pan-Māori structures in the 1962 Act.

74. Waitangi Tribunal, *Te Whānau o Waipareira Report*, pp 20–27

75. Waitangi Tribunal, *Tauranga Moana, 1886–2006*, vol 1, p 21

76. Claimant counsel, closing submissions (paper 3.3.5), pp 26–27

77. Waitangi Tribunal, *The Tarawera Forest Report* (Wellington: Legislation Direct, 2003), p 26

78. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 423; *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, 683

79. *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, 560–561

80. Waitangi Tribunal, *The Report on the Management of the Petroleum Resource* (Wellington: Legislation Direct, 2011), p 150

81. Waitangi Tribunal, *Mohaka ki Ahuriri Report* (2004), p 23; *Tainui Māori Trust Board v Attorney-General* [1989] 2 NZLR 513, 529

82. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, 683

83. Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 15; Waitangi Tribunal, *Matua Rautia*, p 64

84. Waitangi Tribunal, *Matua Rautia*, p 64

85. Waitangi Tribunal, *Report on the Management of the Petroleum Resource*, p 151

In fact the reverse has occurred, and the tribes have been strengthened in recent years, primarily because of the 1980s policy of devolution and due to the settlement of Treaty claims, as discussed in chapter 4. How to ensure the relevance of the NZMC to this representational landscape may warrant a completely new approach to the 1962 Act. There are also other relevant national Māori institutions and urban authorities whose views need to be considered.

2.4.5 Equity and equal treatment

(1) *Parties' arguments*

The claimants argue that the Crown has a duty to act impartially and equally as between Māori.⁸⁶ In reviewing the 1962 Act and in developing and administering the Māori Wardens Project, they say the Crown cannot exclude the authority of the NZMC and DMCS in terms of the 1962 Act.⁸⁷

The Crown contends that the role of TPK in administering the Māori Wardens Project is Treaty-compliant as TPK has sought to help, not hinder, the Māori Wardens through the project's funding.⁸⁸ TPK was engaged only as a temporary measure because of dysfunction in the NZMC and some DMCS.⁸⁹ In addition, the Māori Wardens Project funding did not, Crown counsel submits, interfere with the DMCS' powers to control and supervise Māori Wardens under the 1962 Act, so the Crown has not been favouring one party over another.⁹⁰ The Māori Wardens Project, it was submitted, is open to alternatives for future administration and management of the funds.⁹¹ The Crown's initial concern appears to have been merely to ensure that funding be compliant with Government funding guidelines and accountabilities.

(2) *Our view*

The Tribunal has previously held that the principle of equity emerges in particular from the granting to all Māori of the status of British subjects.⁹² That principle derives from article 3 of the Treaty, guaranteeing Māori the rights of British citizens. A key aspect of the Crown's Treaty obligation of good governance is to treat like cases alike, and not make arbitrary distinctions between groups so as to unjustly favour some ahead of others. Māori are entitled to the full rights and privileges of all other citizens, and the Crown is required to act fairly to all groups of citizens. This constitutes the principle of equity.⁹³

It is the conferring of citizenship rights upon Māori that matures the underlying principle of equity. The principle applies to Māori as individual citizens rather than

86. Claimant counsel, closing submissions (paper 3.3.5), p 25

87. Claimant counsel, amended statement of claim, 17 January 2014 (paper 1.1.1(a)); claimant counsel, closing submissions (paper 3.3.5), pp 1, 31

88. Crown counsel, closing submissions (paper 3.3.3), pp 5, 17–20

89. Crown counsel, closing submissions (paper 3.3.3), pp 6, 17–20

90. Crown counsel, closing submissions (paper 3.3.3), p 19

91. Crown counsel, closing submissions (paper 3.3.3), pp 23–24

92. Waitangi Tribunal, *Napier Hospital and Health Services Report*, p 48

93. Waitangi Tribunal, *Tauranga Moana, 1886–2006*, p 25

2.4.5(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

as members of groups of citizens.⁹⁴ The principle of equity underscores the fact that the protections of citizenship apply equally to Māori and non-Māori.⁹⁵ The principle of equity also leads to a requirement to address disparities.⁹⁶ Coupled with the guarantee of Māori tino rangatiratanga, article 3 guarantees to Māori the right of political representation and self-determination through their own forms of self-government.⁹⁷ This means that a Māori system of self-government should be appropriately and equitably funded in comparison to similar institutions. As well as the principle of equity, which requires the Crown to treat Māori and non-Māori fairly and equally, also relevant is the principle of equal treatment, which requires the Crown to treat Māori groups fairly vis-à-vis each other.⁹⁸

The principles of equity and equal treatment do not mean treating all citizens or groups exactly the same, where they have different interests, populations, leadership structures, and preferences. Tino rangatiratanga must be respected. What they do mean is that the Crown must treat each group (in this case the NZMC, DMCS, and Māori Wardens) fairly vis-à-vis each other, and in doing so, it must do all in its power not to create (or exacerbate) divisions and damage relationships.⁹⁹

In practical terms, these principles consist of two duties: the duty to act fairly and impartially towards all those recognised under the 1962 Act, their respective roles and their duties; and a duty to preserve amicable Māori relations if the Crown's actions might disturb those relations. Both of these duties have been discussed in previous Tribunal reports.¹⁰⁰ The Crown should not allow one group of Māori an unfair advantage over another but it should be clear as to who its Treaty partner is.¹⁰¹

In this context, that means recognising the position of the NZMC. It means that the Crown should not unfairly advantage one group of the Māori Wardens over another or over DMCS. It means that it should recognise that along with the NZMC, they all share different roles and functions under the 1962 Act.

Where Māori have been disadvantaged in their political representation, the principle of equity – in conjunction with the principles of active protection and redress – requires that active measures be taken to restore the balance.¹⁰²

94. Waitangi Tribunal, *Napier Hospital Report and Health Services Report*, p 62

95. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), p 133

96. Waitangi Tribunal, *Matua Rautia*, p 67

97. Waitangi Tribunal, *Māori Electoral Option Report*, pp 14–15

98. Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua* (Wellington: Legislation Direct, 2005), p 73

99. Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua*, p 73

100. Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua*, p 74; Waitangi Tribunal, *Māori Development Corporation Report* (Wellington: Brooker's Ltd, 1993), pp 31–32; Waitangi Tribunal, *Ngati Awa Settlement Cross-Claims Report* (Wellington: Legislation Direct, 2002), p 87

101. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 25

102. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 5

2.4.6 The right to development

(1) *Parties' arguments*

The claimants have not addressed this principle and nor has the Crown, but we consider it relevant because even though they have not directly identified the principle, Māori communities and their social, cultural, and economic development are the very purpose and *raison d'être* of the Māori Community Development Act. It is not possible to address the claim without some reference to this principle.

(2) *Our view*

It has been accepted by the Waitangi Tribunal that there is a right to development inherent in the rights guaranteed by the Treaty and a corresponding Crown duty of active protection of that right.¹⁰³ This right to development is an indigenous right, as has been recognised in international jurisprudence, but it is not exclusive of other persons or interests.¹⁰⁴

It has also been extended from the right to develop Māori property rights or *taonga*, to the right to develop as a people.¹⁰⁵ This would include the right of Māori to develop their social and economic status. In the *Māori Electoral Option Report* (1994) the Waitangi Tribunal noted that Māori development is important in the political sphere as well as the economic and social spheres.¹⁰⁶ Thus, the right to develop their own institutions of self-government is a fundamental aspect of the Māori right to development. In line with the duty of active protection, the Crown has a responsibility to facilitate that right.

2.4.7 Summary

The obligations arising from the principles of the Treaty of Waitangi discussed above require both Treaty partners in these circumstances to act towards each other in 'good faith, fairly, reasonably and honourably'.¹⁰⁷ We have identified a set of principles that are particularly relevant in the exercise of balancing *kāwanatanga* and *rangatiratanga* in the circumstances of this inquiry: partnership; active protection, informed decision-making and the duty to consult; equity and equal treatment; and the right to development.

2.5 THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

2.5.1 Introduction

We now consider how the United Nations Declaration on the Rights of Indigenous Peoples might assist in the interpretation and application of these Treaty principles.

103. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 903

104. *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, 560

105. Waitangi Tribunal, *Radio Spectrum Management and Development Final Report*, pp 61–63

106. Waitangi Tribunal, *Māori Electoral Option Report*, p 35

107. *Te Rūnanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301, 304

We first set out the parties' positions on the relevance of UNDRIP to our inquiry. We then explain our approach in relation to the principles we have set out above.

2.5.2 The claimants' case

The claimants submit in general terms that the Crown, through TPK has failed to respect the role of the NZMC under the 1962 Act as providing for a measure of Māori self-government.¹⁰⁸

They argue that through the actions of TPK, the Crown has breached the principles of the Treaty of Waitangi as informed by specific articles of UNDRIP, which was adopted on 13 September 2007 by the United Nations General Assembly. The claimants identified the following articles in respect of the rights of indigenous peoples: articles 4, 5, 18, 19, 20(1), 33(2), and 39 (see appendix VI).¹⁰⁹

The claimants submitted that UNDRIP 'complements and reinforces the principles of the Treaty' and in particular the rangatiratanga principle as evidenced by Dr Claire Charters, who considers it appropriate to interpret the Treaty principles consistently with UNDRIP.¹¹⁰

The claimants argued that section 6(1) of the Treaty of Waitangi Act gives to the Tribunal jurisdiction to determine the consistency of the Crown's actions with the principles of the Treaty and as such 'the just Rights and Property' of Māori. As UNDRIP is a statement of the just rights of indigenous peoples and is accepted by New Zealand as such, it can and should give content to the principles of the Treaty.¹¹¹

The claimants contended that an approach to UNDRIP similar to that suggested by President Cooke in *New Zealand Māori Council v Attorney-General* (1987) is needed.¹¹² In that respect, they argued that the Treaty should be interpreted 'widely and effectively and as a living instrument taking account of the subsequent developments of international human rights norms.'¹¹³ This approach is consistent with the Tribunal's past acceptance of the Treaty as a living compact that should be interpreted so that the principles it embodies remain relevant to changing circumstances and to changing needs – in this case in light of human rights norms now 'embodied' in UNDRIP.¹¹⁴

The claimants went on to argue that articles 4 and 39 guarantee the right of indigenous people in exercising their right to self-determination and to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. This, they say, must involve the Crown providing Māori with sufficient funds to allow the 1962 Act structures to

108. Claimant counsel, closing submissions (paper 3.3.5), p 1

109. Claimant counsel, closing submissions (paper 3.3.5), pp 27–31

110. Claimant counsel, closing submissions (paper 3.3.5), p 28

111. Claimant counsel, closing submissions (paper 3.3.5), p 28

112. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, 655–656; claimant counsel, closing submissions (paper 3.3.5), p 29

113. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, 655–656; claimant counsel, closing submissions (paper 3.3.5), p 29

114. Claimant counsel, closing submissions (paper 3.3.5), p 29

work as intended and to enable Māori to determine for themselves how they are to be self-governed.¹¹⁵

The claimants also considered that articles 5, 18, 19, 20, and 33(2) ‘guarantee the right of indigenous peoples to develop, maintain and strengthen *through their representative institutions and in accordance with their own procedures*, the laws and institutions by and through which they exercise self-government’ (emphasis in original). This must involve Māori, not the Crown, determining their representative institutions, timetables, questions, organisation and convening of consultation hui, and ultimately determining the changes to the law relating to their self-government which they wish to adopt (by legislation if necessary).¹¹⁶

The claimants disagree with the Crown’s argument that UNDRIP adds little to the practical balance of Treaty principles in this inquiry and that the Tribunal need not address it. They say that findings of breach of UNDRIP should be made where relevant because they inform the Treaty principles analysis.¹¹⁷

The claimants submit that the process used by the Crown to consult leading to the reform of the 1962 Act was in breach of the principles of the Treaty (kāwanatanga in exchange for rangatiratanga / self-determination and partnership) and UNDRIP articles 4, 5, 18, 19, 20(1), and 33(2) in eight respects.¹¹⁸ These are listed in closing submissions and are considered in more detail in chapter 6. The claimants submit that reform should be developed and drafted by Māori, such a path being mandated by UNDRIP.¹¹⁹ This is supported by Dr Charters’ analysis of UNDRIP rights.¹²⁰ In particular, her view is that the NZMC’s unique status and its history as a representative organisation are relevant to determining the proper role to be accorded to it, in order for a consultation/reform process to be UNDRIP-compliant.¹²¹

The claimants also say that the process developed and run by the Crown for the Māori Wardens Project is tainted by breaches of Treaty of Waitangi principles (partnership and active protection) and UNDRIP articles 4, 5, 18, 20(1), and 33(2) in 10 respects.¹²² These are listed in closing submissions and are considered in more detail in chapters 7 and 8. The claimants argue that these actions in sum usurp the administration of the wardens by the DMCS and the NZMC, and they diminish the capacity of these Māori Associations to perform their statutory obligations. Thus the Crown’s actions are inconsistent with the principles of the Treaty and UNDRIP.¹²³

2.5.3 The Crown’s case

The Crown argued that in *New Zealand Māori Council v Attorney General* (2013) the Supreme Court expressed doubt that UNDRIP added significantly to the

115. Claimant counsel, closing submissions (paper 3.3.5), pp 29–30

116. Claimant counsel, closing submissions (paper 3.3.5), p 30

117. Claimant counsel, closing submissions (paper 3.3.5), p 31

118. Claimant counsel, closing submissions (paper 3.3.5), pp 55–57

119. Claimant counsel, closing submissions (paper 3.3.5), p 69

120. Claimant counsel, closing submissions (paper 3.3.5), p 70

121. Claimant counsel, closing submissions (paper 3.3.5), p 70

122. Claimant counsel, closing submissions (paper 3.3.5), p 33

123. Claimant counsel, closing submissions (paper 3.3.5), p 82

principles of the Treaty; however, the Court accepted that the application of the Declaration supported a broad interpretation of those principles.¹²⁴ The Crown submits that UNDRIP is not entirely relevant except to assist with the interpretation of Treaty principles.¹²⁵ The Crown supports the statement made by Dr Pita Sharples and Simon Power when New Zealand affirmed UNDRIP in 2010, that where it sets out principles for indigenous development in decision-making, New Zealand has developed and will continue to rely upon its own processes and institutions that afford opportunities for Māori involvement.¹²⁶

The Crown accepts that in this case Māori will have an interest in all policy and legislative matters affecting them.¹²⁷ It notes that this requires that both parties need to consult and this is part of the Treaty dialogue.

The Crown submits that dialogue between the Treaty partners is fundamental to the Treaty and accords with article 19 of the Declaration, which requires cooperation and consultation towards obtaining consent in legislative or administrative decisions affecting Māori. The collaborative principle expressed in UNDRIP as good faith cooperation towards consent acknowledges that each partner has due rights in the adoption of legislation. Thus the article envisages a collaborative process for legislative or administrative change.¹²⁸

The Crown argues, however, that there is no basis in UNDRIP for the process to require consultation between Māori first and then agreement with the Crown.¹²⁹ Article 19, it submits, envisages a collaborative process for legislative or administrative change. The Crown says that the claimants do not differentiate between collaboration under article 19 and the specific stronger rights of self-government of internal and local affairs affirmed in articles 4 and 20(1).¹³⁰

The Crown contends that article 20(1) (and also articles 4 and 33(2)) envisages substantial autonomy in the development by indigenous peoples of their own internal affairs and political institutions, but article 19 (and also articles 5 and 18) recognises legislative and other governmental administrative measures as requiring a partnership approach.¹³¹ The claimants' wider claim to autonomy is therefore not consistent with the distinction between articles 19 and 20(1) or with New Zealand's acceptance of UNDRIP.¹³²

In concluding, the Crown submits that UNDRIP affirms the fundamental duty of collaboration in legislative and administrative matters alongside a parallel right of substantially autonomous self-government in internal affairs.¹³³ The duty of collaboration 'restates the principle of partnership under the Treaty', and does not

124. *New Zealand Māori Council v Attorney-General* [2013] 3 NZLR 31, 34

125. Crown counsel, closing submissions (paper 3.3.3), pp 9–10, 24

126. Crown counsel, closing submissions (paper 3.3.3), pp 24–25

127. Crown counsel, closing submissions (paper 3.3.3), p 25

128. Crown counsel, closing submissions (paper 3.3.3), p 25

129. Crown counsel, closing submissions (paper 3.3.3), pp 25–26

130. Crown counsel, closing submissions (paper 3.3.3), p 26

131. Crown counsel, closing submissions (paper 3.3.3), pp 26–27

132. Crown counsel, closing submissions (paper 3.3.3), p 27

133. Crown counsel, closing submissions (paper 3.3.3), p 29

require the Crown to support an exclusively Māori-led process or autonomous decision-making in relation to the review of the 1962 Act, as the claimants have suggested.¹³⁴

2.5.4 Our approach to the application of UNDRIP

(1) UNDRIP in the international setting

International declarations while not binding as a matter of international law are solemn instruments developed by States for matters of ‘major and lasting importance where maximum compliance is expected.’¹³⁵ As such, UNDRIP carries significant normative weight affirming basic human rights standards that all States are expected to comply with at the international, regional and national level.¹³⁶ Those standards are not new as UNDRIP merely restates for the most part, human rights contained in other international instruments.¹³⁷ Such standards include those in the International Covenant on Economic, Social and Cultural Rights 1966 and the International Covenant on Civil and Political Rights 1966.¹³⁸

UNDRIP is now routinely referred to by international institutions.¹³⁹ Significant referencing of UNDRIP is now emerging in judgments from regional human rights bodies such as the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, and the African Commission on Human and Peoples’ Rights.¹⁴⁰

With regard to implementation at the national level, we note the decision of the Supreme Court of Belize concerning the Mayan people cited as *Cal v Attorney-General of Belize* (2007).¹⁴¹ On the effect of the Declaration, the Chief Justice of Belize stated:

where these . . . Declarations contain principles of general international law, states are not expected to disregard them. This Declaration . . . was adopted by an overwhelming number of 143 states in favour with only four states against with eleven abstentions. It is of some signal importance, in my view, that Belize voted in favour of this Declaration. And I find its Article 26 of especial resonance and relevance in the context of this case, reflecting, as I think it does, the growing consensus and the general principles of international law on indigenous peoples and their lands and resources.¹⁴²

134. Crown counsel, closing submissions (paper 3.3.3), p 29

135. United Nations Economic and Social Council, *Report of the Commission on Human Rights* (18th session, March–April 1962), UN Doc E/3616/Rev 1, para 105 (Claire Charters, brief of evidence, 20 January 2014 (doc A10), p 4)

136. Claire Charters, brief of evidence (doc A10), pp 3–10

137. *Takamore v Clarke* [2012] 1 NZLR 573 (CA) at paras 252–253, per Glazebrook and Wild JJ

138. For the text of these covenants, see Office of the High Commissioner for Human Rights, ‘International Human Rights Law’, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>, accessed 3 November 2014.

139. Claire Charters, brief of evidence (doc A10), pp 10–15

140. Claire Charters, brief of evidence (doc A10), pp 14–15

141. Claire Charters, brief of evidence (doc A10), p 16

142. *Cal v Attorney-General of Belize* (2007) 71 WIR 110

2.5.4(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

Since this decision in 2007, those states which opposed UNDRIP, namely New Zealand, Australia, Canada, and the United States, have all supported it.

(2) New Zealand's affirmation of UNDRIP

The statement affirming UNDRIP was made by Dr Pita Sharples before the United Nations Permanent Forum on Indigenous Issues on 19 April 2010:

E ngā mana whenua, e te iwi Onondaga, nā koutou ngā karakia i tuku ki te wāhi ngaro kia pai ai tātou, tēnā koutou.

E ngā mate o tēnā iwi, o tēnā iwi, haere, haere, haere ki te okiokinga tūturu mō te tāngata.

E te whare o ngā iwi o te ao, karanga mai, karanga mai. Karanga mai ki tēnei wae-wae tapu (*manuhiri*) mai i Aotearoa.

E te hunga ora, e ngā māngai o ngā iwi taketake o te ao, tēnā koutou katoa.

Kei te mihi atu ki ō koutou maunga, ki ō koutou awa, ki ō koutou whenua, i takea mai ai ō koutou tīpuna, tae noa mai ki a koutou e huihui nei i tēnei ra.

I haere mai au me te ngākau māhaki, ki te whakanui i te Whakaputanga o ngā Mana o ngā Iwi Taketake. Kua roa te Kāwanatanga o Aotearoa e whiriwhiri ana i tēnei take, kātahi anō ka tau te whakaaro, me tautoko.

Nō reira kei te mihi atu ki ngā rangatira, ki ngā iwi, ki ngā rōpū i oti i a koutou tēnei kaupapa o te Whakaputanga, hei whakaae ma ngā Kāwanatanga a te ao.

To the inherent powers of this land; to the Onondaga people, who have offered spiritual acknowledgement to the unseen world to bless us, greetings to you.

To the spirits of the deceased, of each and every nation, we farewell you to the ultimate resting place of humankind.

To this house of the peoples of the world, please welcome this newcomer from New Zealand.

To the living representatives of indigenous peoples of the world, I salute you all.

I greet your mountains, your rivers, your lands, (the places) where your ancestors originated, including you who are meeting here today.

I come with a humble heart to celebrate the Declaration of the Rights of Indigenous Peoples. The New Zealand Government has long discussed this matter, and has recently decided to support it.

So I salute the leaders and chiefs, the many peoples and groups who established the foundation of the Declaration, for assent by the Governments of the world.

In September 2007, at the United Nations, 143 countries voted in favour of the Declaration on the Rights of Indigenous Peoples. New Zealand was one of four countries that voted against the Declaration.

Today, New Zealand changes its position: we are pleased to express our support for the Declaration.

In keeping with our strong commitment to human rights, and indigenous rights in particular, New Zealand now adds its support to the Declaration both as an affirmation of fundamental rights and in its expression of new and widely supported aspirations.

Māori hold a distinct and special status as the indigenous people, or tangata whenua, of New Zealand. Indigenous rights and indigenous culture are of profound importance

to New Zealand and fundamental to our identity as a nation. A unique feature of our constitutional arrangements is the Treaty of Waitangi, signed between representatives of the Crown and Māori in 1840. It is a founding document of New Zealand and marks the beginning of our rich cultural heritage. The Treaty establishes a foundation of partnership, mutual respect, co-operation and good faith between Māori and the Crown. It holds great importance in our laws, our constitutional arrangements and the work of successive governments.

The Declaration contains principles that are consistent with the duties and principles inherent in the Treaty, such as operating in the spirit of partnership and mutual respect. We affirm this objective, and affirm the Government's commitment to build and maintain constructive relationships with Māori to achieve better results for Māori, which will benefit New Zealand as a whole.

The Declaration is an historic achievement: the result of many years of discussions – 22 years in fact – and of hard work and perseverance by many people. I acknowledge the long involvement of Māori in the elaboration of the Declaration and the extent of their investment in its development.

The Declaration acknowledges the distinctive and important status of indigenous peoples, their common historical experiences and the universal spirit that underpins its text. The Declaration is an affirmation of accepted international human rights and also expresses new, and non-binding, aspirations.

In moving to support the Declaration, New Zealand both affirms those rights and reaffirms the legal and constitutional frameworks that underpin New Zealand's legal system. Those existing frameworks, while they will continue to evolve in accordance with New Zealand's domestic circumstances, define the bounds of New Zealand's engagement with the aspirational elements of the Declaration.

In particular, where the Declaration sets out aspirations for rights to and restitution of traditionally held land and resources, New Zealand has, through its well-established processes for resolving Treaty claims, developed its own distinct approach.

That approach respects the important relationship that Māori, as tangata whenua, have with their lands and resources both currently and historically, and the complementary principles of rangatiratanga and kaitiakitanga that underpin that relationship. It also maintains, and will continue to maintain, the existing legal regimes for the ownership and management of land and natural resources.

New Zealand acknowledges and understands the historic injustices suffered by Māori in relation to their land and resources and is committed to addressing these through the established Treaty settlement process. Many Māori groups have already benefited from the transfer of considerable land, forest and fisheries assets through negotiated Treaty settlements; many more are in the process of negotiations with the Government towards settling their claims. These settlements contribute to the re-establishment of an economic base as a platform for future development. Redress offered in Treaty settlements is, however, constrained by the need to be fair to everyone and by what the country as a whole can afford to pay.

Further, where the Declaration sets out principles for indigenous involvement in decision-making, New Zealand has developed, and will continue to rely upon, its own distinct processes and institutions that afford opportunities to Māori for such

involvement. These range from broad guarantees of participation and consultation to particular instances in which a requirement of consent is appropriate.

In those processes and institutions, we acknowledge that our ongoing national dialogue is grounded in the Treaty of Waitangi. We further recognise that Māori have an interest in all policy and legislative matters and acknowledge the determination of Māori that custom, worldviews and cultural heritage should be reflected in the laws and policies of New Zealand. Māori have been, and continue to be, active in developing innovative responses to issues with a strong indigenous perspective and in engaging with successive governments on possible paths forward.

We will continue that conversation within the relationship that the Treaty and New Zealand's constitution as a whole affords. Further, we will continue to work in international fora to promote the human rights of indigenous peoples. New Zealand acknowledges the ongoing process of dialogue and debate over the meanings that may be given to the aspirations put forward by the Declaration.

New Zealand's support for the Declaration represents an opportunity to acknowledge and restate the special cultural and historical position of Māori as the original inhabitants – the tangata whenua – of New Zealand. It reflects our continuing endeavours to work together to find solutions and underlines the importance of the relationship between Māori and the Crown under the Treaty of Waitangi. Its affirmation of longstanding rights supports and safeguards that ongoing relationship and its proclamation of new aspirations give us all encouragement and inspiration for the future.

Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.¹⁴³

This statement clearly envisages that the New Zealand Government, including its officials, will respect the rights of Māori under the Treaty of Waitangi and that it will strive to act consistently with its principles, as further elucidated by any relevant articles of UNDRIP, subject to any lawful limitations. This includes ensuring or at least assessing Māori participation in decision-making and recognising that Māori have an interest in all policy and legislative matters. That is particularly relevant in the context of a New Zealand statute such as the Māori Community Development Act 1962, where Parliament has already laid down in law the nature of the relationship that should exist between the NZMC and the Crown. Thus the statement made by Minister Sharples has not in any way restricted or limited the application of UNDRIP to the claim before us.

Following its affirmation by the New Zealand Government, the Wai 262 Tribunal described UNDRIP as 'perhaps the most important international instrument ever for Māori people'.¹⁴⁴ The courts in New Zealand have also referenced UNDRIP in their decisions.¹⁴⁵ In *New Zealand Māori Council v Attorney-General* (2013), the Supreme Court, while doubting that UNDRIP adds significantly to the principles of the Treaty in the particular context before it, was prepared to accept that the

143. Pita Sharples, New Zealand statement at the opening ceremony of the ninth session of the United Nations Permanent Forum on Indigenous Issues, 19 April 2010 (doc A6)

144. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuatahi*, p 233

145. *Takamore v Clarke* [2012] 1 NZLR 573 (CA) at para 252, per Glazebrook and Wild JJ; *Takamore v Clarke* [2013] 2 NZLR 733 (SC) at para 12, per Elias CJ

Declaration provided some support for the view that those principles of the Treaty relevant to the case before it should be construed broadly.¹⁴⁶ The court stated:

We doubt if the Declaration adds significantly to the principles of the Treaty statutorily recognised under the State-Owned Enterprises Act and Part 5A of the Public Finance Act. We accept, however, that the Declaration provides some support for the view that those principles should be construed broadly. In particular, it supports the claim for commercial redress as part of the right to development there recognised.¹⁴⁷

It is, of course, significant that the court, in doubting that the Declaration added ‘significantly’ to Treaty principles, was dealing with a case in which the principles had been given the force of law by the inclusion of a ‘Treaty clause’ in the statutes concerned, the State-Owned Enterprises (SOE) Act and the Public Finance Act, and thus could be taken account of by the court and enforced through ordinary litigation in a way that is not always (or often) the case.

(3) UNDRIP in this inquiry

In terms of the Waitangi Tribunal, its jurisdiction is governed by the Treaty of Waitangi Act 1975. That Act provides for the observance, and confirmation, of the principles of the Treaty by establishing the Tribunal to determine whether certain Crown actions are inconsistent with the principles of the Treaty and to make recommendations on well-founded claims.¹⁴⁸ The Tribunal’s preliminary function in inquiring into claims is set out in section 5, and in exercising those functions it must have regard to the two texts of the Treaty. For the purposes of the Act, the Tribunal has exclusive authority to determine the meaning and effect of the Treaty as embodied in the two texts and to decide issues raised by the differences between them. Claims are filed where Māori consider that they may be prejudicially affected by certain Crown actions, policies, practices, legislation, or omissions inconsistent with the principles of the Treaty (section 6).

Our jurisdiction is to assess Crown actions against the principles of the Treaty. It is not our role to make findings on whether the Crown has acted inconsistently with UNDRIP. However, both the claimants and the Crown accept that the UNDRIP articles are relevant to the interpretation of the principles of the Treaty of Waitangi. Because the New Zealand Government has now affirmed UNDRIP, the obligations described in its articles are a circumstance we can take into account in assessing the Crown’s actions. UNDRIP is therefore relevant to the manner in which the principles of the Treaty of Waitangi should be observed by Crown officials. This is particularly the case where the UNDRIP articles provide specific guidance as to how the Crown should be interacting with Māori or recognising their interests.

Our approach to UNDRIP in this report is to use it as a tool, where possible, to understand the Crown’s obligations in specific circumstances, in a way that assists

146. *New Zealand Māori Council v Attorney-General* [2013] 3 NZLR 31, 65

147. *New Zealand Māori Council v Attorney-General* [2013] 3 NZLR 31, 65

148. Treaty of Waitangi Act 1975, preamble

our assessment of Crown actions against the principles of the Treaty. We do so by setting out the articles of UNDRIP that are relevant to particular aspects of the issues we consider. In many cases, we express our opinion as to whether or not the Crown has acted inconsistently with those articles. This can be considered as providing additional, specific guidance on the Crown's obligations in light of Treaty principles, as further informed by UNDRIP.

2.5.5 UNDRIP and relevant Treaty principles

In order to provide more specific guidance on how we see the relationship between UNDRIP and Treaty principles, we now set out the specific UNDRIP articles that we consider are relevant to the principles of the Treaty in this case. In doing so, we note that there is some overlap between certain principles.

(1) *Kāwanatanga*

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

We have grouped articles 19, 38, 39, and 46 of UNDRIP under the principle of *kāwanatanga* because they either affirm the role of the Crown to govern the State of New Zealand or demonstrate that the Crown has a role to play in collaboratively developing legislation or administrative arrangements for Māori and for providing reasonable support for Māori within their sphere of authority. Such an approach is consistent with Treaty principles and with the scheme of the 1962 Act, as the Minister of Māori Affairs is responsible for that legislation. They also demonstrate that a responsible Crown must ensure that in the exercise of Māori rights, the human rights and fundamental freedoms of all New Zealanders and others should be respected. Finally, article 46(3) requires that in measuring the Crown's actions, the UNDRIP articles should be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith. Thus the articles complement this principle of the Treaty, requiring as it does that the Crown's right to govern for all New Zealanders is respected while also requiring it to act towards Māori with the utmost good faith.

(2) *Rangatiratanga*

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures

2.5.5(3) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

We have grouped articles 3, 4, 5, 33, 34, and 35 of UNDRIP under the principle of rangatiratanga because they elaborate further upon the principle and are also consistent with the scheme of self-government represented through the Māori Associations of the NZMC, DMCS, and Māori Committees. All these articles are consistent with the notion that Māori should have authority and local self-government over their own spheres of influence and affairs.¹⁴⁹ We agree with Dr Charters that these articles reflect a consistent scheme in UNDRIP that recognises that indigenous peoples should not have outcomes imposed upon them by Governments.¹⁵⁰ The principle of rangatiratanga operates in practice with the same effect. This theme is particularly relevant to the actions of TPK in the proposed reform of the 1962 Act and in its administration of the Māori Wardens project, as we discuss in chapters 6 to 8.

Article 34 also resonates with the local justice system provided for in the 1962 Act whereby Māori Committees may impose penalties for certain offences committed on marae or at Māori gatherings, and article 35 makes it clear that it is Māori communities who have the right to determine the responsibilities of the Māori Wardens warranted under that Act.

The UNDRIP articles also recognise that Māori as a whole have a right to determine their representative institutions.

(3) Partnership

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

149. Claire Charters, brief of evidence (doc A10), pp 40–44, 48–50

150. Claire Charters, brief of evidence (doc A10), pp 40, 50–52

We consider that, combined with the articles grouped under *kāwanatanga* and *rangatiratanga*, articles 18 and 19 of UNDRIP inform the Treaty principle of partnership. We agree with the Crown that they require each partner to the Treaty to consult and cooperate on matters of mutual concern or, to put it another way, the principle of partnership requires that each party act towards the other with mutual respect and with the utmost good faith. Māori must cooperate with the Crown as much as it is required to cooperate with them, for that is the *quid pro quo* of the Treaty.

We also consider that emerging from the reciprocal rights and duties of the Treaty partners is the need to measure where the roles of each partner begin and end in the circumstances of any particular case. If the issue of concern only affects Māori and their institutions, then clearly the greater the duty is on the Crown to acknowledge their *tino rangatiratanga* and leadership. In terms of *mātauranga Māori*, the Wai 262 Tribunal discussed a number of factors for practical application in a similar context. That Tribunal suggested these factors as ‘logical elements of a cooperative working partnership or genuine joint venture’ and it noted that they are applicable to a number of settings.¹⁵¹ We agree and consider the list relevant to the claim before us. The list is replicated below but we have replaced the words ‘*mātauranga Māori*’ with ‘Māori autonomy / self-government’, in keeping with the circumstances of the present case:

1. The survival and revival of Māori autonomy/self-government must be accorded an appropriate priority vis a vis other Crown priorities.
2. The Crown must ensure its agencies act in a coordinated and consistent fashion when developing policies and programmes around Māori autonomy/self-government.
3. The Crown must develop clear and relevant objectives both at sector and agency level after:
 - (a) careful analysis; and
 - (b) a process of shared decision-making with Māori partners.
4. Just who represents the Māori partner in each case will depend on the sector and the particular sector issue. Māori autonomy/self-government and the Māori community are both too complex to admit of a single model of representation applicable to all cases.
5. The Crown must provide sufficient time and resources for meaningful Māori involvement.
6. Māori must engage fully and not as adversaries in the objective-setting process.
7. The partners must make every *effort to reach agreement* through a spirit of compromise.
8. Once the objectives are agreed, the resources set aside in each agency must be sufficient to achieve them, and within a reasonable timeframe.
9. Where possible, programmes for the implementation of these objectives should involve shared action.

151. Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, vol 2, pp 577–578

2.5.5(3) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

10. Objectives and programmes should be accompanied by shared processes of ongoing review and evaluation. [Emphasis added.]¹⁵²

This list provided by the Wai 262 Tribunal is more succinctly articulated in article 19 of UNDRIP, and which we express as the Treaty principle of collaborative agreement. Residing under the broad umbrella of the principle of partnership, this principle applies in legislative and administrative matters where the authority of the Crown to make law and the right of Māori to exercise autonomy overlap. It requires dialogue between the Treaty partners and, in terms of article 19 of UNDRIP, requires consultation and cooperation, possibly even negotiation towards obtaining Māori agreement in the development of administrative arrangements and legislation affecting Māori institutions. The principle of collaborative agreement, expressed as good faith cooperation towards consent in UNDRIP, acknowledges that each partner has rights and duties in the adoption of such administrative arrangements and legislation.

The Crown's duty under this principle sits alongside the parallel rights of the Crown to govern and the guarantee that Māori should enjoy substantially autonomous self-government in their internal affairs. It underpins the partnership principle and requires cooperation and mutual effort and enterprise.

In the circumstances of this case, cooperation envisages in the first instance a Māori-led process or autonomous decision-making in relation to the review of the 1962 Act. Following internal decision-making, the Māori position would then be negotiated with the Crown. The need for cooperation also acknowledges that the Crown has broader interests that it must weigh, including accountability for the expenditure of taxpayers' money.

The Crown is very aware of the need for collaborative agreement in the present case.¹⁵³ Crown counsel submitted that 'collaboration under the Declaration in legislative matters' follows the Treaty principle of partnership: 'That collaborative principle – expressed as partnership in Treaty principles and as good faith cooperation towards consent under the Declaration – acknowledges that each partner has due rights in the adoption of legislation.'¹⁵⁴ In the Crown's view, dialogue is the essential mechanism for giving effect to the partnership and to the article 19 requirement of 'cooperation and consultation towards consent in legislative or administrative decisions affecting Māori'.¹⁵⁵

Crown counsel concluded:

The Declaration affirms the fundamental duty of collaboration in legislative and administrative matters, alongside a parallel right of substantially autonomous self-government in internal affairs. The duty of collaboration, as in issue here, restates the

152. Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, vol 2, pp 577–578

153. Crown counsel, closing submissions (paper 3.3.3), pp 6–10, 25–29

154. Crown counsel, closing submissions (paper 3.3.3), p 25

155. Crown counsel, closing submissions (paper 3.3.3), p 25

principle of partnership under the Treaty: it does not support the claim, whether to autonomous decision-making or to exclusively Māori-led procedures, as advanced.¹⁵⁶

While we deal with the points of disagreement later in the report, the nub of the matter here is that the Crown agrees that some cases can – and this case does – invoke a Crown duty to cooperate with Māori so as to reach mutual agreement. Yet, as we discuss later in chapter 6, the Crown did not recognise that the present case required this approach until the time of our hearing in 2014. The Crown says that dialogue is the answer, but how does the Crown know who to have that dialogue with, and when dialogue for the purpose of ‘cooperation towards consent’ is needed rather than a process to inform itself?

A key point, therefore, is the one cited above (and more generally) in the Wai 262 report: that mechanisms are necessary to ensure that the Crown and Māori ascertain and agree at the beginning whether or not an issue is of such centrality to both partners as to require a mutual duty of collaborative agreement. We deal with this point further in chapter 10.

(4) Active protection, informed decision-making, and consultation

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Articles 18 and 19 of UNDRIP are important in understanding the principle of partnership, as we have just explained, but they also speak to the need for the Crown to actively protect Māori interests by engaging through the appropriate Māori representatives, and to use and allow time for Māori decision-making processes to occur. Consultation is key to this and the Crown should in certain circumstances strive to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them. As Dr Charters points out, such an approach is linked back to the right to self-determination and the ability to be self-governing.¹⁵⁷ Whilst the obligation varies depending on the subject matter of any legislation and policy, we consider this claim is at the high end of the spectrum for consultation and cooperation requiring free, prior,

156. Crown counsel, closing submissions (paper 3.3.3), p 29

157. Claire Charters, brief of evidence (doc A10), pp 45–48

2.5(5) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

and informed consent, rather than mere participatory processes.¹⁵⁸ That has implications for how the Crown should proceed and we discuss that further in chapters 6 and 10.

(5) Equity and equal treatment

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Articles 5, 18, 20, and 39 of UNDRIP reflect the principles of equality and equity in the Treaty of Waitangi. They recognise that States must acknowledge that indigenous peoples have both collective and individual rights of citizenship. In the expression of either, Governments should strive to support and assist them with financial support or redress for past wrongs.

(6) Right to development

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

158. Claire Charters, brief of evidence (doc A10), p 48

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Articles 3 and 23 support the right to development by Māori of their own representative institutions. Given the functions of the NZMC and the other Associations under the 1962 Act, it is clear that Māori health, housing, and economic and social development are issues legitimately within the ambit of the NZMC's authority.

2.6 CONCLUSION

In this chapter, we have set out the principles of the Treaty of Waitangi that we consider to be relevant to this inquiry. They are:

- ▶ kāwanatanga – the right to govern and exercise good government;
- ▶ tino rangatiratanga – the right to self-government and autonomy;
- ▶ partnership and collaborative agreement;
- ▶ active protection, informed decision-making, and the duty to consult;
- ▶ equity and equal treatment; and
- ▶ the right of development.

We have explained how the interpretation and application of these principles are informed by UNDRIP. We have also explained how Māori communities are the holders of rangatiratanga, and that the Crown must recognise the NZMC as its Treaty partner in respect of the 1962 Act.

These matters guide our assessment of how the parties have approached the issue of any proposed reform of the Māori Community Development Act 1962 and the administration of the Māori Wardens Project. Whether the parties have complied with their respective rights and duties is a matter we consider in the chapters that follow.

CHAPTER 3

KA TIPU TE WHAKAARO /
A CHERISHED THOUGHT EMERGES

The Origins and Significance of the 1962 Act

3.1 INTRODUCTION

In 1962, the New Zealand Parliament enacted the Māori Welfare Act, which was later renamed the Māori Community Development Act. Parliament enacted this law, Minister Ralph Hanan stated, with the ‘blessing’ of the New Zealand Māori Council (NZMC), which had been established the year before.

The claimants seek a finding from the Tribunal that the Government’s proposed process for the reform of this Act is inconsistent with the principles of the Treaty of Waitangi and the UNDRIP. This is because, they say, ‘the 1962 Act represents an agreement to give effect to Māori proposals for self-government’. From this fundamental proposition, it follows that the ‘process for the reform of those proposals’ (that is, the proposals agreed in 1962 for Māori self-government) should be ‘self-determining and not government led’. It is therefore, the claimants say, ‘for Māori to propose and government to respond’. Also, the claimants argue that a fundamental aspect of the ‘terms of the agreement’ and of the 1962 Act was that ‘DMCs and the NZMC have responsibility for Wardens’.¹

Following on from these arguments, the claimants seek findings that the Crown has ‘usurped’ the administration of wardens and diminished the capacity of the District Māori Councils (DMCs) and NZMC to perform their statutory responsibilities, thus breaching the Treaty because ‘the Wardens are an integral part of the historic arrangement for Māori self-determination’.²

The purpose of this chapter is to explore the claimants’ fundamental argument that there was an agreement between the Crown and Māori in 1962 to give effect to Māori proposals for self-government, arising from a Māori-led or ‘self-determining’ process. Although the Wai 2417 claim is not an historical claim, and the Tribunal cannot make findings of Treaty breach about any matters prior to 1992, it is essential for the Tribunal to reach a view on this matter, which underpins the claimants’ grievance about how the Crown is treating the Act (and its self-government

1. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), pp 81–82

2. Claimant counsel, closing submissions (paper 3.3.5), p 82

institutions) today. In particular, we devote a great deal of attention to exactly how the creation of the District Māori Councils and the NZMC came about, to determine whether the process was Māori-led and whether the 1962 Act was the product of an agreement between the Crown and Māori Treaty partners. The significance today of any such agreement will be addressed in later chapters.

3.2 THE PARTIES' ARGUMENTS

3.2.1 Introduction

As noted above, the claimants have alleged that the Crown and Māori forged an agreement in 1962 which gave statutory recognition to a long-sought system of Māori self-government. In brief, the claimants seek a finding that there was such an agreement in 1962, and that the agreement forms the essential context for Crown actions in the 2000s. This part of the claim was reflected in the Tribunal's statement of issues for the urgent hearing. Under the heading 'Essential Context', we posed Issue Question (a): 'What were the origins and intent of the Māori Community Development Act 1962?'³

In this section of our chapter, we set out the parties' arguments about this aspect of the claim.

3.2.2 The Crown's case

In their closing submissions, Crown counsel made no submissions about Issue Question (a).⁴ Rather, they took the position that the claim is focused on the current review of the 1962 Act in respect of wardens, and the funding allocated to wardens through the Māori Wardens Project. As a result, DMCS and the NZMC are only relevant 'insofar as those entities are responsible for the control and management of Māori Wardens'. Further, Crown counsel submitted that evidence on the formation of the NZMC and DMCS under the 1962 Act (and its predecessors) would only be relevant 'to inform the Tribunal of the context in which the Wardens currently operate'.⁵ Otherwise, the Crown urged the Tribunal to take a 'forward-looking and solutions-based approach' to the issue of determining the respective Crown and Māori roles in the review and reform of the 1962 Act.⁶

The Crown offered no submissions as to how the formation of the councils under the 1962 Act (and its 'predecessors') does inform the context in respect of wardens and the review of the Act. Crown counsel did, however, emphasise that 'the powers conferred by the Act are under the general direction and control of the Minister [of Māori Affairs]'.⁷ This, along with the facts that the scheme is a legislative one and public funding is involved, explains the Crown's role 'in respect of agreeing to and promoting legislative reform' of the 1962 Act.⁸

3. Waitangi Tribunal, Statement of Issues, 17 February 2014 (paper 1.4.2), p 1

4. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3), pp 1–2

5. Crown counsel, closing submissions (paper 3.3.3), p 2

6. Crown counsel, closing submissions (paper 3.3.3), pp 6–7

7. Crown counsel, closing submissions (paper 3.3.3), p 7

8. Crown counsel, closing submissions (paper 3.3.3), p 7

3.2.3 The claimants' case

The claimants' position was very different from that of the Crown, offering detailed submissions about the contextual significance of the 1962 Act. Claimant counsel summarised this aspect of the claim as follows:

The Claimants say that the Māori Community Development Act 1962 (the '1962 Act') cannot be seen apart from its historical context.

The 1962 Act is no ordinary statute but, when seen in the context of a century old search for rangatiratanga/self-government, it is an agreement to recognise a structure that contributes to the exercise of self-government.

This context requires the Crown to honour the spirit and text of the agreement which is given the force of statute law by the 1962 Act. It also requires that any change to the 1962 Act today similarly requires a genuine search for an agreed position.

The Crown through its agent Te Puni Kōkiri ('TPK') has failed to approach the 1962 Act in ways that respect the Act as providing a measure of Māori self-government following an agreement between Māori and the Crown.⁹

In support of these arguments, the claimants referred to a 'century of Māori-led efforts to establish officially recognised rangatiratanga/self-government structures and bodies'.¹⁰ This search for official recognition (and, in many cases, statutory powers) began in the 1840s with efforts to turn customary rūnanga into committees or councils which would regulate affairs and disputes at the local level. Then, from the 1850s, there were also national movements to provide for self-government, including 'the appointment of the Māori King and the introduction of Māori Parliaments' (Te Kotahitanga).¹¹ State recognition was won to a limited extent: first, the Government accepted official rūnanga in 1861 to provide for local self-government (but reversed that recognition after the New Zealand wars); and, secondly, the Government reinstated 'official recognition for local and tribal self-government' in 1900 with the Māori Councils Act.¹² In the claimants' view, it is from the 1900 Act that the NZMC ultimately derives 'its name and its role as a state-recognised form of self-government'.¹³ As a result of the 1900 Act, Te Kotahitanga agreed to merge with the general conferences of the Māori Councils, but lack of funding meant that several councils had ceased to operate by the 1930s.¹⁴

The next engagement in this long struggle, in the claimants' view, came with the Second World War and the Māori War Effort Organisation. Local self-government structures were revived to help support the war effort, and at the end of the war the Labour Government formalised these structures through the Māori Social and Economic Advancement Act 1945. The claimants quoted T P Paikea, member for Northern Māori, as saying that the 1945 Act was a 'step in the right direction

9. Claimant counsel, closing submissions (paper 3.3.5), p 1

10. Claimant counsel, closing submissions (paper 3.3.5), p 2

11. Claimant counsel, closing submissions (paper 3.3.5), p 2

12. Claimant counsel, closing submissions (paper 3.3.5), pp 2–3

13. Claimant counsel, closing submissions (paper 3.3.5), p 3

14. Claimant counsel, closing submissions (paper 3.3.5), p 3

in giving the Māori people the right to govern themselves.¹⁵ They also quoted JR Hanan, Minister of Māori Affairs in 1961, as recognising that the 1945 Act laid down ‘the beginnings of a very good system of community organisation whereby the Māori people could look after matters of particular concern to them.’¹⁶

But it was only the ‘beginnings of a system’: Hanan (and the National Government) went on in 1962 to recognise ‘a national voice for Māori by consolidating and amending statutes that provided for the District Councils and for the national body, the NZMC.’¹⁷ A key point for the claimants is that the initiative for these changes ‘came not from the Crown but from Māori’. Claimant counsel quoted Prime Minister Holyoake in his 1962 address to the NZMC:

The idea, as I recall, originated with the Māori people. You wanted a body through which you could speak with one voice. And I felt strongly that the Government needed to hear and heed the voice of the Māori people. Your desire was our need.¹⁸

Claimant counsel saw the 1962 Act – looking back to what had come before it – as the culmination of a long struggle: ‘Māori had finally obtained in the 1962 Act an officially recognised national organisation, with powers to promote policies for Māori development.’ In particular, the claimants stressed section 18 of the Act, which defined the councils’ role as promoting, encouraging, and assisting Māori to ‘apply and maintain the maximum possible efficiency and responsibility in their local self-government.’¹⁹ The ‘governance and management structure’ established under the 1962 Act was tailored to that end, and it included community officers (called welfare officers at the time), wardens, committees, executive committees, district councils, and the NZMC. The claimants cited Hanan’s speech in Parliament in 1962 to support their view that the structure is very deliberately arranged as an integrated Māori ‘hierarchy’, where the NZMC takes the lead but each tier is made up of members from the tier below, and all tiers are thus ‘able to represent and reflect the views of local and District communities.’²⁰ At the flax-roots level, Māori living in a particular community decided who would govern that community, as evidenced by the requirements for elections of Māori committees. And, in the claimants’ submission, Māori Wardens were very clearly and deliberately bound into this hierarchy, chosen by their communities and made subject and accountable to the District Māori Councils.²¹

In addition to this integrated hierarchy for wardens, communities, and governance bodies, the claimants argued that three other features of the Act ‘stand out, all going to the purpose or intent of the 1962 Act.’²²

15. NZPD 1954, vol 303, p 346 (quoted in claimant counsel, closing submissions (paper 3.3.5), p 3)

16. NZPD 1961, vol 327, p 1969 (quoted in claimant counsel, closing submissions (paper 3.3.5), p 3)

17. Claimant counsel, closing submissions (paper 3.3.5), p 3

18. NZMC minutes, 26–27 July 1962 (quoted in claimant counsel, closing submissions (paper 3.3.5), pp 3–4)

19. Claimant counsel, closing submissions (paper 3.3.5), p 4

20. Claimant counsel, closing submissions (paper 3.3.5), pp 4–5

21. Claimant counsel, closing submissions (paper 3.3.5), pp 5–7, 14–16

22. Claimant counsel, closing submissions (paper 3.3.5), p 7

The first of these outstanding features was that Māori were to ‘control their own self-government’.²³ In particular, the claimants pointed to the way in which the Māori committees and councils were severed from the Department of Māori Affairs in 1961 and 1962, and freed from any government control. They emphasised speeches in Parliament to this effect, particularly by the Minister of Māori Affairs at the time, Ralph Hanan, and by Māori member Sir Eruera Tirikātene. Also, claimant counsel emphasised statements in Parliament that the council structure was not being imposed from above but had its origins in the wishes of the Māori people, which Tirikātene confirmed.²⁴ In severing the structure from the department, the Minister concluded that ‘the Māori people are now, in their own words, able to paddle their own canoe’,²⁵ and he said in 1963 that the Government was acting in ‘accordance with the principle of giving as much autonomy and self-government as possible to these Māori associations’.²⁶

The second outstanding feature, in the claimants’ view, was that the NZMC had a statutory role ‘to speak for Māori to government’. Having (in reality) been created from below, the Government was recognising it and according it that right. In this respect, the NZMC was to ‘take the lead in advancing Māori self-government in terms of the 1962 Act’.²⁷ Again, parliamentary speeches from Ministers Hanan and Tirikātene were quoted in support.²⁸ In particular, the claimants relied on the following statement by Hanan in respect of the 1961 Bill, which first created the NZMC:

It [the Māori Social and Economic Advancement Amendment Act 1961] will create a fully representative and democratic body, quite independent of government, free of any external control or domination and able, I sincerely hope, to speak with one voice for Māoridom as a whole, and then it will provide a two-way channel of communication between the Government and individual Māori . . .²⁹

According to the claimants, the third outstanding feature was that Māori were ‘to develop/consent to changes to [the] 1962 Act’. Claimant counsel submitted:

The legislative history bears this out, and indeed suggests a practice that the NZMC would take the lead in proposing changes to the 1962 Act or, if changes came from the Crown, then NZMC consent was required for them.³⁰

The claimants cited the recollections of Titewhai Harawira as well as a number of examples from the 1960s and 1970s, in which the Government stated in Parliament

23. Claimant counsel, closing submissions (paper 3.3.5), p 7

24. Claimant counsel, closing submissions (paper 3.3.5), pp 7–9

25. NZPD 1962, vol 332, p 2693 (quoted in claimant counsel, closing submissions (paper 3.3.5), p 9)

26. NZPD 1963, vol 337, p 2337 (quoted in claimant counsel, closing submissions (paper 3.3.5), p 10)

27. Claimant counsel, closing submissions (paper 3.3.5), p 10

28. Claimant counsel, closing submissions (paper 3.3.5), pp 10–11

29. NZPD 1961, vol 327, pp 1971–1972 (quoted in claimant counsel, closing submissions (paper 3.3.5), p 10)

30. Claimant counsel, closing submissions (paper 3.3.5), p 11

that changes to the Act had either been proposed by the NZMC or agreed to by that body.³¹

From all these points, the claimants concluded:

It follows that the Crown needs to ensure that the community representativeness and the democratic legitimacy of the rangatiratanga/self-government institutions provided for in the 1962 Act, are recognised and respected in the actions the Crown takes in relation to those institutions.

This last point has relevance in relation to the Crown's dealings with Wardens as well as in relation to any processes for reform of the 1962 Act.³²

We turn next to consider the evidence in relation to these arguments (sections 3.3 and 3.4) before drawing our conclusions about this aspect of the claim.

3.3 THE QUEST FOR MĀORI SELF-GOVERNMENT: A BRIEF OVERVIEW, 1840–1952

In the claimants' view, the establishment of the NZMC in 1961–62 was the culmination of a long quest to obtain state recognition and statutory powers for a system of Māori self-government. Such a system was based on adapting British institutions – committees and councils – to Māori needs and aspirations. This process of selection, adaptation, and appropriation began from the earliest contact between Māori and missionaries. At that time, Māori kin groups had governed themselves by means of tribal leaders (rangatira) and elders (kaumātua). Community decisions were made – and conflicts resolved – through hui, rūnanga (tribal councils), and traditional community sanctions. In the 1830s, Māori leaders began to adapt the customary rūnanga into Church komiti as a mechanism for communal regulation in the new circumstances of Māori Christianity.³³ This process broadened after the signing of the Treaty, as settlers began establishing their own councils and committees for local and national self-government, including a virtually autonomous New Zealand Parliament from the 1850s.

The claimants explained:

The Māori Council system, which contributes to Māori self-government, came about as a result of a history of Māori efforts to establish and gain recognition for a formal governance structure for Māori. The history begins with Māori initiatives from the 1840s to adapt the customary Rūnanga (or hapū and iwi councils) to form Committees and Councils to regulate local conduct and manage local disputes. From

31. Claimant counsel, closing submissions (paper 3.3.5), pp 11–14

32. Claimant counsel, closing submissions (paper 3.3.5), p 16

33. Vincent O'Malley, 'Rūnanga and Komiti: Māori Institutions of Self-government in the Nineteenth Century' (PhD thesis, Victoria University of Wellington, 2004), pp 29–31

the 1850s national movements had developed, as in the appointment of the Māori King and the introduction of Māori Parliaments.³⁴

What ensued was a long and complicated history of Māori efforts to obtain state recognition – and Crown efforts to avoid or minimise any such recognition, especially for a national Māori body.

It might be asked as a preliminary question: why did Māori need state recognition for their own institutions of self-government, and why was the Government so reluctant to give it? The short and inescapable answer was that Māori community decision-making required political acknowledgement (from the Government) and legal acknowledgement (from the courts) before its decisions could be made to stick. Hence, Māori constantly sought statutory powers for their local, district, and national bodies. Otherwise dissenters could defy the community, by selling land, for instance, and neither private settlers nor the Crown had to recognise or respect the decisions of Māori communities in such instances. Similarly, Māori communities could not enforce their rules on outsiders (whether settlers, government bodies, or other Māori groups) without legal powers to do so. Māori self-government institutions could not operate effectively within the State and the economy without a corporate legal identity. Thus, even where Māori autonomy movements established their own institutions without state sanction or permission, as with the Kīngitanga in the 1850s and the Māori parliaments in the 1890s, it was still common to seek some form of recognition and even empowerment from the New Zealand Government. The alternative, as with the aukati (boundary) of the King Country in the 1870s, was enforcement by Māori through persuasion, agreement, or the threat of force.³⁵

Nineteenth-century governments, for their part, usually opposed recognising or giving real powers to Māori self-government institutions, because it was feared that they would retard assimilation, ‘civilisation’, and all-important land sales.

The Waitangi Tribunal has already traversed the history of Māori autonomy movements in the nineteenth century. On the basis of its previous findings, we can provide a brief overview of the process by which Māori sought state recognition for local and (eventually) district and national self-government institutions.

3.3.1 The Māori quest for self-government institutions, 1840s–90s

In the 1840s and 1850s, hapū and iwi throughout New Zealand tried to get the Crown to recognise their rūnanga as the official ‘negotiating face’³⁶ for tribal

34. Cletus Manu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, ‘Statements on the basis for the Claim’, 27 September 2013 (paper 1.1.1), p 6

35. See Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, chs 3–7

36. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 5

communities in their dealings with settlers and the Crown.³⁷ This rūnanga movement, as it came to be known, sprang up alongside a movement to set up a Māori King to maintain and enhance the mana and autonomy of all tribes, by bringing lands and tribes under the King's protection. The Kīngitanga was formally established after many North Island tribes came together at a hui at Pūkawa in 1856, and the kingship was offered to senior tribal leaders and finally accepted by Pōtatau Te Wherowhero of Waikato-Tainui in 1858. The Kīngitanga established official rūnanga and other institutions of self-government, with the structure headed by the King's council. Although the Governor and the settler Parliament refused to recognise the King, they did enact legislation in 1858 to accord legal powers to tribal rūnanga and courts (under the presidency of settler magistrates). This legislation remained dormant until 1861, when Governor Grey rolled it out in tribal areas friendly to the Crown, establishing official rūnanga (known at the time as the 'New Institutions'). There were also attempts, by John Gorst and other magistrates, to establish these New Institutions in Kīngitanga districts, leading to a contest between 'Queenite' and 'Kingite' councils and courts prior to the outbreak of the Waikato war in 1863.

Also, before Grey's return to New Zealand in 1861, Governor Gore Browne had convened a conference or 'parliament' of chiefs at Kohimarama in 1860. One of its most important demands was that this parliament of chiefs be established as a permanent institution so that Māori leaders could propose legislation to the settler Parliament and come together to debate and decide matters of common interest. The settler Parliament agreed to vote funds for an annual chiefly conference, and also passed a law to establish a national body called the Native Council (made up of leading chiefs and such 'philo-Māori' settler leaders as Bishop Selwyn and Sir William Martin). But Grey preferred to keep Māori self-government at a local level; thus, he established the New Institutions but discontinued the Kohimarama conference and refused to put the Native Council Act into operation. It should be noted that Grey's New Institutions were established under the local 1858 legislation; no self-governing Native Districts were set up, as had been provided for under section 71 of the imperial New Zealand Constitution Act of 1852. For 134 years, from 1852 to 1986, this Act providing for Māori self-government was to remain on the statute books yet no section 71 districts were ever declared.

Grey's New Institutions lasted only so long as convenient to the Government as a means of appeasing and providing for Māori allies during wartime. After the main phase of the New Zealand wars was over by the mid-1860s, and Māori political power had been significantly reduced as a result, the Government discontinued funding for the New Institutions and they were abolished. On the other hand, Māori were finally admitted to representation in the settler Parliament in 1867, with the creation of the four Māori seats. By the end of the 1860s, the Māori Members of Parliament were the only official means for Māori self-government, although many

37. The material in section 3.3.1 is a brief summary drawn from a variety of sources. In particular, the Tribunal has relied on: Waitangi Tribunal, *He Maunga Rongo*, vol 1, chs 4, 6, 7. For the Kīngitanga, see also Evelyn Stokes, *Wiremu Tamihana: Rangatira* (Wellington: Huia, 2002); *Te Kīngitanga: The People of the Māori King Movement, Dictionary of Biography* (Auckland: Auckland University Press, 1986).

unofficial rūnanga, councils, and committees continued to operate at tribal level. From that point on, there were regular calls from Māori for section 71 to be applied and self-governing Native Districts to be established.

In the 1870s, the Kīngitanga still comprised a virtually independent state in the centre of the North Island, its borders guarded by the defenders and enforcers of the aukati. Inside the 'King Country', the King's councils and institutions continued to operate. Outside the King Country, tribal leaders pressed the Government to recognise and accord legal powers to their rūnanga, including many of the leaders who had supported the Crown most strongly during the wars. Without such powers, attempts to enforce community control over land, such as Major Kemp's trust (Whanganui) and Te Arawa's Komitinui (Rotorua), could not succeed in the long run.

Māori pressure led the Native Minister, Donald McLean, to try to enact Native Council Bills in 1871 and 1872 (a Bill promised for 1873 was not even introduced), which would have given Māori councils local self-government and judicial powers. But the New Zealand Parliament would not agree to this form of Māori self-government in the 1870s. Attempts to reach an accommodation with the King also failed in that decade.

Māori leaders persisted, trying to get increased representation in the settler Parliament as well as state recognition and powers for their tribal committees. Māori members introduced Native Committee Bills into the settler Parliament in the early 1880s without success, until the Government finally passed a watered-down version as the Native Committees Act in 1883. Unfortunately, the district committees established under this Act had few powers and did not provide genuine local self-government. Another measure seemed more successful at first, in the shape of the Native Lands Administration Act, pushed through Parliament by John Ballance in 1885. After extensive consultation, Ballance believed that he had won Māori support for a law that would empower localised self-government in the form of block committees, which would enable communities of owners to control land transactions. But Ballance had ignored feedback that Māori only wanted these block committees to operate in conjunction with fully empowered tribal committees at a district level. Ballance's Act was not taken up by Māori, therefore, and it was repealed soon after in 1888. Māori were left with no block committees, nominal district committees, and only four members in a settler Parliament.

In the meantime, Government efforts to negotiate an arrangement with the King and the central North Island tribes, particularly to push the main trunk railway line through the King Country, had resulted in the Te Rohe Pōtae agreement in the mid-1880s. This agreement or compact is currently before the Tribunal in the Wai 898 Te Rohe Pōtae inquiry, so we do not wish to make any comment upon it here. Some self-governing Māori communities, on the other hand, were actively suppressed; the fate of Parihaka in Taranaki needs no elaboration. But we can also mention the arrangements negotiated for Te Urewera in the 1890s. In 1896, the Liberal Government agreed to a self-governing native reserve, established by the

Urewera District Native Reserve Act. This Act provided for hapū block committees and a central ‘general committee’ to decide land matters, manage the communities’ local affairs, and represent the peoples of Te Urewera to the New Zealand Government. As the Tribunal has reported, however, these committees were never properly established; the Government set aside the authority of the General Committee in the early twentieth century, purchased individual land interests in defiance of the Act, and eventually repealed the 1896 Act itself in 1922.

Nonetheless, the establishment of self-government institutions for Te Urewera seemed a hopeful sign at the time. It was not impossible – so it seemed – for the settler Parliament to recognise and give legal powers to such Māori institutions. For other districts, the Government had also agreed in 1894 to the possibility of block owners establishing incorporations for the first time, mainly to make land sales easier but with some potential at last for corporate decision-making about and farming of Māori land. This was one of the concessions made as a result of a mass autonomy movement that had developed among the tribes: thousands of Māori supported Te Kotahitanga, the great unity movement which established a pan-tribal Māori Parliament and sought recognition from the New Zealand Government for a structure of local committees capped by a national paremata (parliament). Te Kotahitanga leaders were divided, however, over whether recognition alone would suffice, or whether statutory powers should be conferred on the Māori paremata and committees by the New Zealand Parliament. At the same time, the Kīngitanga tribes established their own Te Kauhanganui (Great Council). These developments were accompanied by an attempted boycott of the Native Land Court and a call for an absolute end to Crown purchases of Māori land.

At first, the Liberal Government resisted these movements as ‘separatist’. But the same accusation had been made and overcome in respect of Te Urewera in 1896. By the end of the 1890s, the Government was prepared to negotiate with the Māori Parliament: the result was the Māori Land Administration Act and the Māori Councils Act of 1900. We turn to consider twentieth century developments next.

3.3.2 The era of Māori Councils, 1900–39

As a result of negotiations between the Liberal Government, representatives of the Māori Parliament, and ‘Young Māori Party’ leaders, two Acts were passed in 1900:

- The Māori Land Administration Act; and
- The Māori Councils Act.

Under this legislation, Parliament compartmentalised and divided the autonomy that Māori had sought in the nineteenth century; control of the community’s primary resource, Māori land, was separated from other powers of local self-government.

The Māori Land Administration Act established papatupu committees at the block level, and Māori Land Councils at the district level. There was provision for Māori to elect their leaders to these councils, to sit alongside members appointed by the Government (some Māori, some Pākehā). The land councils exercised various

powers over titles, providing an alternative to the Native Land Court, and Māori could vest land in the councils for leasing if they wished. But we note that this representative and permissive system was abolished soon after. By the second half of the decade, the councils had been replaced by appointed Māori Land Boards (which later had no Māori members at all), compulsory vesting was introduced, and the Government's agreement to leasing was once again replaced by Crown purchase. Thus, any autonomy gained in respect of land in 1900 was very shortlived.³⁸ The introduction of one-off 'meetings of assembled owners' in 1909 to make decisions about land, touted at the time as a 'resuscitation of the old rūnanga system', did little in fact to re-empower Māori communities.³⁹

The Māori Councils established under the other 1900 Act were of greater duration than the Māori Land Councils. In brief, the Māori Councils Act provided for self-government at two levels: komiti marae or village committees operating at a very local level, and district Māori councils acting at a higher, usually multi-tribal level. Described as an equivalent to borough or town councils, these bodies had a mix of powers and responsibilities, including community development, local bylaws, and social control. In respect of community development, there was a special emphasis on sanitation schemes and improving Māori health, especially after 1919.⁴⁰

There was also provision for national conferences of delegates from the Māori councils. It was this provision which persuaded the Māori Parliament to disband in 1902 and 'merge' with the Māori council system. But these conferences were held infrequently, had no powers or authority, and were discontinued after 1911. Māori leaders had believed that they were gaining a state-recognised national body in the form of Māori council conferences, but this proved not to be the case.⁴¹

According to the claimants, we need to note three significant points about the Māori Council system:

- ▶ it did provide for 'local community or hapū self-government';
- ▶ it did not provide 'a national government structure, as earlier sought by Te Kotahitanga'; and
- ▶ it did allow Māori communities to appoint officers to undertake functions for the community.⁴²

The latter point seems especially pertinent in terms of 'native constables', or 'komiti marae constables', as they were also known. These Māori 'police' assisted with 'chiefly control' and the enforcement of bylaws in Māori communities.⁴³

38. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 671–682

39. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 688–689

40. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 368, 387–400

41. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 381, 387–400

42. Cletus Manu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, 'Statements on the basis for the claim', 27 September 2013 (paper 1.1.1), p 7

43. Cletus Manu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, 'Statements on the basis for the claim' (paper 1.1.1), pp 6–7; Richard Hill, *Introducing Policing into the Rangatiratanga Discourse: An Historical Overview of the Role of Māori Police Personnel* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2003), p 9

Although not specifically authorised by the 1900 Act, the appointment of community police was within the councils' powers.⁴⁴ As Raeburn Lange pointed out, the councils' interest in community control remained 'important in later years, and in fact would contribute to the shape of the 1945 legislation that superseded the Māori Councils Act'.⁴⁵ This referred in particular to the adoption of 'Māori wardens' and their introduction as part of a revamped self-government system under the Māori Social and Economic Advancement Act in 1945.

There is general agreement among historians and commentators that the Māori council system was in decline by 1920, due mostly to its extreme lack of funds. Apart from fines and the dog tax, the councils and komiti marae had to raise all their own finance – which could attract government subsidies under certain conditions.⁴⁶ Raeburn Lange commented:

The story of the rise and fall of the Māori Councils in the two decades after 1900 is a sad commentary on the political priorities of the time. The achievements of the councils movement might well have been enormous throughout this period if the enthusiasm of 1900 had been nurtured through the years by generous official finance and support.⁴⁷

Most councils only existed on paper by the time they were transferred to the Health Department in 1919.⁴⁸ There, Te Rangi Hīroa (Peter Buck) tried to re-establish them as Māori health agencies, with some success in the 1920s. In the wake of the influenza epidemic, Māori communities worked hard with the Māori Hygiene Division to improve their sanitation systems, housing, and other circumstances vital to good health in their rural areas, but funding remained a constant constraint. By 1928, there were 20 functional Māori health councils and 260 komiti marae.⁴⁹ Buck even convened national conferences in 1920 and 1927, with Māori leaders still keen to have even 'rudimentary national forums of this kind'.⁵⁰

In 1929, Āpirana Ngata, as Native Minister, approved the holding of a national conference of Māori councils at Ngāruawāhia. The conference reported to him that:

'the power and authority to conduct our maraes' was a 'privilege' highly valued by 'a large majority of the Māoris throughout the Dominion', who were distressed that the Councils had almost 'ceased to be an effective instrument in the regeneration of the Māori Race'. In the opinion of the meeting, if the decline of the Councils led to their abolition 'it would be a catastrophe to the Māori race and a mark of disrespect to the memory of the late Sir James Carroll'. It was unanimously resolved to recommend

44. Raeburn Lange, *In an Advisory Capacity: Māori Councils, 1919–1945* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2005), pp 26, 32–33

45. Lange, *In an Advisory Capacity*, p 26

46. See Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 387–400.

47. Raeburn Lange, *May the People Live: A History of Māori Health Development 1900–1920* (Auckland: Auckland University Press, 1999), p 197

48. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 394

49. Lange, *In an Advisory Capacity*, pp 1–22

50. Lange, *In an Advisory Capacity*, p 21

‘that the Māori Councils Act and Bylaws be consolidated and revised to meet all present requirements’. The meeting requested the Government to provide enough finance to ‘enable the spirit and intention of the Act to be properly administered’, to pay £1 for £1 subsidies for sanitation and water supply projects, to pay the travel costs of those attending quarterly Council meetings, *and to convene an annual conference of Māori Council representatives*. [Emphasis added.]⁵¹

By this time, however, the councils were seen purely as health agencies and the Native Department had no interest in revising the Act or increasing their finances. Neither did the Health Department. Buck had left the department, and its Māori Hygiene Division was abolished in 1931. After that, the system fell again into decline and there were few councils operating by the outbreak of the Second World War in 1939. The election of the Labour Government in 1935 had made little difference. At first, the new Government considered transferring all of the councils’ powers to the komiti marae, many of which were still active, but Māori leaders called for a national conference to decide a way forward.⁵² The 1900 system had been set up ‘at the request of the Native people to carry out in some measure the spirit of the Treaty of Waitangi’: the Government must not abolish it (or so said the northern Māori leaders).⁵³ Yet it was dying anyway by 1939, when the Second World War temporarily transformed the political, social, and economic landscape, resulting in a remarkable new autonomy movement: the Māori War Effort Organisation (MWEO). We turn to that development next.

3.3.3 The Māori War Effort Organisation and the origins of the 1945 Act

The Māori quest for state recognition of their autonomy came closest to achievement during the extraordinary circumstances of the Second World War. The Government needed to mobilise military and civilian ‘manpower’ for the war effort, but found that it had no means other than the Native Department to reach and mobilise the Māori people. The Department at the time was ill-prepared for this role; it was under-staffed, unpopular with Māori, and almost entirely Pākehā-controlled. Āpirana Ngata and the Rātana–Labour members of Parliament urged the Government not to resort to formal conscription, which had led to outright defiance from some tribes during the First World War. They persuaded the Labour Government to agree to a tribally based Māori battalion sourced from voluntary enlistment. Led by the member for Northern Māori, Paraire Paikea, the Rātana–Labour members also persuaded their Labour colleagues that voluntary Māori committees, formed by the tribes themselves, should be used to mobilise Māori men and women for military service and to supply food and labour for the war effort. Cabinet signed off on the Māori War Effort Organisation in 1942, to consist of hapū committees elected by their local communities, with two representatives from each committee to form higher-level tribal executives. The committees and

51. Lange, *In an Advisory Capacity*, p 23

52. Lange, *In an Advisory Capacity*, pp 22–46

53. Lange, *In an Advisory Capacity*, p 44

**OTHER EXPERIMENTS IN RECOGNISING MĀORI SELF-GOVERNMENT
INSTITUTIONS BEFORE THE SECOND WORLD WAR**

The First World War: During the First World War, the Government agreed to the request of the Māori members of Parliament and other Māori leaders that Māori should be recruited into 'native contingents' and (eventually) the New Zealand (Māori) Pioneer Battalion, organised along tribal lines. These were significant achievements, not won without some reversals and resistance from military leaders. Recruitment was managed by a special committee of the four Māori members and Sir James Carroll, with local committees to assist. A Māori Patriotic Committee was also set up in 1917 to raise funds for Māori returned servicemen, because Māori leaders doubted that the Government would act fairly in providing land for rehabilitation. Towards the end of the war, the Māori members of Parliament urged the Government to extend conscription to Māori, which saw the exercise of autonomy in a different direction when Kīngitanga leaders inspired defiance of conscription among their people.

Tribal Trust Boards: During the 1920s, the Government negotiated a settlement of Te Arawa's Rotorua lakes claim. After hard bargaining on both sides, the Government agreed not to insist on an annual payment to individuals via the Māori Trustee, and Te Arawa agreed not to insist on hapū-level settlement arrangements. Thus was born the Te Arawa Māori Trust Board, the first tribally based board of trustees to administer settlement funds and assume a leadership role in tribal affairs. It was followed soon after by the Tūwharetoa Māori Trust Board (1926) and the Ngāi Tahu Māori Trust Board (1929). By the outbreak of war, the Crown was in negotiations to settle Taranaki claims by establishing a similar board. Historian Richard Hill argued that these 1920s boards, and the ones that followed in later decades, were a compromise with which both Crown and Māori could live. They provided some scope for tribal autonomy but in a

executives would work with Māori recruiting officers and the manpower officers of the National Service Department, and they would do so without any state funding.⁵⁴

The whole scheme had emerged from meetings between the Māori members and other Māori leaders and was almost universally supported by the tribes; within six months, Māori had set up 315 tribal committees and 41 executives.⁵⁵ By the end of

54. Claudia Orange, 'An Exercise in Māori Autonomy: The Rise and Demise of the Māori War Effort Organization', in Judith Binney (ed), *The Shaping of History: Essays from The New Zealand Journal of History* (Wellington: Bridget Williams Books, 2001), pp 62–66, 71

55. Orange, 'An Exercise in Māori Autonomy', p 65

form that was legally 'safe', monitored and supervised by the Government. For Māori, the boards became avenues to manage at least some of their affairs on a tribal basis, but for the Crown they became what Hill called a 'collectively-based roadblock' in the way of assimilation.

Rātana: By the end of the 1920s, the Māngai, Tahupōtiki Wiremu Rātana, had launched a mass political movement with the objective of capturing 'the four koata/quarters', the four Māori seats. His goal was to give a political voice and power to the mōrehu, 'the dispossessed and common people of Māoridom', on a platform of honouring the Treaty and Māori self-government. The Rātana movement began to work with the political party of the 'pākehā mōrehu', the Labour Party, which accepted that some Māori aspirations were compatible with its goal of equality and development for all citizens. 'Mana Māori motuhake' became a political catchphrase in the mid-1920s, and the Labour Party promised (among other things) to establish a national Māori body to advise the Government on policy and legislation. Even so, Labour (like National) was assimilationist in some of its policy objectives.

In 1931, the Labour–Rātana alliance was formed, and Eruera Tirikātene won its first seat in a by-election in 1932. Then, in 1935, Tokouru Rātana took a second Māori seat, and the First Labour Government was elected. The two Rātana members joined the Labour caucus, and the alliance was formalised in 1936. In 1938, the Rātana members stood as Labour candidates, and Paraire Paieka obtained their third seat, Northern Māori. By the outbreak of the Second World War, the Rātana–Labour members of Parliament were poised to seek real gains in respect of Māori autonomy, as we discuss below. (The fourth seat was captured in 1943 when Ngata lost Eastern Māori to Tiaki (Jack) Ōmana.)

For more information on these matters, see Richard Hill, *State Authority, Indigenous Autonomy: Crown–Māori Relations in New Zealand/Aotearoa, 1900–1950* (Wellington: Victoria University Press, 2004), chs 4–6.

the war, it had grown to 407 committees and 60 executives.⁵⁶ According to Claudia Orange, Māori leaders had an eye to their political empowerment in the future as well as the present. Their support of the organisation was aimed in part at ensuring its continuation after the war.⁵⁷ As Paieka put it:

56. Bryan Gilling, *Paddling Their Own Waka or Rowing the Government's Boat? The Official System for Māori Socio-Economic Development in the Post-1945 Period* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2008) (doc B20), p 9

57. Orange, 'An Exercise in Māori Autonomy', pp 63, 65. See also Gilling, *Paddling Their Own Waka*, (doc B20), pp 7–8.

In the minds of the Māori people, the establishment of the Māori War Organization is the greatest thing that has happened in the history of the Māori people, since the signing of the Treaty of Waitangi. They feel that in the organization lies the future prosperity, development and happiness of their people. It is submitted that the Organization should be carefully nursed, encouraged and developed to the full, not only on account of the people's war effort, but also that it may play a worthwhile and practical part in the after-war reconstruction and . . . rehabilitation.⁵⁸

Thus, it was Māori leaders such as Paikea who drew the link between the Māori War Effort Organisation and post-war Māori social and economic development. This ultimately led to a dual focus on autonomy and development, on the one hand, and the war and post-war periods on the other. As Dr Monty Soutar put it, 'if Māori were to have a say in shaping the future of the nation after the war they needed to participate fully during it'.⁵⁹ It was hoped that 'equality of sacrifice' would finally result in 'equality of citizenship'. But this did not distract from the key point that the war itself had first to be won – 'Ngata summed up the situation: "We are of one house, and if our Pākehā brothers fall, we fall with them."⁶⁰

Paikea warned the Government that tribal autonomy and development were vital to Māori and would be inextricably entwined, both during the war and after it:

Should the present attempt to reorganise the Māori people around their tribal system and spirit, and to put them with their rapidly increasing population, to compete on equal terms with their Pākehā brothers and sisters in the present and future economic, commercial, industrial and social life of New Zealand fail, then the outlook can only be viewed in a dim light, with inferiority complex as a dominant factor.⁶¹

At a national level, the MWEO was led by a committee made up of the Māori parliamentarians – the four members of the House and a member of the Legislative Council, Rangī Mawhete – with Paikea as Minister in charge of the Māori War Effort. Thus, the MWEO had its own parliamentary committee and its own Māori Minister. After Paikea's death in April 1943, leadership was assumed by the southern Māori member, Eruera Tirikātene, although Prime Minister Fraser took over ministerial responsibility. By then, the Māori members faced a battle with the Native Minister, HGR Mason, and his department, over retaining the organisation in the short term, let alone extending its existence after the war. Mason's plan was to revamp the 1900 Māori Councils Act in conjunction with a Native Department refocused on welfare services. He presented a draft Bill to the Māori members and tribal leaders, which was later sent out to all the MWEO tribal executives for consultation. Māori opinion was universally opposed because Mason's councils would

58. Paikea to War Cabinet, 3 April 1943 (quoted in Orange, 'An Exercise in Māori Autonomy', p 67)

59. Monty Soutar, *Nga Tama Toa: The Price of Citizenship* (Auckland: David Bateman Ltd, 2008), p 35

60. Soutar, *Nga Tama Toa*, p 35

61. P K Paikea, report to Minister of Defence, July 1942 (quoted in Orange, 'An Exercise in Māori Autonomy', pp 67–68; R Ngātata Love, 'Policies of Frustration: The Growth of Māori Politics. The Rātana/Labour Era' (PhD thesis, Victoria University of Wellington, 1977), p 362)

be ‘dominated by Pākehā’, and his scheme would take away the autonomy secured by the MWEO.⁶²

In 1944, the Māori members won an extension of the MWEO’s existence for the duration of the war. But its long-term future remained in doubt. Mason persisted with his Bill despite opposition and began to appoint departmental welfare officers. Tirikātene led the development of a counter-proposal: a new Department of Māori Welfare or Māori Administration would coordinate Government services to Māori, alongside the continued role of the tribal committees and executives. Tirikātene wanted to add two more layers at the supra-district and national levels, to create bodies that would put joint decision-making in the hands of Māori leaders and senior officials. He and his supporters proposed to establish four district Māori councils (corresponding to the four Māori electoral districts). These district Māori councils would be made up of the local Māori member of Parliament, representatives of the tribal executives, and representatives from the government departments with which Māori needed to work. In turn, these councils would elect eight Māori representatives to a new national board, which would also include the Minister, the head of the new department, and the heads of six other government departments. The plan was for this board to replace the Board of Native Affairs and coordinate all Māori policy and administration through the new department and the district councils.⁶³

Tirikātene developed these proposals in late 1944 at four conferences of Māori leaders, held at Wellington, Rotorua, Rātana, and Ōpoutama.⁶⁴ The Bill that was drafted as a result of these conferences did have a significant influence on the final product in 1945: Mason’s new Māori Social and Economic Advancement Bill.⁶⁵ The claimants have emphasised this point in their submissions. In their view, the Government’s 1945 Bill ‘came about by direct dealings between Māori and Ministers, with local hui in support.’⁶⁶ They saw this as an example in which ‘indigenous peoples determine the structure of their institutions through their own processes.’⁶⁷ The key victory was the ‘[o]fficial recognition of Māori bodies which contributed to Māori self-government’,⁶⁸ namely, the tribal committees and tribal executives which Māori themselves had established as part of the MWEO.

The historical evidence supports the claimants’ interpretation. It was made clear to the Government that the MWEO structure had to be included in post-war arrangements for Māori governance and development. Thus, Mason’s Bill provided for the tribal committees and executives to become statutory bodies, which Tirikātene welcomed, with their focus on social and economic development. But Mason was not prepared to accept everything that the Māori leaders had sought, particularly the insertion of Māori leaders in ‘positions of administrative responsibility’. Hence,

62. Orange, ‘An Exercise in Māori Autonomy’, pp 68–69

63. Orange, ‘An Exercise in Māori Autonomy’, pp 68–72

64. Orange, ‘An Exercise in Māori Autonomy’, p 71

65. Gilling, *Paddling Their Own Waka* (doc B20), pp 5–10

66. Claimant counsel, amended statement of claim, 17 January 2014 (paper 1.1.1(a)), p 9

67. Claimant counsel, amended statement of claim (paper 1.1.1(a)), p 9

68. Claimant counsel, amended statement of claim (paper 1.1.1(a)), p 5

Tirikātene's proposal (developed after consultation at the four hui) for district councils and a new national board at the top of the structure was rejected.⁶⁹ The claimants noted the significance of this point, attributing it to the Government's fear of Māori nationalism 'like the [separatist] nationalism experienced in Ireland' at the time.⁷⁰

Also, the Native Department was to remain the principal administrative organ for Māori matters, and its officials would now become members of the tribal committees and superintend their work.⁷¹ Rather than Māori assuming the powers and responsibilities of self-government, it seemed as if the Government might take over the committees instead. But much would depend on how the new system worked in practice. The committees were already used to working with Māori military liaison officers, and the Native Department was in process of developing a new, largely Māori-staffed division of welfare officers to work in the field. As will become clear later, these welfare officers sometimes sided with their committees against the department in the coming years.

Could such a structure be a vehicle for Māori autonomy and Māori-directed development? Prime Minister Peter Fraser certainly believed so:

It was early recognised by myself that if the Organisation was absorbed into the ordinary activities and routine of the Department it would to a very great extent, be stultified and could not possibly exercise that positive beneficial influence, and carry out the work specified by Parliament for it to do as efficiently as if it was practically an autonomous organisation. It has been my aim to make the Organisation as self-controlling and autonomous as possible, that is to the full limits of its potential development – always stipulating for efficiency. . . . The Māori Social and Economic Welfare Organisation must not be looked upon as merely another branch of the Māori Department. It is an organisation that must be to a very large extent independent and self reliant. The Tribal Committees, the Tribal Executives and the Welfare Officers must think out proposals and plans for the advancement of the Māori people in all directions . . .⁷²

The Māori members also believed so and they strongly supported the 1945 Bill as a negotiated compromise, which preserved the core of what Māori leaders had sought from the Government. Tirikātene wrote upon its passage:

At midnight on the 6th instant [of December 1945] we guided the Māori War Effort Organisation in its peace-time Role through the House of Representatives. It [the MWEO] is now the Māori Social and Economic Advancement Act 1945 giving it statutory power of local self-government and administration as a Unit of the Native

69. Orange, 'An Exercise in Māori Autonomy', p 72

70. Cletus Manu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, 'Statements on the basis for the claim' (paper 1.1.1), p 7

71. Orange, 'An Exercise in Māori Autonomy', pp 72–73

72. Fraser to Under Secretary, 21 September 1948 (quoted in Orange, 'An Exercise in Māori Autonomy', pp 73–74)

Department. In this Act the ideals of our Race can be carried upwards and onwards to prosperity and success.⁷³

Claudia Orange concluded that the Government's 1945 Bill was a compromise between the aspirations of Māori leaders and those of the Native Minister (and his Department):

It left the structure of the Board and Department of Native Affairs intact and made no provision for the District Councils proposed in Tirikātene's Bill. It incorporated only the tribal and executive committees, which immediately became a part of the department's structure. The Act made provision for an allocation of government funds to the committees through subsidies equal to any money raised by the committees. The funds could be used for almost any purpose, because the Act left the widest scope for interpretation. . . . The Act's full title indicated this: An Act to make Provision for the Social and Economic Advancement and the Promotion and Maintenance of the Health and Social Well-Being of the Māori Community.

At best, however, it represented a partial victory. The department had been drawn into a wider range of work and was committed by legislation to a degree of cooperation with the Māori people which would have been unthinkable in the pre-war years. Constant Māori pressure had secured this shift in policy. But the committees would have to deal with Native Department officers at district office level in all aspects of tribal business. They had lost the 'flax-roots' autonomy as well as Māori leadership at the top level of government.⁷⁴

Another key point to note is that the MWEO shaped the nature or perhaps limits of self-government provided for in 1945. The Māori Councils of the 1900 Act had been local government bodies. The task of the tribal committees and executives of the MWEO, however, was to rally and direct their communities' war effort. Broadly speaking, these committees transitioned from the war effort to leading and directing their communities in the spheres of social and economic development. They were not local government bodies per se, and it was never intended that they should be, although they exercised some local powers.

We turn next to consider the detail of the Māori Social and Economic Advancement Act, which was the direct predecessor of the Māori Community Development Act 1962, and much of which was replicated in the 1962 Act.

3.3.4 The Māori Social and Economic Advancement Act 1945

In 1945, the New Zealand Parliament enacted the Māori Social and Economic Advancement Act. In brief, the Act provided for ministerial 'direction and control' of the powers conferred by it, and departmental superintendence of the tribal committees by the Controller of Māori Welfare. The committees were to operate at two levels: tribal committees elected every two years by a 'general meeting of the

73. Tirikātene to F Katene, 7 December 1945 (quoted in Gilling, *Paddling Their Own Waka* (doc B20), p11)

74. Orange, 'An Exercise in Māori Autonomy', pp 72–73

Māori residents'; and tribal executive committees, consisting of two members from each of the tribal committees in their area. In addition to the elected members, the Minister would appoint a departmental Welfare Officer to every committee. Ministerial approval was required for the exercise of a number of specific powers or functions; indeed, government supervision and control was a significant theme of the Act.

The committees' functions were to promote, encourage, guide, and assist Māori in all areas of social and economic development and well-being, including the preservation or revival of Māori culture. One function of particular note for the present claim was the committees' duty to promote, encourage, and assist Māori to 'apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings' (section 12(a)(iv)). Also, in order to promote Māori development, the committees were to collaborate with and assist the work of relevant government agencies, especially in Māori education. The tribal executive committees were empowered to make recommendations to the Minister on any matter affecting the well-being of Māori, and the Minister could convene a district conference of executives to consider such matters jointly. Importantly, the Act arranged for government subsidies so that the committees could raise funds to promote Māori social, economic, and cultural development on a practical level.

In terms of self-government, the 1945 Act provided for the Minister to appoint Māori Wardens under the control of the tribal executive committees. Wardens were also given specific powers in respect of alcohol (which were carried over into the 1962 Act), and tribal committees could investigate and impose fines for minor offences. The committees could also control Māori community water supplies and fishing reserves, and enact bylaws for local community purposes.

According to historian Bryan Gilling, 'the various institutions provided for in the MSEAA would legalise a degree of Māori self-government, albeit in ways that were supervised by the Native Department'.⁷⁵ As noted above, Prime Minister Fraser had high hopes for the Act. He took over the portfolio of Māori Affairs from Mason in 1946, and he hoped that – ministerial and departmental controls notwithstanding – the committee structure would be 'more or less autonomous'.⁷⁶ He also hoped that Māori would 'consider it their own – "a form of local expression, direction and control, and, up to a point . . . even a measure of local government"'.⁷⁷ In this sense, and in its recognition of the need for Māori to maintain, preserve, and develop their culture, the Act sat uneasily alongside government-led policies of integration (which was sometimes a thin veil for assimilation).

The claimants relied on Ralph Hanan's assessment, which was made in 1962:

The 1945 Act was seen to be 'a step in the right direction in giving the Māori people the right to govern themselves'. It did that by laying down 'the beginnings of a very

75. Gilling, *Paddling Their Own Waka* (doc B20), p 11

76. Orange, 'An Exercise in Māori Autonomy', p 75

77. Fraser to Under Secretary, 21 September 1948 (quoted in Orange, 'An Exercise in Māori Autonomy', p 75)

good system of community organisation whereby the Māori people could look after matters of particular concern to them.⁷⁸

The claimants also relied on Tirikātene's view that the Act was 'designed to see Māori themselves not Crown officials in control of Māori self-government'.⁷⁹ But what was missing was a provision for higher level district bodies and a national body, which Māori leaders continued to seek in the 1950s.⁸⁰

In 1946 and 1947, Tirikātene tried to restore Māori control at the top. He wanted to remove the committee structure and welfare officers from the Native Minister and put them under a Māori parliamentarian, the 'Minister Representing the Māori Race' (which was Tirikātene), but the Government would not agree.⁸¹ Tirikātene was to try this again in 1960, as we shall see in the next section.

It took about four years to replace the MWEO committees and executives with the new bodies created by the Act. This was because the Act was permissive – Māori established the new committees and executives as and when they chose – and it took some years for Māori to debate the new Act and decide whether or not to adopt it. Rangi Royal was appointed Controller in 1946. After Fraser replaced Mason as Minister later that year, the Government sent Royal around the country to explain the Act and encourage tribal groups to establish committees and executives. It took a long time, partly because the new committees were official bodies and so had to have their boundaries mapped and gazetted before the first elections could take place. But by 1948, most hapū and iwi had agreed to establish the new bodies. Only Waikato, Taranaki, and the East Coast remained outside the system, and those districts had also agreed to become part of it by 1950. Thus, the system was not fully in place until the close of the decade: 430 tribal committees and 72 executives were in operation at the beginning of the 1950s. The number had grown to 446 committees and 77 executives by 1952, although there was soon a tendency for committees to go in and out of existence, and for executives and welfare officers to try to revive, amalgamate, or reinvigorate them.⁸² Claudia Orange suggested that once the concrete development opportunities provided for by the Act had been achieved, such as marae improvements, installation of water supplies, and cultural arts and crafts projects, then the committees were confused by the range of their potential duties and they faltered, directionless.⁸³

During the 1950s, the new committees and executives faced major social and economic challenges. The Māori population was growing and urbanising at a rapid rate. In 1956, almost a quarter of the Māori population was located in the towns

78. Claimant counsel, closing submissions (paper 3.3.5), p 3

79. Claimant counsel, closing submissions (paper 3.3.5), pp 7–8

80. Cletus Manu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, 'Statements on the basis for the claim' (paper 1.1.1), pp 7–9

81. Raeburn Lange, *To Promote Māori Well-Being: Tribal Committees and Executives under the Māori Social and Economic Advancement Act, 1945–1962* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2006) (doc B19), p 11

82. Lange, *To Promote Māori Well-Being* (doc B19), pp 12–25; Gilling, *Paddling Their Own Waka* (doc B20), pp 12–22

83. Orange, 'An Exercise in Māori Autonomy', p 75

THE TREATY RIGHT OF DEVELOPMENT

Relying on the jurisprudence of the courts and previous Waitangi Tribunal reports, the Central North Island Tribunal concluded that the Māori Treaty right of development included 'the right of Māori to develop as a people, in cultural, social, economic, and political senses'. In Eruera Tirikātene's view, expressed in Parliament in 1945, the Māori Social and Economic Advancement Act (especially section 12) would enable a 'key principle, the right of Māori to progress, to be effected'. 'On the hilltop of Māoridom', he said, 'the torch has been lit, and may the beams continue to shine with a perpetual light of success and prosperity.'

For its time, the 1945 Act gave expression in Treaty terms to the Māori development right.

Sources: Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, p 890; Bryan Gilling, *Paddling Their Own Waka or Rowing the Government's Boat? The Official System for Māori Socio-Economic Development in the Post-1945 Period* (Wellington: Victoria University of Wellington, 2008) (doc B20), p 10

and cities. That proportion had risen to 40 per cent by 1961.⁸⁴ The ink was barely dry on an Act designed for hapū and iwi organisations in rural areas before it had to be adapted to a migrating, increasingly urban population. The new Māori urban communities needed employment, housing, schools and job training, health care, and opportunities to develop new cultural centres and lifestyles. The need for leadership and representation at a district and national level was felt increasingly by Māori leaders, struggling to respond piecemeal to a range of issues within the new Māori Welfare Organisation.

This report is not the place for an indepth study of the operations of the committees under the 1945 Act.⁸⁵ For our purposes, two crucial aspirations had emerged in Māoridom by the early 1950s as a result of the Act's operations:

- ▶ to work with the Government and the welfare officers but to free the committees and executives from government supervision and control; and
- ▶ to make a new push for district bodies and a national body to lead and coordinate the committee system and to enable Māori to put their requirements and proposals to central government.

84. Gilling, *Paddling Their Own Waka* (doc B20), p 25

85. For recent studies, see Aroha Harris, 'Dancing With the State: Māori Creative Energy and Policies of Integration, 1945–1967', Ph D thesis, University of Auckland, 2007 (doc B23) and Raeburn Lange, *To Promote Māori Well-Being* (doc B19).

**OTHER EXPERIMENTS IN RECOGNISING MĀORI SELF-GOVERNMENT
INSTITUTIONS : MANA WAHINE**

During the Second World War, Māori women were prominent in the MWEO committees and tribal executives. After the war, however, there was less opportunity for women to participate in the 1945 Act's committees and executives. Māori women did have their own voluntary bodies by which they organised themselves and pursued initiatives in their communities, including the Women's Health League (established in 1936). Encouraged by the Government, especially Controller Royal and the women Welfare Officers, such as Mira Szászy, Māori women founded community welfare committees in the late 1940s. These committees eventually forged district bodies and then a national body, again with the Government's encouragement, called the Māori Women's Welfare League. When the league held its inaugural national conference at Wellington in 1951, there were 157 branches operating under 22 district councils. Te Puea Hērangi was made patron and Whina Cooper was elected president of the new national league, which adopted a constitution and set up a dominion council and executive. By April 1954, the league had grown to 303 branches under 64 district councils, focused on Māori development in the areas of health, education, justice, and (most especially) housing. It was continuing to hold national conferences and to lobby the Government on its key concerns.

The establishment of the Māori Women's Welfare League showed that, by 1951, the Department of Māori Affairs and the Government – with Ernest Corbett as Minister and a Māori-dominated Welfare Division – was willing to work with and even encourage Māori self-organisation and self-determination on welfare and community development at a national level. This must have influenced the Waiariki tribal executives in 1952 when they called for dominion conferences and a national Māori council. As we shall see, this initiative received a very favourable response at first in 1953. The point was made to the Government thereafter that, if it would agree to a national organisation for the Māori Women's Welfare League, then why not for the tribal committees and executives of the Māori Welfare Organisation?

In 1961, introducing the Bill to establish DMCS and the NZMC, Minister JR Hanan stated: 'The setting up of a New Zealand council of tribal organisations can, I think, infuse into those organisations something of the spirit of enthusiasm and enterprise that has made the Māori Women's Welfare League such a strong influence for good among the Māori people. In this case we perhaps acknowledge that the Māori women of New Zealand have pointed the way.'

For Hanan's speech, see NZPD, 1961, vol 327, p1971. There are many publications about Māori women's committees and the Māori Women's Welfare League. On the Tribunal's record of inquiry, see Aroha Harris, 'Dancing With the State: Māori Creative Energy and Policies of Integration, 1945–1967' (PhD thesis, University of Auckland, 2007) (doc B23), ch 4.

The first of these aspirations emerged in 1950 at a large hui of tribes at Raukawa Marae in Ōtaki, the second at a district conference of tribal executives in Rotorua in 1952.⁸⁶

We turn next to discuss the 1952 conference of tribal executives, which began the long process of forging an agreement between Māori and the Crown to establish Māori bodies at the district and national levels, and to revise the 1945 Act to free the committee structure from government control.

3.4 THE FORGING OF AN AGREEMENT BETWEEN MĀORI AND THE CROWN, 1952–69

3.4.1 Seeking an agreement with the National Government, 1952–57

In 1952, tribal executives in the Waiariki district came together to hold a regional conference. There was provision for this kind of regional gathering under section 13 of the Māori Social and Economic Advancement Act 1945, which provided for such conferences to be called by the Minister. The 1952 Waiariki conference was held at Mourea, and it appears to have involved close cooperation between the tribal delegates and the Māori Affairs Department. Tipi Rōpiha, the Under-Secretary for Māori Affairs, was asked to present the conference's unanimous resolutions to the Minister:

That a District Council of tribal executives be formed from the Waiariki District;

That we respectfully request the Minister of Māori Affairs to authorise the calling of a Dominion Conference – the agenda to include consideration of the formation of a National Executive Committee.⁸⁷

Rōpiha advised the Minister, Ernest Corbett, that the delegates genuinely believed that it would be a 'real advantage' to the Government as well as to 'the Māori people' to have 'a Central Council representing the tribal executives in each district and also a National Executive so that the Minister could have a responsible and representative body to refer to and confer with'. 'The Māori people likewise', Rōpiha advised, 'would have a representative approach to the Department, the Minister or the Government on matters which merit their consideration'.⁸⁸

It might be asked why was it necessary for the delegates and the head of the Māori Affairs Department to reassure the Minister in this way, that district councils and a national Māori body would be advantageous to the Government as well as to Māori? According to historian Richard Hill, the Government had refused to

86. Gilling, *Paddling Their Own Waka* (doc B20), pp 22, 35; Lange, *To Promote Māori Well-Being* (doc B19), pp 35–36; T T Rōpiha to Minister of Māori Affairs, 'Formation of District Councils of Tribal Executives Dominion Conference', 12 December 1952 (Craig Innes and Ann Beaglehole, comps, First Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 233)

87. T T Rōpiha to Minister of Māori Affairs, 'Formation of District Councils of Tribal Executives Dominion Conference', 12 December 1952 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 233)

88. T T Rōpiha to Minister of Māori Affairs, 'Formation of District Councils of Tribal Executives Dominion Conference', 12 December 1952 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 233)

create district and national bodies in 1945 because ministers and officials had been ‘wary of the power this might give Māoridom to pursue separatist designs.’ By 1952, however, officials were no longer so worried because, although the tribal committees and executives had acted independently, they were not perceived as posing ‘any real threat to state authority.’⁸⁹ As a result, officials saw the advantages as outweighing the possible disadvantages: ‘Thus, when tribal executives began liaising and engaging in informal, regional-level organising activities, there was little alarm within official circles.’⁹⁰

When the Mourea conference was over, Rōpiha summoned a meeting of all the department’s District Officers and District Welfare Officers to discuss its resolutions. He also held meetings to canvass the opinion of Head Office officials. The ‘feeling of all’, he reported, was that the first resolution (to establish district councils) would ‘definitely be a progressive step’ for four reasons:

- ▶ It would infuse new life into the tribal committees and executives because the people would be ‘encouraged by the knowledge that their voices would have an organised outlet in their efforts to help themselves.’
- ▶ It would be a ‘logical “topping off”’ for the existing structure, which presently had no coordination above the tribal executive level ‘so that in effect there are as many voices in districts as there are tribal executives.’
- ▶ District councils would work with their departmental counterparts, the District Officers, and could help and advise at that more senior level. If, as hoped, the ‘most informed men’ were elected, the advice would be ‘of great value.’
- ▶ ‘It completes the chain in the two way flow of endeavour from the Minister to the people and from the people to the Minister with special emphasis on the latter.’⁹¹

The meeting of District Officers and District Welfare Officers also supported the creation of a national executive as the next ‘logical step’ after district councils, but thought the details a matter best left to a national meeting of representatives from the tribal executives to work out. As with the formation of district councils, the department’s senior field staff felt that a dominion conference would be worthwhile because:

- ▶ It would give ‘new life and zest’ to the work of the tribal committees and executives – officials thought that part of the reason for the success of the Māori Womens’ Welfare League was its national conferences.
- ▶ It would give the department an opportunity to disseminate information ‘at first hand’.
- ▶ Establishing a head for the system of Māori committees would enable the Welfare Division to discuss such issues as subsidies, accounting, the duties of

89. Richard Hill, *Māori and the State: Crown–Māori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), p 55

90. Hill, *Māori and the State*, p 55

91. T T Rōpiha to Minister of Māori Affairs, ‘Formation of District Councils of Tribal Executives Dominion Conference’, 12 December 1952 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 233)

Māori wardens, and control of liquor consumption at a high level, providing an opportunity to explain matters and identify and correct weaknesses in the system.

- ▶ ‘It would give the Department an opportunity to assess the thoughts needs and feelings of the people and thus would be advised on matters as the people see them.’

Given the backing of all his senior field staff, Rōpiha proposed that a Dominion Māori conference should be held in Wellington in May or June 1953, if the Minister approved. There was, however, no authority in the Act to establish district councils or a national executive. Thus, if the idea was approved by the Minister and the Dominion conference, the 1945 Act would need to be amended. At this point, quite a large conference was envisaged: each of 77 tribal executives would send a representative. Rōpiha asked Corbett to approve the formation of district councils in the meantime (even without legislative authority) and the calling of a national conference in mid-1953.⁹²

Corbett was persuaded by Rōpiha’s advice.⁹³ He authorised the formation of district councils and the convening of a national conference.⁹⁴ As noted above, the department preferred to leave the exact shape and nature of a national body to the Māori conference to decide, but its officials now threw themselves into organising the district councils in early 1953.

Rōpiha instructed District Officers to convene regional conferences in their districts, for the purpose of forming councils and to prepare remits to be considered at a national conference. Each tribal executive could be asked to elect a representative to the district council, or (on the model of the already-formed Waiariki District Council) executives could be grouped for that purpose. Rōpiha wanted the District Officers to take a lead role in the movement – at least at first. Once up and running, District Officers could ‘perhaps gradually hand over organisational responsibility to the people’. But the department’s plan in 1953 was to have its field officers integrated into the district councils, as they already were in the tribal committees and executives. District Welfare Officers could act as secretaries for the district councils, and all welfare officers would be ex officio council members. Rōpiha even gave instructions as to how the district councils would operate, modelled on arrangements for tribal executives in the 1945 Act, including that decisions should be made by majority vote. ‘Every attempt’, he instructed, should be made to have the district councils up and operating by March, so that they could prepare remits for a national conference in May 1953.⁹⁵

Work proceeded accordingly, using the Māori Land Court districts as the basis for the regional conferences and councils. On 28 March 1953, for example, a

92. T T Rōpiha to Minister of Māori Affairs, ‘Formation of District Councils of Tribal Executives Dominion Conference’, 12 December 1952 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 234)

93. Hill, *Māori and the State*, pp 55–56

94. T T Rōpiha to District Officers, 23 January 1953 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 230)

95. T T Rōpiha to District Officers, 23 January 1953 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 230–232)

conference of delegates and kaumātua was held at Kaikohe to form the Tokerau⁹⁶ District Council. This conference was also attended by the member for Northern Māori, T P Paikea, and the District Officer, the District Welfare Officer, and five welfare officers.⁹⁷ Questions were raised about how the national conference should be constituted: whether each district council should send delegates, or whether it was necessary for every tribal executive to do so. Also, it was unclear as to what authority the new Tokerau district council could wield in ‘the Welfare organisation’, given that it had no official role or statutory powers whereas the lower committees had both.⁹⁸ Already, the question was being debated as to whether the hierarchy could function if it was made up of a mix of voluntary and statutory bodies.

The Head Office response to these questions was unequivocal: the dominion conference would consist of a representative from each of the tribal executives. In the national council, however, the tribal executives would likely be represented more indirectly by members of their district councils. But that matter remained to be decided by Māori: the national council would not be formed until after the conference, ‘and thus every Executive . . . should have a voice in its formation or otherwise.’⁹⁹ Similarly, the question of the national council’s status and authority would be decided by the tribal executives at their dominion conference. While officials anticipated that legislation would be needed after the conference to create the district and national councils, and to clothe them with statutory powers, it was noted that at present district councils had no formal status or powers.¹⁰⁰

The Assistant Controller of Māori Welfare, Charles Bennett, was advised:

You might ask all District Councils formed, to suggest what they consider would be the best set up, and what powers, if any, should be vested in them and the Dominion Council. The desire to form the Councils came from among the people and we do not want to impose from without anything contrary to their wishes.¹⁰¹

These were important articulations of principle: that Māori representatives should decide the form, status, and powers of the district and national councils; and that these decisions should not be made ‘from without’ and imposed upon them.

But what seemed a very promising situation in early 1953 soon changed. Although district councils were formed with departmental assistance (and representation), the proposed national conference did not take place as planned in mid-1953. At first, the official reason for postponing the conference was Corbett’s

96. This 1953 version of the district council was named the ‘Tokerau District Council’. The name ‘Te Tai Tokerau’ was not used until later. See First Waitangi Tribunal document bank, vol 5 (doc B26(e)), p 260.

97. ‘Conference of Tribal Executive Delegates and Elders for the Purpose of Forming Tokerau District Council held in the Kaikohe Courthouse on Saturday 28th March 1953’ (doc B26(e), p 256)

98. J T Henare, District Welfare Officer, ‘Formation of District Councils’, no date [March or April 1953] (first Waitangi Tribunal document bank, vol 5 (doc B26(e)), p 271)

99. Head Office minute, 28 April 1953 (first Waitangi Tribunal document bank, vol 5 (doc B26(e)), p 271)

100. Head Office minute, 28 April 1953 (first Waitangi Tribunal document bank, vol 5 (doc B26(e)), p 271)

101. Head Office minute, 28 April 1953 (first Waitangi Tribunal document bank, vol 5 (doc B26(e)), p 271)

absence overseas.¹⁰² District councils continued to press the department but, after his return, Corbett advised Rōpiha that he was too busy to hold a dominion conference before 1954.¹⁰³ In September 1953, the Taniwharau Tribal Executive wrote to the department, inquiring about the national conference (which they had been told would happen in July). The Taniwharau executive had prepared remits covering the functioning of wardens, tribal executives and committees, and Māori housing. They wanted to know when the national conference would take place – and if not, why not.¹⁰⁴ Rōpiha replied that the ‘first National Conference of the newly formed District Councils’ had been planned for 1953 but that the Minister was ‘faced with heavy and exceptional commitments this year on matters of State’ and so could not hold one until 1954.¹⁰⁵

Internally, officials debated whether they should raise this matter with the Minister, to ascertain whether he still thought a dominion conference should be held. In the end, they decided to stick with the official position – that one would be held when press of business allowed. It was noted that the Minister had previously agreed to a conference in principle and

has not expressly stated that a Conference should not [be] held, either now or at a later date. If he feels that a Conference will serve no useful purpose, I feel confident that he will notify us to that effect at a time suitable to himself. I don't think he will take too kindly to any prompting from us as to what he should do.¹⁰⁶

In reality, Corbett had changed his mind about the desirability of having district councils, a dominion conference, and a national council. The informally constituted district councils appear to have lapsed as a result. Although Corbett's decision does not appear to have been put in writing, he stuck to it for the rest of his tenure as Minister (until August 1957). The reason for this was well known within the department, and was soon circulating among the tribal executives and committees. A later Secretary for Māori Affairs, J K Hunn, recorded in 1960:

Our records do not show in writing why the proposal to call a conference of Tribal Executives was dropped but it is known that the then Minister [Corbett] had circulated his draft legislation – later enacted as the Māori Affairs Act 1953 – to District Councils and was somewhat perturbed at the tone and expression of criticism from District Councils of portions of that legislation. District Councils had also criticised the representation of the Māori people at the Coronation [of Queen Elizabeth II] and also arrangements for the Royal Tour of New Zealand.

102. Rōpiha to Corbett, 26 August 1953 (marked ‘not sent’) (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 226)

103. Minute, 28 August 1953, on Rōpiha to Corbett, 26 August 1953 (marked ‘not sent’) (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 226)

104. J T Paki, secretary, Taniwharau Tribal Executive, to Rangi Royal, Māori Affairs Department, 28 September 1953 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 225)

105. Rōpiha to Paki, 7 October 1953 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 224)

106. Minutes, October 1953, on Rōpiha to Paki, 7 October 1953 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 224)

The Minister's approval of the formation of District Councils and of the proposal to call a Dominion Conference had been received with real satisfaction by the Māori people and all District Councils had been formed with an enthusiasm that brought new life into the Tribal Committees. When it became known – again our records do not show how this knowledge was promulgated – that a Dominion Conference of Tribal Executives was not to be held, disappointment amongst the Māori people was widespread and practically no further meetings of District Councils were held.¹⁰⁷

In response to the district councils' opposition – and to opposition from tribal leaders around the country – Corbett agreed to make some important changes to his 1953 legislation.¹⁰⁸ But he also issued an informal rebuke to the departmental staff who had served as members of the district councils in 1953. The councils' protests against the proposed legislation had been signed by welfare officers as council secretaries.¹⁰⁹ Rōpiha passed on the Minister's rebuke, instructing officers that they could only sign letters of routine business, and reminding them that they were only supposed to be start-up secretaries until others could be found.¹¹⁰ This had two important consequences: first, it highlighted the issue that integrating departmental officers at district council level was problematic, and eventually the view of both Māori and the Government turned against it; and, secondly, it drew a stinging protest from Norman Perry, welfare officer for the Bay of Plenty and Rotorua, who was later to leave the department and who became an instrumental figure in the formation of the NZMC:

Surely the Minister and the Department want to know the opinion of the Māori people on all subjects even if they think that opinion is wrong. Is it not the duty of a Secretary to faithfully convey the resolutions and opinions of his Council. Surely it is a question of what is right, not who is right.¹¹¹

3.4.2 Unexpected success: National's election promise, 1957

With the district councils temporarily quashed after 1953, the tribal executives and committees continued to function without the opportunity for regional or national coordination and leadership. As noted, Corbett (and therefore the department) remained opposed to regional and national Māori bodies until he resigned as Minister in August 1957. Stymied in this direction, Māori leaders attempted to use National Party political structures to change the Government's view. As Graham Butterworth noted, Norman Perry was a member of the Māori Advisory and Organisation Committee of the National Party. Other influential leaders in

107. JK Hunn to Walter Nash, Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 120)

108. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 751

109. Corbett to Rōpiha, 13 August 1953 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 229)

110. Rōpiha to District Officers, 21 August 1953 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 228)

111. DN Perry to Controller of Māori Welfare, no date [1953] (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 223)

the Māori council movement, including Sir Turi Carroll, Pei Te Hurinui Jones, and Henare Ngata, were also ‘National Party stalwarts.’¹¹² Butterworth commented:

The National Party, which claimed to represent all ‘patriotic’ New Zealanders, had been very disappointed that since 1943 National had not even come close to regaining a single Māori seat. It wanted a counterweight to the Labour–Ratana MPs, and was looking for something that might influence Māori favourably.¹¹³

These political concerns, perhaps, go some way to explaining Māori leaders’ unexpected success with their national council proposal in late 1957. The Prime Minister, Keith Holyoake, had just taken over the Māori Affairs portfolio from Corbett, and he proved sympathetic. Perry recorded:

We met the National Party policy committee just before the 1957 election and were encouraged by the interest and reception given to the proposals. We kept Mr Holyoake informed.¹¹⁴

Holyoake decided to consult the Māori Affairs Department informally. His private secretary, J Te H Grace, asked the new Secretary for Māori Affairs, Mortimer Sullivan, for his informal views on the matter. Sullivan was to prove an inveterate opponent of establishing either district councils or a national council as statutory bodies. In response to Grace’s request, Sullivan prepared some ‘notes’ for the Prime Minister on 10 October 1957.¹¹⁵ He stressed the existing integration of departmental officers into the existing two-level structure. Welfare officers and District Welfare Officers were members of the tribal committees and executives, and were responsible for ‘guiding and leading as far as possible’ the ‘functionary activities’ of those bodies. In addition, the District Officers attended as many tribal executive meetings as possible. Officials gave information and promoted interest and enthusiasm in welfare work, focusing on education, work training, and housing. The Department’s goal was to ‘enlist’ the existing committees ‘in all ways possible for this work’. Officials’ attendance at and cooperation with the tribal committees and executives was ‘consistent and continuous’, and Sullivan believed that it was working to achieve the Government’s welfare aims.¹¹⁶

The question for Sullivan was what effect the creation of additional levels might have on what he saw as a successfully integrated Government–Māori welfare organisation. He suggested that in the case of a Dominion Council, the remits, time, and

112. Graham Butterworth, *Men of Authority: The New Zealand Māori Council and the Struggle for Rangatiratanga in the 1960s-1970s* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2007) (doc B21), pp 9–10

113. Butterworth, *Men of Authority* (doc B21), p 10

114. DN Perry to JR Hanan, 20 January 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 89)

115. M Sullivan, ‘Dominion Council for Tribal Executives under MSEA Act’, 10 October 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 221)

116. M Sullivan, ‘Dominion Council for Tribal Executives under MSEA Act’, 10 October 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 219)

discussion involved would be considerable, and it would come on top of the lower committees' existing work. He advised:

Frankly, one is pessimistic regarding the results obtained from such Dominion efforts against the time and talk and work involved. . . . It is not felt that it could achieve more or indeed necessarily achieve as much as the approach at district levels that is now operating.¹¹⁷

This was to remain Sullivan's – and therefore the department's – advice for the next three years. He accepted that the Government could be criticised for treating the tribal committee system differently than the Māori Womens' Welfare League, which had a dominion council and dominion conferences. Sullivan's explanation was that the league's focus on family and children was missing from the rest of the welfare structures, and so it was felt necessary to give every possible encouragement, including by 'rounding off the Leagues at Dominion level', but 'it does not appear to be at all necessary or worthwhile to repeat this for the Tribal Executives'.¹¹⁸

But for Sullivan, the key objection to the formation of a Dominion Council was not so much that it would not be useful (although he feared that too), but that it could become a political opponent of the department and the Government. An independent Māori voice at a national level was inherently risky, so – he argued – why take the risk when the system was already working adequately? He advised Holyoake:

Then again there is a point of policy or principle to be considered here. Any national body combining and co-ordinating the views and submissions of people from all over the country must tend to become a policy forming body. That is, it forms its own views on policy in many general matters. This is right and proper.

Government has defined policy for its Welfare workers. It is not considered desirable or necessary that Government should assist in promoting a national body that would tend to formulate policies of its own and press those upon Government. There would be nothing of course to prevent delegates from Tribal Committees assembling of their own arrangement as an advisory body. That would be a matter for them. The point is that it is not seen as desirable that Government should go about it.

Although the points made here are against the forming of a Dominion Council, that is not to say that the department, the Welfare Officers or Government cannot learn from the views of others and the effort is always to be alert to the significance of any worthwhile suggestions or views and to weigh those carefully.¹¹⁹

117. M Sullivan, 'Dominion Council for Tribal Executives under MSEA Act', 10 October 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 220)

118. M Sullivan, 'Dominion Council for Tribal Executives under MSEA Act', 10 October 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 220)

119. M Sullivan, 'Dominion Council for Tribal Executives under MSEA Act', 10 October 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 220–221)

Thus, Sullivan's view was that Māori could form their own national body as a voluntary organisation, but that it should not be accorded an official role, status, or powers.

Holyoake was not convinced by Sullivan's arguments. Perry and his supporters succeeded in persuading the National Party policy-makers to include the promise of a dominion conference and a dominion council in National's 1957 election manifesto:

We will continue to encourage the work of the 75 Tribal Executive Committees and the 446 Tribal Committees.

The National Government will consult with leaders of the Māori people on the formation of a national organisation to represent the Tribal Executives, if desirable by the appointment of representatives to a Dominion conference as a preliminary.¹²⁰

These announcements in November 1957 coincided with pressure on the department from Māori leaders, and revealed a range of opinion among senior officials. Not everyone agreed with Sullivan's private advice to Holyoake, or felt threatened by bodies that would convey Māori opinion at a district and national level.

E McKay, an assistant secretary, noted that the subject was raised on 'several maraes during my last tour with the Secretary'. By then, it was known that Prime Minister Holyoake had promised 'that effect will be given to the desire of Māori people to have their present Tribal Committee and Executive organisation extended, firstly on District Committee basis and then on to Dominion Council status'.¹²¹ McKay noted that the Māori people wanted their tribal executives to be represented on district councils, and the councils to elect one or two representatives to a dominion body – 'and it certainly would be desirable', he said. His advice to Sullivan was:

Such a build up from Tribal Committees to National Council would be logical, democratic and, I consider, desirable. Far more so than the appointment of a Council by any Government. Any Council created by appointment could never be free of suspicion of 'Party' alignment.

A council 'built up in such a manner' (that is, from the ground up through stages of representation) 'could express the wishes of *the people themselves*' (emphasis in original), conveyed to the council via the committees, executives, and district councils. Such a structure would also enable the department to convey its own views and wishes to the people through a straightforward chain of communication.¹²²

120. M Sullivan to McKay and Herewini, 'From Policy Statements made by the Rt Hon the Prime Minister in Connection with the General Election', 6 November 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 218)

121. E McKay to Sullivan, 'Dominion Status – Representation: Māori Welfare Organisation', 8 November 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 216)

122. E McKay to Sullivan, 'Dominion Status – Representation: Māori Welfare Organisation', 8 November 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 216)

Sullivan seemed resigned to the inevitable at this point. He accepted that if National won the 1957 election, and if Holyoake remained as Minister, then it was ‘very likely that there will be a national conference of representatives from Tribal Committees from which a national organisation will be formed’. He admitted, rather grudgingly, that ‘it is thought that value could be obtained from such an assemblage’, particularly in conveying the department’s policies and systems to Māori leaders. Sullivan thus instructed the department to start planning for a dominion conference.¹²³

In response, the Assistant Controller of Māori Welfare suggested that a large national conference should be held, involving a representative from every tribal executive, in the hope of re-awakening interest among the tribal committees (some of which had become dormant). Its effect, he hoped would be to ‘raise morale considerably’. Although it would be up to Māori themselves at their conference to decide the composition of the dominion council, he suggested that the department should prepare arguments against a body that was too large and unwieldy. But it was important that the Māori people ‘would have the satisfaction of knowing that it shared in its formation.’¹²⁴

Sullivan, however, was not quite prepared to give up his opposition to the whole idea. Although he instructed his officials to prepare, he decided that nothing would go up to the Minister until Holyoake himself raised the matter with them. In other words, the department would do nothing to initiate, suggest, or foster the holding of a dominion council – it would await the outcome of the election and/or for Minister Holyoake to initiate matters.¹²⁵

3.4.3 Seeking an agreement with the Labour Government, 1957–59

As it turned out, National lost the 1957 election and the new Minister of Māori Affairs, Prime Minister Walter Nash, had made quite a different set of election promises. The relevant one, in Sullivan’s view, was to create a ‘special advisory committee to ensure the welfare of the Māori race – and the carrying out of the principles of Māori Trusts – Land Titles and Tenures – and particularly to provide special facilities to guide the Māori race to the responsibilities necessary for full equality with the Pākehā.’¹²⁶ As the Secretary put it, this was not ‘exactly in line’ with the idea of a dominion conference of tribal executives to establish a dominion Māori council.¹²⁷

Thus, the idea of a conference and council was put on the backburner until renewed Māori pressure caused its reconsideration in 1958. During Nash’s visit to

123. Sullivan to Assistant Secretary McKay and Controller Herewini, ‘From Policy Statements made by the Right Hon the Prime Minister in Connection with the General Election’, 6 November 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 218)

124. Assistant Controller to Assistant Secretary (Welfare), 14 November 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 206)

125. Sullivan, Minute, 18 November 1957, on Assistant Controller to Assistant Secretary (Welfare), 14 November 1957 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 206)

126. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 200)

127. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 200)

Te Rere Pā at Ōpotiki in April of that year, representations were made by Māori leaders ‘for the establishment of a Dominion Council for Tribal Executives along the lines of the Dominion Council of Māori Women Welfare Leagues and for the holding of annual conferences’. Nash advised the hui that he would look into the matter and send a written reply. So, in May 1958, he asked Secretary Sullivan for his ‘views on the formation of such an organisation.’¹²⁸

In essence, Sullivan’s advice was a reiteration of that conveyed to Holyoake the year before. The Secretary admitted that there was among Māori:

a fairly widespread demand for a National Conference and going along with it a National Executive or Council, in connection with welfare or social and economic matters. The idea is always put forward on the basis that the Government or the Department should make the necessary arrangements. While there is no reason that there should not be such a Conference and Council, it is felt that it would be better if the people themselves made the arrangements rather than that this should be done by the Department.¹²⁹

Sullivan, however, once again stressed the negative effects of creating a statutory national Māori body, reiterating that it would achieve nothing additional (and possibly less) than the tribal committees and executives already operating on their own. In his view, the department was better able to secure its goals through the existing system. Also, he advised Nash against ‘promoting a national body that would tend to formulate policies of its own and press these upon Government’. It was safer for the Government, in Sullivan’s view, for Māori to form their own voluntary organisations on the same basis as other sectors of the community with particular interests to press. The Returned Services Association could serve as a model, with its national conferences and a national executive, which made representations to the Government. ‘The point’, wrote Sullivan, ‘is that such gatherings are arranged and Executives set up by the people concerned of their own initiative. They are not arranged by Government.’¹³⁰

Sullivan’s advice to Nash did differ from that to Holyoake in one respect. Previously, he had advocated for the tribal executives and committees to work directly with (and to) the department, but now he suggested that the dormant district Māori councils could have an important role to play:

Perhaps more good would result if the District Councils of Tribal Executives, administrative provision for which was made in 1953, were encouraged to take a more active interest in the affairs of their respective districts. If any District Council felt that it would like to discuss any matter with other District Councils it should not be difficult for the District Councils themselves to arrange the meeting.

Section 13 of the Māori Social and Economic Advancement Act 1945 provides for the holding of District Conferences of Tribal Executives. There is no mention in the

128. Nash to Sullivan, 2 May 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 205)

129. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 198)

130. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 198–199)

Act of a National Conference of Tribal Executives and it seems that the persons who framed the legislation did not consider this necessary.¹³¹

Sullivan also noted that contrary positions had been taken in the past: first, that the department had supported the establishment of a dominion council for the Māori Women's Welfare League; and, secondly, that Rōpiha had advised Corbett to create statutory district councils and a national council.¹³²

Nevertheless, although Sullivan accepted the inevitability of some form of national Māori body, he preferred it to be a voluntary organisation without statutory authority or a formal role in the Māori welfare organisation.¹³³ It would thus be a private pressure group, unable to control, guide, or perhaps even influence the integrated Department/Māori structure of tribal committees and tribal executives.

Sullivan sought a decision from Nash as to whether the Government's approach should be:

To leave it to District Councils and Tribal Executives to arrange any National gathering or Council they may wish to have, our Welfare Officers and staff not taking part in bringing about such arrangements. I recommend that it be left this way. Or:

The Department to help in forming a Dominion Council and arranging a National Conference. This would mean that our officers would take the initiative and attend to most of the work involved.¹³⁴

Nash met with Sullivan to discuss this advice, including some points that the Secretary was not prepared to put in writing. As a result, Nash came to the view that a dominion conference and the establishment of a national Māori body were 'inadvisable at present'.¹³⁵ That remained his view for the next 12 months, despite pressure from Māori leaders. In June 1958, the Taniwharau Tribal Executive wrote to the Minister, advising him that a gathering of delegates from the northern Waikato district had been held in Hamilton. A unanimous remit was passed:

That the Hon the Minister of Māori Affairs be respectfully approached to earnestly consider the holding of a Dominion conference of representatives from all Tribal Executives throughout NZ at some suitable centre; where Māori problems could be fully discussed; and where delegates would receive a 'pep talk' on their responsibilities as tribal leaders; and where our parliamentary leaders could create a 'renaissance' for Māori welfare work; and if the need arises, establish a Dominion council.¹³⁶

131. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 199)

132. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 199)

133. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 198–199)

134. Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 200)

135. Nash, Minute, no date, on Sullivan to Nash, 4 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 192)

136. L Rangi, Chairman, Taniwharau Tribal Executive Committee, to Nash, Minister of Māori Affairs, 28 June 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 190)

The Prime Minister replied that the matter was being considered,¹³⁷ but in fact the Government's position remained unchanged: Māori could hold a dominion conference and form their own council as a voluntary organisation, using the pre-existing administrative approval of informal district councils as a means for convening that conference if so desired.¹³⁸

Although we have no direct evidence, it is clear that this view was communicated informally to Māori leaders. Thus, the position by late 1958 was different than it had been in 1953 and even in 1945, when Government sanction and official status had been considered necessary before a national Māori body could be formed. The Government was now prepared to accede to Māori wishes up to a point, in that it would no longer oppose the formation of a national Māori council – but nor would it accord such a council formal recognition and statutory powers in the committee-executive structure. Even so, this was a significant change, and Māori leaders were quick to take advantage of it.

Sullivan's emphasis on voluntarism struck a chord with Māori leaders and also with the wider New Zealand public, because it seemed to offer a solution to a number of practical and theoretical problems. For Māori leaders, they could simply act without the threat of Government interference or control, and they could form a body so wholly unconnected with the Government that its independence would not be in doubt. The price, however, would be significant: the council would have no official status, no statutory powers, and no budgetary assistance. For the public, a voluntary pressure group of this type could be made to fit into prevailing concepts of citizenship and nationhood, without any hint of political separatism. As one journalist put it in May 1959, the movement for national tribal federation was not nationalist in the sense of seeking national independence for Māori; rather, people with common interests would

unite for their common welfare so that they may speak with one voice. The farmers do it, the unions do it, the churches do it, the returned servicemen do it, sporting bodies do it and so, I believe, will the Māori tribal representatives.¹³⁹

In 1959, Māori leaders therefore took the initiative and re-formed the district Māori councils without seeking any Government involvement – with the exception of the situation in the South Island, where they sought assistance from the Māori Affairs Department to communicate with the tribal executives. Otherwise, the department and its officials watched from the sidelines as district conferences were held, district councils elected, and a national conference was organised. The

137. Nash to Rangi, 17 July 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 189)

138. Sullivan to Nash, 23 July 1958 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 188)

139. 'Move Afoot to Unite the Māori Tribes', *NZ Free Lance*, 6 May 1959 ((first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 181). Similar reasoning applied to the councils as statutory bodies as well – see the *Hawera Star*, 30 March 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 54), where it was stated about the proposed Dominion Māori Council: 'Like other special bodies representing sections of the community, the council will concern itself with Māori opinions irrespective of political tags. Presumably it will be a permanent body and will therefore be able to institute long-term investigations of all kinds of problems.'

Waiariki District Council, with Norman Perry as its secretary, took the lead in organising the dominion conference.¹⁴⁰ But support was very widespread. It was now only a matter of time before Māori established their own national body. As Turi Carroll told the *New Zealand Herald*: ‘A committee of this sort must come.’¹⁴¹

3.4.4 The Dominion Māori Conference, October 1959

By September 1959, there was press coverage of the upcoming dominion conference, which the Waiariki Council had called at Rotorua for October. By then, the district councils had decided that the conference would be composed of two representatives from each district, rather than a large body of direct representatives from each tribal executive. Sullivan instructed all departmental officers (especially those in Rotorua) that they must take no role in assisting or attending the conference – although, at the invitation of Māori leaders, he agreed that Controller Herewini could attend for the sole purpose of supplying information. Otherwise, the Government would remain aloof. It was a conflict of interest, he suggested, for officials to be involved in any way with a body which might criticise the Government and its policies.¹⁴²

The Dominion conference assembled at Rotorua on 24 October 1959. The delegates included important tribal leaders of their day, such as Hamiora Maioha of Ngāpuhi, Major Te Reiwhati Vercoe of Te Arawa, Arnold Reedy of Ngāti Porou, Sir Turi Carroll of Ngāti Kahungunu, John Asher of Ngāti Tūwharetoa, and others. Some delegates, such as Richard Himona of Ngāti Kahungunu, had chaired their tribal committees since they were first established.¹⁴³ J F Boynton was a long-serving member and secretary of the Eastern Tūhoe Tribal Executive, and had recently become a member of the newly formed Tūhoe Māori Trust Board.¹⁴⁴ The Tribunal hearing the Tūhoe claims received evidence that tribal elders were the ‘backbone’ of Tūhoe tribal executives, which acted as the ‘platform for all major issues that arise within each community’. They assisted ‘marae committees’ to address ‘social issues, land issues, almost just about anything that affects a marae or hapū community’.¹⁴⁵ Thus, delegates from the District Māori Councils to the Dominion conference came from a system that was rooted in rural, tribal communities. This was to remain true of the NZMC in its early years, as Richard Hill and Graham Butterworth have observed.¹⁴⁶ There were also experts in the Pākehā as well as Māori world. Matiu Te Hau of Te Whakatohea was a teacher and university extension tutor who promoted

140. First Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 159–175

141. ‘National Body Planned: Māori Organisation’, *New Zealand Herald*, 2 September 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 175)

142. Sullivan to Nash, 7 October 1959; Sullivan to Nash, 22 October 1959; Sullivan to A E Edwards, District Officer, 23 October 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 159–160, 163, 172)

143. Peter James Himona, ‘Himona, Richard Tahuora’, in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/5h22/himona-richard-tahuora>, last modified 22 October 2013

144. ‘Māori Leaders Receive Queen’s Birthday Honours’, *Te Ao Hou*, no 56 (September 1966), p 53; *Te Ao Hou*, no 27 (June 1959), p 57

145. Waitangi Tribunal, *Te Urewera: Pre-publication, Part III* (Wellington: Waitangi Tribunal, 2012), p 494

146. Hill, *Māori and the State*, pp 111–112; Butterworth, ‘Men of Authority’ (doc B21), pp 21–22

Māori adult education in te reo, history, carving, and weaving, organised the 1959 Young Māori Leaders' Conference, tried to establish an urban marae in Auckland in the 1950s, and was later Māori Vice President of the National Party.¹⁴⁷

We are reliant on Controller Herewini's report of the 1959 conference, as no official minutes appear to have been recorded in the evidence available to the Tribunal. The conference was chaired by Major Vercoe (Waiariki) with Norman Perry as secretary and Claude Anaru as assistant secretary. Its stated purpose was to 'consider [the] establishment of a Dominion Council of Tribal Executives'. Work had already been done to prepare a draft constitution, which was designed for a national council and for district councils affiliated to it, all of which Māori would establish as incorporated societies if necessary.¹⁴⁸

Major Vercoe opened the conference, after which the delegates passed a unanimous resolution that a dominion council should be formed. The meeting then proceeded to discuss the draft rules and constitution. There was quite a lot of discussion about the need to keep the council above any biases towards political parties, religious denominations, or particular tribal interests, and to ensure that it made careful and thoroughly canvassed representations to the Government on behalf of all Māori.¹⁴⁹ Indeed, the term 'dominion council' (and later 'New Zealand') was preferred to 'national', to avoid any suggestion that the proposed council was affiliated to the National Party.¹⁵⁰ After 'some alterations', which Herewini did not record in his report, the conference adopted the draft constitution and appointed a sub-committee to carry matters forward with the Government. The committee was made up of Major Vercoe (Waiariki), Turi Carroll (Tairāwhiti), Matiu Te Hau (Waikato–Maniapoto), W Karaka (Waikato–Maniapoto), and Perry (secretary).¹⁵¹

One of the most important questions facing the conference was the question of whether the new council should be a statutory or a voluntary body, and what its relationship should be to the Government and to the other components of the welfare organisation. As we shall see, the delegates' preference was to make the dominion and district councils as independent of Government control as possible, but nonetheless to have them as official bodies with statutory powers and a formal role in the welfare system. To those ends, they wanted the Controller to be a member of the council but as an adviser, not as a full voting member. In his opening speech,

147. Ranginui Walker, 'Te Hau, Matiu Te Auripo', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/5t7/te-hau-matiu-te-auripo>, last modified 4 March 2014

148. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959', 13 November 1959, attached to Sullivan to Nash, 16 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 144)

149. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959', 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 144–146)

150. Eruera Tirikātene, Acting Minister of Māori Affairs, to Mrs Tokomaru Ryan, Tuahiwi Tribal Committee, 6 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 154)

151. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959', 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 145–147)

**DISTRICT COUNCIL DELEGATES AT THE DOMINION CONFERENCE,
ROTORUA, 24–25 OCTOBER 1959**

Tokerau	S Maioha, J Rogers
Waikato–Maniapoto	M Te Hau, W Karaka
Waikato–Maniapoto (Hauraki)	Charles Sergeant, T T Manihera
Waiariki	HR Vercoe, J F Boynton
Tairāwhiti	A T Carroll, A Reedy
Aotea	J Asher
Ikaroa	R Himona, G Katene, T M McGregor
Departmental representative	W Herewini, Controller
Observers	
Waikato	Ropiha Hoeta, Sonny Kaihau, Joe Ramanui
Waiariki	Mr Matenga, Mr Newton ('and two others')

Source: W Herewini, Controller, to M Sullivan, Secretary, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959, 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p143)

Major Vercoe had welcomed Herewini's attendance to offer 'guidance and advice'.¹⁵² But Herewini was asked to confirm whether, 'if any matter under discussion by the Council resulted in a motion calling for a variation of Departmental policy[,], would my vote as a full member be in support of the Council or the Department[?]' The Controller's response was that he would always vote in support of the department. Thus, the conference agreed that 'the Controller should be considered for appointment to the Council as an advisory member' only.¹⁵³

Having established that point, the delegates also agreed that the Dominion Council and district councils 'should not be subject to superintendence by the Controller under Section 5 of the Māori Social and Economic Advancement Act but rather that this provision be limited to Tribal Committees and Tribal Executives'. In fact, the Māori delegates wanted to ensure their councils' independence while at the same time making them a formal part of the Act and its statutory bodies. Thus, they wanted section 13 replaced by a clause 'giving the Dominion Council and

152. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959, 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p144)

153. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959, 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p147)

District Councils the right to meet as and when they choose and that the Dominion Council be given the right to make representations to the Government at any time.¹⁵⁴

Herewini put the department's position in response, pushing the voluntarist position that there was 'nothing to prevent delegates from [tribal] executives assembling of their own arrangement'. The conference, however, preferred the councils to have specific status and powers under the 1945 Act.¹⁵⁵ Since the Government's preference was clearly different, it was eventually decided that the sub-committee would take both options to the Minister for a formal response:

- (a) To set up and incorporate a Dominion Council and District Councils as bodies outside the Act.
- (b) To amend the [1945] Act to provide for the establishment of these bodies with powers as are set out in Para 18. (Repeal Section 13).¹⁵⁶

Sullivan, of course, had a firm view of which option should be adopted. He forwarded Herewini's report to Nash, with a covering recommendation:

On the question of amending legislation to provide for the setting up of a Dominion body, the Department does not consider such action necessary. Such a body can be arranged by the people without any specific legislation providing for it.¹⁵⁷

Thus, the Māori Affairs Department remained as opposed as ever to the possibility of setting up a statutory national body at the end of 1959. We have no information as to what advice Nash was receiving from his parliamentary colleagues, the four Māori members. As noted, the conference delegates were tribal leaders who sought to keep their conference and its proposals free of party bias. The Labour–Rātana members of Parliament had not been invited, and the conference had stressed the need to avoid party or sectarian alignments (presumably mainly directed at Rātana, although there were many important denominational allegiances – and cleavages – within the Māori world). Yet Nash saw these traditional Māori leaders as allies of the National Party and opposed to Labour's interests. Norman Perry later told Hanan:

[From 1957] up till 1960, it was obvious to the Council that their proposition was being pre-judged by the Department of Māori Affairs. The Minister of Māori Affairs also

154. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959', 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p147)

155. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959', 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p147)

156. Herewini to Sullivan, 'Meeting of District Representatives at Rotorua to consider establishment of Dominion Council of Tribal Executives 24 October 1959', 13 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p147)

157. Sullivan to Nash, 16 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p142)

balked – as he told me – ‘it seemed to him that our Council were largely National Party supporters.’¹⁵⁸

Nonetheless, the conference sub-committee prepared a submission and sought a formal interview with Nash to present their case. On 18 November 1959, secretary Norman Perry sent Nash the draft constitution as the basis for discussion between the Government and the committee, and set out the arguments in support of the conference’s resolutions. He told the Prime Minister:

The delegates enthusiastically and unanimously voted for the establishment of a Dominion Council. This conclusion was based on the conviction that it is in the best interest of the Country, and of citizens generally, that the Māori people should have such an organisation: that it would be a responsible body, democratically elected and widely representative which would provide for Government and other national organisations a direct line of communication on matters of mutual concern: that it would complete the organisation established by the Māori Social and Economic Advancement Act and so give the people a full voice in their own affairs as is contemplated by that Act; and that it would give new life and value to Tribal Committees and Executives.¹⁵⁹

Oddly, however, Perry’s discussion of whether the councils should be statutory or voluntary bodies put matters rather differently than Herewini’s summation of the conference. Perry summarised the dilemma of voluntary societies supervising statutory bodies in this way: ‘The delegates realised that the organisation could be somewhat untidy – operating within the Act as well as under a [incorporated society’s] constitution.’¹⁶⁰ Then, rather than conveying what appears to have been the conference’s preference for statutory recognition, he suggested that official bodies might be *the Government’s* preference:

You [Nash] may show it to be preferable to amend the Act to provide for the establishment of these Councils.

If it is agreed that this is a better way to proceed then the draft constitution will indicate to you, and your officers, the fundamental points which the Tribal Executive representatives considered would need to be brought within the Act. For example, it would seem necessary to repeal Section 13 and substitute a section setting up a Dominion Council and District Councils with the responsibilities and opportunities as proposed [in the draft constitution]. Also, it would appear to be undesirable to

158. DN Perry to JR Hanan, 20 January 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 89)

159. DN Perry, on behalf of the ‘Conference of District Councils’, to Nash, 18 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 136)

160. DN Perry, on behalf of the ‘Conference of District Councils’, to Nash, 18 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 136)

DRAFT CONSTITUTION OF THE DOMINION COUNCIL

Here, we set out the main features of the draft constitution, as developed and endorsed by the conference of district Māori council delegates at Rotorua on 24 October 1959. This shows the way in which a Dominion Māori Council and district Māori councils could have operated as voluntary societies, and also serves as a useful comparison to the features later adopted for the councils as statutory bodies in the legislation of 1961 and 1962. As Perry noted, the constitution showed the main features that the delegates wanted for inclusion in any legislative scheme.

The Dominion Council of Tribal Executives

The name of the incorporated society will be the Dominion Council of Tribal Executives. (Section 3.)

'The general aim and object of the council, which shall be non-sectarian and non-political (in that it shall not seek to influence the views of its members regarding any candidate for public office of any kind) shall be:—

- ▶ To take an active interest in all matters pertaining to or affecting the well-being of the Māori population, as a people, or in groups, or as individuals.
- ▶ To deliberate on such matters and to make representations on them to Government or other public agencies.' (Section 3.)

Specific aims of the council:

- ▶ to encourage the formation and functioning of tribal committees and tribal executives;
- ▶ to encourage the formation and functioning of district councils as 'branches of the Dominion Council' (that is, the district councils would be branches of the incorporated society);
- ▶ to 'promote fellowship and understanding between Māori and European';
- ▶ to 'act as a responsible and representative mouthpiece of the Māori people in dealings with Government, with national and public organisations of all kinds, and with individuals'; and
- ▶ to raise funds by subscription or to acquire property. (Section 4.)

Membership: There will be two classes of members: district members and advisory members.

- ▶ District members: the Council can decide the number of district members but it will not be less than two from each Māori Land Court district, elected for a two-year term at the annual meeting of the district councils. These members can be re-elected, but half have to retire at the end of two years, and the remaining members at the end of three years. (Sections 6, 7.)
- ▶ Advisory members: the Controller, Māori Welfare Division, shall be an

advisory member. (Section 8.) The Council will decide the number of any other advisory members, who may be appointed because of their special knowledge on particular issues of concern. Advisory members can be appointed at the annual meeting for a term of one year. They can be reappointed, can speak on any matter, but cannot vote. (Sections 9, 10.)

Officers and procedure:

- ▶ President (also chair) and Secretary (also Treasurer) will be elected annually, and can be re-elected. (Section 11.)
- ▶ All matters will be decided by a majority vote of the district members. The chair has a deliberative and casting vote. (Section 13.) A quorum is a majority of current district members. (The Controller does not have to be present). (Section 14.)
- ▶ Any member who fails to attend two consecutive meetings without good reason forfeits office. (Section 15.)
- ▶ There will be an annual meeting at Rotorua or at a place chosen by the Council as near as possible to 20 October each year. The president or Council (at its meeting) can decide to have other meetings as necessary. Three or more members can require an extraordinary general meeting to be convened. (Sections 16, 17.)
- ▶ The Council can borrow, mortgage, and change these rules. (Sections 18–20.)

District Councils of Tribal Executives

There will be one or more district councils of tribal executives for each of the 7 Māori land districts, except that no district council can become a branch of the Dominion council without its prior approval. (Section 22.) Approved district councils will be branches of the Dominion council but – with the approval of the Dominion council – can become separate incorporated societies under the Incorporated Societies Act. Regardless, the district councils' rules will be subject to approval by the Dominion Council. (Section 26.)

Each district council will consist of members appointed by those tribal executives which, in the opinion of the district council, are functioning. In addition, the District Māori Welfare Officer will be an advisory member. The district council can appoint other advisory members as it wishes. (Section 23.)

The rules of the Constitution apply to district councils in the same way as to the Dominion council where appropriate, except that the annual meeting of the district councils will be in August, and district councils can make representations to local or regional bodies but not to the Government or national bodies, otherwise than through the Dominion council. (Section 24.)

Source: 'Constitution of the Dominion Council of Tribal Executives (Incorporated)' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 138–141)

make the Councils subject to superintendence by the Controller under Section 5 of the Act, as is the case with Tribal Executives and Committees.¹⁶¹

Nash agreed to meet with the conference's deputation in Rotorua on 9 December 1959 to discuss these proposals.

3.4.5 Forging an agreement with the Labour Government, 1959–60

The December 1959 meeting between the conference's deputation and the Prime Minister was an important one; it was the first time that a group of Māori leaders from around the country had put a formal request to the Minister of Māori Affairs for the establishment of district councils and a dominion council. The meeting was held at the Te Arawa Trust Board chambers, where the dominion conference had also held its sessions, and the formal request was presented by Major Vercoe. In his speech, Vercoe stressed:

- ▶ The importance for Māori that a channel be created through which 'we can come to you with the matters of our various districts and of our Māori people as a whole, coming with matters screened and vetted by our councils'. This would benefit the Government as well as Māori because it would speed up the welfare work, and the Minister (and Parliament) could rely on it as the voice for the whole of the Māori people.¹⁶²
- ▶ It would help the 'small' committees already established under the 1945 Act in many ways.
- ▶ 'We feel that we have been the weaker section [of the community] for a long long time', but the district councils and dominion council would reverse the imbalance and 'kindle the spirit of independence' among the Māori people. The councils would become an 'instrument to plant the seed of effort' and instil confidence and self-confidence in the people.¹⁶³
- ▶ The councils would remain above party politics and sectarian concerns.¹⁶⁴
- ▶ The councils would cooperate with 'our Department' and the Government 'with a greater understanding and greater co-operation than what we are able to do at the present time'. As part of that cooperation, Māori would be 'happy' to have their Māori members of Parliament associated with the dominion council, but had not proposed it so far for fear of appearing presumptuous.¹⁶⁵
- ▶ The councils would embody Māori democracy and provide a body to speak to the Crown with the authority of that democracy at a national level:

161. DN Perry, on behalf of the 'Conference of District Councils,' to Nash, 18 November 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 136–137)

162. 'Deputation to the Prime Minister, 9 December 1959' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 127)

163. 'Deputation to the Prime Minister, 9 December 1959' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 128, 129)

164. 'Deputation to the Prime Minister, 9 December 1959' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 128)

165. 'Deputation to the Prime Minister, 9 December 1959' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 128–129)

Speaking as the Chairman of the Arawa Executive for a period, I think, of 13 years or more, I can say this, Sir, that the small organisations are already in their place carrying out the functions which they can well do but when it comes to major problems then I think you should have a body that you could call on at any time to give you the advice, the real concrete advice and you know it will be supported not only by any one small section of people but be the voice of the Māori people as a whole, through their small organisations and leading up to the pinnacle organisation[,] if it is your wish or your decision that our submissions are worthy of your consideration.¹⁶⁶

Nash was accompanied at the meeting by two of the Labour Māori members, Sir Eruera Tirikātene and Tiaki Ōmana, both of whom spoke, and also a number of senior Māori Affairs officials. Ōmana and Tirikātene neither supported nor opposed the kaupapa, although Tirikātene noted that their case was ‘very deep’.¹⁶⁷

The Prime Minister, however, expressed significant concerns. His main point was that he did not ‘fully understand the implications’ of what was being proposed, and would need to ‘fully examine it and then to communicate with you again’.¹⁶⁸

But Nash also expressed his doubt as to whether it could ever be practical for just ‘one [Māori] body to come to the Government’. He also expressed doubt that a chain of representation from the tribal executives to district councils and on to a dominion council was the correct path for Māori to represent their views to the Government. In both respects, he pointed to the elected parliamentary representatives of the Māori people as the alternative. Nash noted that Māori also had a means of communicating with the Government through the existing links between their committees and the Māori Affairs Department.¹⁶⁹

Having expressed these doubts, Nash came to the nub of the problem for his and any Government: what if the Council and the elected Government of the country disagreed? ‘I would be glad at any time’, he said,

to find a way of discussing those things in principle that are associated with policy with representative men of the Māori race. [But] the Government must determine what the policy is to be – you will accept that. If the council did not agree with the Government would you at that point be fighting against the Government?¹⁷⁰

166. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 128)

167. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 129)

168. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 130)

169. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 130–131)

170. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 131)

MAJOR HENRY TE REIWHATI VERCOE

Of Ngāti Pīkiao, Ngāti Tuara, and Te Arawa, Major Vercoe was born at Maketu in 1884, the son of Ngahua Te Ahoaho and a surveyor, Henry Vercoe. A noted rugby player and horseman, Vercoe falsified his age and enlisted in the Seventh Contingent in 1901 to fight in the South African War. Vercoe was decorated for bravery during that war, and returned to farming at Paengaroa and Maketū after it ended. During the First World War, Vercoe served in one of the Māori Contingents and was made sergeant major. He was wounded in action at Gallipoli and promoted to lieutenant, after which he served in France with the Pioneer Battalion, was again wounded, and attained the rank of captain. By the end of the First World War, Vercoe had been recommended twice for the Victoria Cross and was made DSO, before once again returning to farming and becoming heavily involved in returned servicemen rehabilitation and Māori land development schemes.

At the outbreak of the Second World War, Vercoe served in the Home Guard (where he attained the rank of major) and then the Māori War Effort Organisation. After the war, he took a leadership role in Māori education and the Māori Welfare organisation, chairing the Waiariki District Māori Council and the Te Arawa Māori Trust Board. Vercoe was also, as we discuss in this chapter, instrumental in the 1959 dominion conference, the 1961 Provisional Dominion Māori Council, and the establishment of the New Zealand Māori Council. Major Vercoe died at Rotorua on 23 March 1962, shortly before the inaugural meeting of the New Zealand Māori Council that he had worked so hard to establish.

For more information, see Whakahuihui Vercoe, 'Vercoe, Henry Te Reiwhati', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/3v5/vercoe-henry-te-reiwhati>, last modified 19 March 2014.

Vercoe responded: 'I would certainly say that we would still desire for you to reconsider.'¹⁷¹

Nash replied that a fight between the Government and the council over policy would inevitably become political – and there went, in his view, any pretence on the council's part that it was above party politics. A fight with an elected Government was, per se, a fight with whichever political party was in office.¹⁷² Vercoe, however, would not concede the point:

171. 'Deputation to the Prime Minister, 9 December 1959' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 131)

172. 'Deputation to the Prime Minister, 9 December 1959' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 131)

If you are asking me a question, I think that if we had a difference and we were very strong in our views, would you object to having another overhaul of your view and our view[?] [T]hat is my desire to answer. I would be very much against fighting the Government. I think my attitude would be to endeavour to show my point was worth it.¹⁷³

Nash accepted that ‘wisdom generally comes through disagreement of good minds and integrity’. But his fundamental concern echoed political separatist arguments that had been made ever since the nineteenth century: ‘New Zealand’ could not have two governments. In essence, Nash feared that a dominion or New Zealand Māori council would become a policy-making body, claiming exclusive rights to make representations about such policy on behalf of Māori to the Government, thus denying ‘the right of the people elected to do so’, whether Māori or other members of Parliament: ‘You deny my privileges [as an elected member] which I prize very much.’ Nash’s solution echoed his advice from the department: Māori already had the power under the Māori Social and Economic Advancement Act to form tribal executives and, he said, district councils – and they should stop there at the district level.¹⁷⁴

But the Prime Minister also accepted that the deputation had a different view, and that they knew Māori matters better than him. So he promised to go away and consider the draft constitution in detail, and to attempt to determine

whether this is going to advance the confidence we want in the Māoris [that is, to instil the confidence and self-confidence referred to by Major Vercoe] or Māori relations in general as between peoples and between Māori and the Government . . .¹⁷⁵

The final word at the meeting came from Turi Carroll, who underlined that there was no intention to ‘overlook our political representatives in the House. If we undermine them, Sir, as you pointed out, what value are they to us?’ The relationship between the two forms of representation was one to which Māori leaders would now need to give careful thought, but Carroll stressed that Māori ‘must preserve our representation in the House to the very last letters’, or the people would be significantly weakened. In other words, it was not a case of either/or but both.¹⁷⁶

Thus, the meeting highlighted Nash’s concerns with the proposed dominion council, which partly reflected Sullivan’s advice but also reflected the very political question of how an indirectly elected council would relate to the elected Māori members of Parliament, and whether a national Māori body should appropriately

173. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 132)

174. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 132)

175. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 133)

176. ‘Deputation to the Prime Minister, 9 December 1959’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 133)

propose policy and attempt to represent all Māori people in their representations to Government. Party political concerns, of course, were never far from the surface in considering such questions, since Labour had all the Māori members and National had none. One of the mysteries facing us is the attitude of the Māori members themselves at this time, as they were not invited to the dominion conference and had not yet stated a public position, as far as we are aware.

After he returned to Wellington, Nash sought urgent advice from the Māori Affairs Department as to what he should do.¹⁷⁷ As noted earlier, Sullivan had already advised in November against any change of approach but his retirement and the appointment of an acting Secretary now resulted in a dramatic and crucial turn-around in policy advice. Nash brought JK Hunn in from outside the department to evaluate its performance and policies, and he is best known, of course, for the resultant ‘Hunn report’. But, as acting secretary, he was also faced with Nash’s request for urgent advice on the Māori conference’s proposal to formally establish district councils and a dominion council, either as voluntary societies or statutory bodies. Hunn consulted the files and discussed the matter with senior officials before proffering his advice in mid-February 1960.¹⁷⁸ Because the department’s change of position was crucial in persuading Nash, and also remained the basis of its advice to his successor, we set out Hunn’s reasoning in some detail here.

First, the acting Secretary explained the legal basis for the department’s previous ‘voluntarist’ position. According to legal advice, section 13 of the Act allowed the Minister to call a national conference of tribal executives. But this was a ‘one-way’ provision because only the Minister needed statutory power to do so. The tribal executives could ‘come together of their own volition’ whenever they wanted to – although such a forum would have no statutory recognition.¹⁷⁹ This was an interesting and novel interpretation of section 13, and was certainly not how it had been interpreted in the early 1950s.

Secondly, Hunn rehearsed the department’s past advice and then pointed out that – in reality – a dominion council was now inevitable; what the Government had to decide was whether or not it wanted to accede to the wishes of the Māori people and work with a statutory body, or deny them and risk facing a hostile voluntary organisation outside of its ability to influence. He wrote:

The Department is satisfied that if a Dominion Council is not formed with the approval of the Minister, and possibly by some amendment of the MSEA Act 1945 to meet the position, a Dominion Council will be formed in any case probably as a private association.

To reject the suggestion that a Dominion Council be formed within amended provisions of the 1945 Act could quite conceivably result in the people becoming

177. Nash to Sullivan, 17 December 1959 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 126)

178. JK Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 119–121)

179. JK Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 119)

antagonistic to the Department and we could well find a militant private association that could retard our already difficult task in Māori affairs.

Recognition of the wish of the Māori people – and our officers report that the wish for a Dominion Council is widespread, to have a Dominion Council authorised within the 1945 Act would enable the Department to deal in a friendly way with a body representing the views of the Māori people.¹⁸⁰

Hunn suggested that there would also be positive advantages to having a statutory dominion council. First, it would create a ‘single authority to speak at national level for the network of tribal organisations and afford a two-way channel of communication between the Minister and the Māori people.’ This would clearly be of benefit to both Māori and the Government. In making this argument, Hunn did not touch on the vexed question of how such a body would relate to the Māori members of Parliament. Secondly, Hunn suggested that the creation of a national body would be an advantage for the existing welfare system and committee structure, because it would ‘activate and assist District Councils, Tribal Executives and Tribal Committees.’ Thirdly, Hunn expected that the Government’s acceptance of the Māori leaders’ request would benefit the department’s relationship with Māori in the short and long term: ‘Enhancement of friendly relations by willing acceptance of the inevitable.’¹⁸¹

There were also disadvantages. There was no denying Sullivan’s view that a New Zealand Māori council would become another ‘large pressure group’ for the Government to ‘contend with.’ But, Hunn pointed out, this was an objection of ‘expedience rather than principle and is hard to sustain.’¹⁸² This was an important point.

Also, Hunn feared that a statutory Māori council would be harder to get rid of in the long run, once Māori had become so ‘integrated’ with Pākehā that it was no longer considered necessary. One disadvantage, therefore, would be the creation of ‘an influential Māori body that would soon be entrenched and difficult to disband when it becomes no longer desirable to have purely Māori organisations that set themselves apart from the Pākehā.’ That prospect, however, was ‘too speculative and distant to carry much weight in the present deliberations.’¹⁸³

Hunn concluded:

On balance, the Department is now of the opinion that the advantages of having a Dominion Council set up by the authority of the Minister within amended provisions of the 1945 Act would outweigh the possible disadvantages.

You are recommended to approve in principle of the formation of a Dominion Council of Tribal Executives and of the Department preparing and submitting to you such amending legislation to the Māori Social and Economic Advancement Act 1945

180. JK Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 120–121)

181. JK Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 121)

182. JK Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 121)

183. JK Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 121)

as may be found necessary to provide a statutory basis for the formation of District Councils and a Dominion Council of Tribal Executives.¹⁸⁴

Although we do not know the details of how Hunn's recommendation was received by the Māori members, the Minister's liaison officer with the department, MR Jones (Pei Te Hurinui Jones' brother), immediately supported it.¹⁸⁵ After preliminary discussions, Nash held a meeting with Hunn, Jones, and Sir Eruera Tirikātene on 31 March 1960. The Minister was by then 'inclined to agree' to the formation of a New Zealand Māori council but 'did not like the idea, however, of leaving the Tribal Executives to take the initiative in calling a Dominion conference of their own and spontaneously resolving to form such a Council'. His preference was for the Government to convene a new conference and sponsor the proposal itself, although further discussion with Tirikātene was required before proceeding.¹⁸⁶ Nonetheless, the Minister formally accepted Hunn's recommendation that legislation be enacted in 1960 to establish district councils and a national council.¹⁸⁷

Following on from that agreement, Hunn drafted a letter to the Māori conference's secretary, Norman Perry, communicating the Government's decision to the district council delegates. Nash was absent so the letter was approved and signed by Tirikātene as Acting Minister on 3 May 1960. In the meantime, Nash had been persuaded that the Government should not, in fact, convene a fresh dominion conference and sponsor its own proposal for a national council. Rather, the Prime Minister agreed to accept the existence and recommendations of the 1959 self-authorized Māori conference. Hence, Tirikātene advised Perry and the delegates that the Prime Minister had been considering calling a conference of tribal executives to decide the *details* but, now that the Rotorua conference had taken place and proposed a draft constitution, it was not necessary to do so. Instead, preparation of legislation could begin right away and be introduced in the 1960 parliamentary session. If, however, the district councils' delegates believed that a further preliminary conference was needed to work on the details, then the Minister would consider convening it at their request.¹⁸⁸

Thus, the first point of agreement was reached between the Māori leadership and the Crown in May 1960. The district councils (with the exception of the South Island) had sent delegates to a national conference in October 1959, and put a concrete proposal to the Government on behalf of their constituencies: district councils and a national council should be given formal status and powers, either through voluntary means (by Māori leaders establishing their own incorporated societies) or through Government agreement and legislation. After a formal meeting between the Prime Minister and a deputation from the conference in December 1959, the

184. JK Hunn to Nash, 16 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 121)

185. MR Jones to Nash, 22 February 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 118)

186. JK Hunn, 'Notes of Discussion 31.3.60 by Minister of Māori Affairs (Rt Hon Mr Nash) with Hon ET Tirikātene and Messrs JK Hunn and MR Jones: Dominion Council of Tribal Executives', 1 April 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 122)

187. MR Jones to Hunn, 12 April 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 117)

188. Tirikātene to Perry, 3 May 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 116)

Māori Affairs Department (and likely Tirikātene) persuaded the Prime Minister to agree to the Māori delegates' request. Māoridom had spoken and the Government had listened. The draft constitution proposed by the conference would form the basis for legislation in 1960, although the Government was willing to convene a further conference if Māori leaders sought additional input to the working out of a legislative scheme. Inevitably, because the constitution had been designed for an incorporation and not a statutory body, there would need to be some changes to what the Māori leaders had proposed. Perry had acknowledged this earlier but maintained that the 'fundamental points' in the draft constitution must be reflected in the legislation.

A key question became: to what extent would the draft legislation reflect those 'fundamental points'; and what role (if any) would Māori leaders play in vetting or approving the draft legislation?

In June 1960, a clause was drafted for the annual Māori Purposes Bill, repealing section 13 of the 1945 Act (as requested) and replacing it with a new section 13, which established district councils and a New Zealand Council of Tribal Executives.¹⁸⁹ Some key points should be noted.

First, the Controller of Māori Welfare agreed with the Māori conference's stipulation that he should not be given the power (as he had for the lower committees) to superintend the district Councils and the New Zealand Council.¹⁹⁰ This was an important acknowledgement that the department should not push for the kind of structural control that it could exercise in respect of the tribal committees and executives.

Secondly, senior officials rejected the conference's proposal that there should be two classes of councillors, district and advisory. At first, consideration was given to having the Controller and Assistant Controller as *ex officio* members of the New Zealand council (without voting powers, as the conference had proposed), and District Welfare Officers as *ex officio* members of the district councils. But this proposal was rejected: there would be no advisory members and no departmental members on the councils.

Together, these two points would have brought about a complete separation of the department and the Māori councils.

Nonetheless, the Minister of Māori Affairs was to be given a number of formal roles. While these mostly concerned the initial start-up of the system, they also included such features as the unfettered power to dissolve or amalgamate district councils as the Minister saw fit.

The functions of the New Zealand and district councils were narrower than those envisaged by the Rotorua conference. For the New Zealand council, the Act would have prescribed:

189. Draft Māori Purposes Bill, cl 21 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 98–100)

190. Controller Herewini to Assistant-Secretary BE Souter, 26 June 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 103)

3.4.6 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

The functions of the New Zealand Council shall be to advise and consult with District Councils, Tribal Executives, and Tribal Committees on such matters as may be referred to it by any of those bodies or as may seem to it necessary for the purpose of the social and economic advancement of the Māori race. In the exercise of its functions the New Zealand Council may make such representations to the Minister or to any other person or authority as seems to it advantageous to the Māori race.¹⁹¹

Also, in a specific departure from what the Māori conference had stipulated, district councils were to be given the right to make representations directly to the Minister, without having to go through the New Zealand council.¹⁹²

These points are important because they show some of the differences between what Māori leaders had sought and how far the Crown was prepared to go in 1960 when establishing the councils as statutory bodies.

3.4.6 The agreement between Māori and Labour falls over, October 1960

When the Māori Purposes Bill was introduced to the House in October 1960, the clause creating the district Māori councils and New Zealand Māori council had been deleted. The reason for this was never explained to the Māori conference delegates or their sub-committee. Perry later wrote to Nash's successor, Hanan, in 1961:

We anticipated legislation during the last Session to provide for the formation of a Dominion Council under the Act. However, this was fallen from, deliberately. We find it difficult to believe that it was Mr Nash himself who blocked the proposed amendment from coming before the House. No doubt your officers will be able to produce the [relevant] correspondence which will tell its own story.¹⁹³

The official explanation was that the proposal to create a New Zealand Māori council was 'crowded out' due to press of business.¹⁹⁴ In fact, clause 21 was dropped from the Māori Purposes Bill at the very last minute, the day before it was to be introduced to the House, as a result of a meeting between Nash and the Māori members. On 19 October 1960, Nash met with Hunn and MR Jones to explain and discuss the Māori members' requested changes to the Bill. As will be recalled, the key issue of how the Māori members and the councils would relate to each other had not been addressed. Now, this issue arose in such a way as to torpedo the proposed amendments.

First, the Māori members wanted to remove superintendence of the 1945 Act from the Minister of Māori Affairs and place it under a 'Māori Minister Representing the Māori Race to be appointed from an elected Māori Member of Parliament'.¹⁹⁵ As will be recalled, the MŪWEO had had its own Māori Minister, and Tirikātene had tried

191. Draft Māori Purposes Bill, cl 21 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 100)

192. Draft Māori Purposes Bill, cl 21 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 99)

193. Perry to Hanan, 20 January 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 90)

194. Extracts from the Acting Secretary's Report of his interview with the [new] Minister of Māori Affairs, 10 January 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 92)

195. Hunn to Nash, 20 October 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 94)

to get the Māori Welfare Organisation put under a Māori Minister back in the late 1940s.

Hunn's advice to Nash was that splitting the Māori Welfare Division from the rest of the department would be a 'retrograde step attended by disruptive consequences. It is difficult to see how it could work.'¹⁹⁶ So, this proposal – that the whole Māori welfare organisation, including its committees and councils, be brought under a special Māori Minister – was rejected by both the department and Prime Minister Nash. The official response to the Māori members was that a clause would be included to add a Māori Minister representing the Māori Race to the Executive Council, but that there was no time to consider 'what Acts, if any, could or should be placed under his control'.¹⁹⁷

Secondly, the Māori members opposed 'the setting up of District Councils'. We have no information as to the scope or content of their objection. Hunn noted, after his meeting with Nash and Jones:

In view of the Māori Members' opposition to the District Councils, the clause constituting them is to be dropped. This means dropping also the national council for the time being as it was to be composed, inter alia, of representatives of the District Councils. The whole of Clause 21 is therefore to be deferred for consideration next year. . . . The Bill is to be revised accordingly for introduction to the House tonight.¹⁹⁸

Thus, the Māori Purposes Bill was introduced in Parliament in October 1960 without clause 21. Inevitably, Hunn pointed out, the whole proposed creation of district councils and a New Zealand Māori council would need to be reconsidered in 1961. Before that could happen, the Labour Government lost office in the 1960 general election.

3.4.7 Forging an agreement with the National Government, 1960–61

(1) *Delivering on National's 1960 election promise*

The third Labour Government lost the general election in November 1960. This meant that the question of a relationship between the Māori members and the New Zealand council took on a very different complexion. As Noel Harrison explained in his biography of Sir Graham Latimer, the new National Government hoped to use a national Māori body as a political 'counterbalance to Labour's four Māori seats'.¹⁹⁹ Barry Gustafson suggested that the National Government also wanted a 'more independent, authentic and authoritative voice for Māoridom than that

196. Hunn to Nash, 20 October 1960 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 94)

197. Hunn, 'Māori Purposes Bill, 1960', 19 October 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 97)

198. Hunn, 'Māori Purposes Bill, 1960', 19 October 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 96)

199. Noel Harrison, *Graham Latimer: A Biography* (Wellington: Huia Publishers, 2002), p 82

RALPH HANAN AND SIR JACK HUNN

JR Hanan, as Minister of Māori Affairs, and JK Hunn, as Secretary for Māori Affairs, represented the Crown in the discussions and agreements which established the New Zealand Māori Council in 1961 and 1962.

Josiah Ralph Hanan

Josiah Ralph Hanan was born in Invercargill in 1909, where he was a lawyer, city councillor, and mayor all before the age of 30, before giving up the mayoralty to serve in the 20th Battalion in the Second World War. Wounded in action three times, Hanan attained the rank of captain by the end of the war. In 1946, he was elected the National member for Invercargill, a seat which he held until 1969. Hanan was first appointed to Cabinet in 1954 to 1957, so he was already an experienced minister when Holyoake appointed him Minister of Justice and Attorney-General in 1960. But Hanan was a surprised and reluctant appointee to the Māori Affairs portfolio. He claimed to know nothing of Māori issues. Known as a law reformer, Hanan is considered to have made important contributions as Minister of Justice, including the abolition of capital punishment. But his tenure as Minister of Māori Affairs is less celebrated. In particular, his enthusiastic promotion of integration – considered assimilation in another guise by many – was controversial. The Māori Affairs Act 1967, which was enacted in the face of much Māori opposition, including from the New Zealand Māori Council, is now considered a serious breach of Māori Treaty rights. There is no doubting, however, his commitment to ‘domestic’ or internal self-government, which he also promoted for the Cook Islands. Hanan died suddenly in 1969, and was succeeded as Minister of Māori Affairs by Duncan MacIntyre.

provided by the four Labour Māori members of Parliament, subject as they were to strict caucus discipline.²⁰⁰

In any case, the National Party’s position had not changed from 1957, when Holyoake had replaced Corbett as Minister for a very brief period and promised to create district and dominion Māori councils in his election manifesto that year. The 1960 National Party election promise was: ‘We will continue to encourage the work of the Tribal Executive Committees as well as Tribal Committees and support the formation of Dominion and District Councils of Tribal Executives.’²⁰¹ It seemed highly likely, therefore, that the agreement reached between the Labour

200. Barry Gustafson, *The First Fifty Years: A History of the New Zealand National Party* (Auckland: Reed Methuen, 1986), p 251

201. ‘Item from National Party Election Policy 1960’ (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 61)

Sir Jack Hunn

Sir Jack Kent Hunn was born in Masterton in 1906. A lawyer and career civil servant, Hunn worked for the Public Trust Office and was a union president (of the Public Service Association), before becoming a Public Service Commissioner. In that role, he acted as temporary head of various government departments to review their functions and performance. In 1960, he was appointed Acting Secretary of Māori Affairs. The result was the famous (or infamous) Hunn Report, which Prime Minister Nash quietly put aside so that, it was later said, it could be taken up by his successor, Ralph Hanan. Hunn's appointment as Secretary was made permanent and he attempted to foster integration of Māori and Pākehā by promoting Māori housing, education, and social and cultural adjustment in the cities, while at the same time trying to remove legal distinctions (some of them discriminatory) and roadblocks to Māori development.

Hunn's report and recommendations were both controversial and influential but he was only head of Māori Affairs for a short time. While overseas in June 1963, the Government appointed him Secretary for Defence. In that role, he is best known, perhaps, for his opposition to New Zealand participation in the Vietnam War, which lost him political support. He retired in 1965 but undertook numerous roles for the Government, including the creation of a single, unified fire service in the 1970s. Hunn was knighted in 1976 and died in 1997.

For more information, see GP Barton, 'Josiah Ralph Hanan', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/5h6/hanan-josiah-ralph>, last modified 8 October 2013; RM Williams, 'Jack Kent Hunn', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/5h43/hunn-jack-kent>, last modified 22 October 2013; Aroha Harris, 'Dancing With the State' (doc B23); JK Hunn, *Not Only Affairs of State: An Autobiography* (Palmerston North: Dunmore Press, 1982).

Government and the Māori conference delegates in May 1960 – so unexpectedly reversed in October – would be renewed under the National Government in 1961.

This was immediately apparent in early January, when Hunn met with the new Minister of Māori Affairs, Ralph Hanan. Hunn reported:

It was brought to the Minister's notice that the setting up of a Council had been promised to the Māori people but it had been crowded out of last year's legislation. He agreed that it was desirable to have such a body as a two-way channel of communication with the Māori race. Legislative proposals are to be submitted to him accordingly.²⁰²

202. Extracts from the Acting Secretary's Report of his interview with the Minister of Māori Affairs, 10 January 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 92)

3.4.7(1) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

When Hanan spoke at Waitangi on Waitangi Day 1961, he reaffirmed the election promise and promised further consultation:

I look forward to consultation with the Māori leaders about the course and speed of the canoe on their great voyage into the future. In particular, we will confer together on the setting up of a Māori Tribal Council so that the leaders of the people may have a forum for discussion at a national level and a channel of communication with the Government.²⁰³

Hanan had the firm support of Prime Minister Holyoake, as the Prime Minister later explained to the New Zealand Māori Council in 1962:

Many of you will recall that I publicly advocated the setting up of this Council when I was Minister of Māori Affairs in 1957 for a brief period.

The idea, as I recall, originated with the Māori people. You wanted a body through which you could speak with one voice. And I felt strongly that the Government *needed* to hear and heed the voice of the Māori people. Your *desire* was our *need*.

Though it was not possible to set up the Council during the few months that I was Minister the idea never lost its attraction for me. Therefore, when your present Minister resurrected it, it had my enthusiastic support. [Emphasis in original.]²⁰⁴

Hunn prepared a formal proposal for Hanan to consider, differing in some respects from the position put forward by the department to Nash in 1960. In particular, the Secretary now proposed to submit the draft legislation to a second Māori conference or a provisional Māori Council for vetting and approval. This was an important step, proposed partly because there were other urgent matters that he wanted discussed by a 'sounding board for Māori opinion' without having to wait for the council to be formally created by statute.²⁰⁵

On 21 February 1961, Hunn set out the department's revised proposals, which were largely based on the legislation prepared the year before. There was little change to the proposed structure and purposes of the councils, as defined in Labour's Bill. In terms of machinery matters, probably the only important point was Hunn's insistence that there could only be one district council per Māori land district, with the explicit exception of Waikato–Maniapoto, where Auckland city would have its own council. This reversed a more flexible position in the previous year. In order to maintain the core principle, this Māori land district would likely be split, with some official duties transferred from Auckland to Hamilton.²⁰⁶

203. *Te Ao Hou: The New World*, no 35 (June 1961) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p183)

204. NZMC, minutes, 26–27 July 1962 (NZMC, minute book, 1962–70 (doc C3), pp 25–26)

205. Hunn to Hanan, 'Māori Tribal Council', 27 February 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 80, 82)

206. Hunn to Hanan, 'Māori Tribal Council', 27 February 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 80–81); draft Māori Purposes Bill, cl 21 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 98–100)

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Hunn's explanation of the underlying purpose, however, was very important, and it explained the proposed separation of department and councils (and, hence, the rejection of the Māori conference's proposal to have advisory members):

The essence of the business is that the Dominion Council should be a body comprised wholly of persons thrown up by election or selection from the lower strata. One of the points that was earlier weighed was whether any outsiders should be introduced, in particular, officers of the Department. This was decided against, so far as officers of the Department were concerned, on the ground that the Department should not compromise its duty to express to the Minister its own views on any proposition which might be put forward by the Dominion Council. Another ground was that, if others than those elected or selected by the Māori organisations were brought in, there was room for the suggestion that the Council was being packed.

On the footing that Māori opinion is to be tested on any substantial questions of policy, it seems that the principle of excluding persons other than those who are elected or selected from among the people themselves, should still be adhered to.²⁰⁷

Then, as noted, Hunn suggested that the number of new policy measures affecting Māori was such that the Government could not afford to wait for legislative action to establish the councils. Rather, the Minister should invite the informally established district councils to nominate two representatives each to meet as a provisional council, for 'the purpose of taking their views on measures that are in contemplation'. One such measure for discussion should be the draft legislation itself for 'the constitution of the District Councils and the Dominion Council'. To cover the South Island gap, Hunn proposed asking the elected Ngāi Tahu Trust Board to nominate two representatives.²⁰⁸

On 24 March 1961, Hanan minuted this memorandum: 'Suggestions approved subject to consideration of draft legislation and suggested date for meeting with District Council representatives.'²⁰⁹ But the decision had already been taken before this, and Hanan went to Mourea to meet with the Waiariki District Māori Council to formally announce it on 15 March 1961. Unaware of his intention, the Waiariki council took advantage of his visit to once again put forward the proposal for a dominion council. Major Vercoe took the lead role, reading out 'Submissions of the Waiariki District Council of Tribal Executives to the Hon the Minister of Māori Affairs regarding the formation of a Dominion Council of Tribal Executives'. Vercoe outlined the recent history of agreement by both the previous and the present Governments, including the meeting with Nash in December 1959, the Labour Government's letter of 3 May 1960 advising that Nash had agreed and legislation would be introduced, and the National Party's election promise in 1960 that 'if they

207. Hunn to Hanan, 'Māori Tribal Council', 27 February 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 81)

208. Hunn to Hanan, 'Māori Tribal Council', 27 February 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 82)

209. Hanan, minute, 24 March 1961, on Hunn to Hanan, 'Māori Tribal Council', 27 February 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 62)

were elected the Government, they would set up a Dominion Council'. The formation of district councils in anticipation of a national body had already stimulated a revival of interest in the tribal committees and executives. Given, therefore, the history of apparent government agreement and the manifest benefits of the councils, the Waiariki Council put to Hanan that legislation should be introduced as soon as possible to establish a dominion council.²¹⁰

In his reply, the Minister explained the issue from the Government's perspective, that there was 'no unified voice that can speak for the Māori people in their particular problems'. The 455 tribal committees and 85 tribal executives, he said, had few opportunities for 'formulating and presenting an unified opinion.'²¹¹ Adverting to the situation in the early 1950s, Hanan noted that the Waiariki District Council had been promised a national conference in 1953 which had never eventuated. As a result, 'enthusiasm waned and the district councils ceased to function'. But Hanan had a positive answer for the people this time and observed that he had already planned to give it before receiving Vercoe's submission:

I am already convinced that there would be a number of advantages in having the Dominion Council. It would provide a unified voice for the Māori people on matters affecting the Māori Race.

—Great applause by the assembly.—

And that is what I want. I have a hundred questions to ask the Māori people but who do I ask? Do I put an advertisement in the paper? Do I speak over the radio? Do I speak in the House of Representatives? Where can I get the answer? From the Māori people themselves. They are spread from one end of the country to the other. How do we get the answer? Such a Council would provide a two-way channel of communication between the Māori people as a whole and the Minister of Māori Affairs.

—Hear! Hear! from the assembly.—

And, of course, it would activate and assist the District Councils and tribal committees and executives. It would make them worthwhile; it would make them tick; give them something to do; some objective;

This is the reply to your question:

The Government has decided to introduce legislation providing for the establishment of district councils – which at the present time have no statutory authority – we will give them statutory authority and we will also provide for the setting up of a Dominion Council.

—Met by great applause.—²¹²

Then, explaining that as Minister he needed to be sure that all the proposals in the Bill met with the approval of the Māori people, Hanan announced his intention to call together representatives of the existing (though informal) district councils to

210. 'Extract from Meeting of Minister of Māori Affairs at Takinga Meeting House, Mourea, 15 March 1961' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 56)

211. 'Extract from Meeting of Minister of Māori Affairs at Takinga Meeting House, Mourea, 15 March 1961' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 57)

212. 'Extract from Meeting of Minister of Māori Affairs at Takinga Meeting House, Mourea, 15 March 1961' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 58)

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discuss the draft Bill. In doing so, he stressed that separation between department and councils would be essential, and that it was important to the Government to have the authentic representations of the Māori people through their own democratic structures:

One principle that we think should be established right here and now and made clear is that there should be no outside appointments. One principle has dominated our thinking: that the district councils and the Dominion Council must be an extension of the tribal committees and executives, that is the Dominion Council derives its authority from below not from above; not from outside; but derives its authority from the Māori people themselves. There would be no appointment of departmental officers to the district or dominion councils. There would be no Government appointments. In fact, only persons elected by your tribal committees and executives would be able to sit on district councils and only persons elected to the district council would be able to sit on the Dominion Council. In this way, we would have a chain of representation from the tribal committees right up to the Dominion Council and to make this proposal most worthwhile, these principles, we believe would have to be strictly adhered to. I think these proposals are sound and could have immediate and far reaching benefits for the Māori people. For the first time for many years you, the Māori people, would be able to present to the Government views which undoubtedly were those of the Māori people as a whole. This idea springs not from Government; not from me; not from the Department of Māori Affairs but it springs from the Māori people themselves.²¹³

Hanan laid great stress on this, and that the proposal had its origins, he said, at Mourea with the Waiariki council:

how appropriate it is, and this is the reason – the main reason – I am here tonight, it is because this proposal originated in this part of New Zealand. We felt it right and proper that I should come and tell you that your proposals are accepted by the Government. I am anxious to learn the needs of the Māori people . . . I am conscious of the very great problems we have ahead. I am conscious I have not all your worries . . .²¹⁴

In the meantime, the department had been contemplating a complete overhaul of the 1945 Act, but decided that there was not enough time to do it in 1961. There was also a question as to how many substantive matters should be put to a provisional council, which Hunn termed a 'shadow organisation'. He seems to have changed his mind from earlier in the year, and now recommended that only two issues – the Bill to establish the councils and the Māori Education Foundation proposal – should be put to the provisional council. All other matters, which closely affected Māori property rights, 'ought to be discussed with the Dominion Council properly constituted'.

213. 'Extract from Meeting of Minister of Māori Affairs at Takinga Meeting House, Mourea, 15 March 1961' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 59–60)

214. 'Extract from Meeting of Minister of Māori Affairs at Takinga Meeting House, Mourea, 15 March 1961' (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 60)

3.4.7(1) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

This was also a tactical move; Hunn hoped that the council itself would take up his report and run with it in the meantime, which would ‘tend to do away with any suggestion that changes are being foisted on the Māoris by the Government.’²¹⁵

Hanan accepted Hunn’s advice, and a meeting of the Provisional Dominion Council of Tribal Executives was set for 10 June 1961. This date was selected by the ‘Standing Committee’ of the new Provisional Council, which wanted to meet with the Minister, the Secretary, and the Controller in Wellington on 9–10 June – preferably in the Māori Affairs Committee Room. The committee wanted to keep the meeting small; only the councillors on their side, and only Hanan, Hunn, and Herewini on the Government’s side. This, they hoped, would enable full engagement of both parties on the draft Bill. The December 1959 meeting with Nash had been less effective, in their view, because of the presence of a large entourage of ‘parliamentary and departmental officers.’²¹⁶ Most importantly, the Provisional Council welcomed the opportunity to discuss Hanan’s draft Bill, and asked for copies to study before the meeting:

We appreciate the fact that you quickly realised that this move has come from the people themselves, and that you wish to give them the opportunity of studying and discussing the proposed legislation. We look forward to fruitful discussions together.²¹⁷

The department prepared draft sections for a Māori Social and Economic Advancement Amendment Bill in May, which were sent to the Minister for his sign-off on 24 May 1961.²¹⁸ Hanan approved the draft and posed two additional questions for the Provisional Council to consider:

Name of Council – ‘Dominion Council of Tribal Executives’ or ‘New Zealand Council of Tribal Executives’.

Although there is no provision in the original Act or in the proposed legislation, the committee might consider the inclusion of 2 representatives from the Māori Women’s Welfare League.²¹⁹

Perry, now described as secretary of the ‘Provisional Dominion Council of Tribal Executives’, was sent the draft legislation and the two questions (as above) in early June 1961. Hanan also wanted the council’s preliminary views on his proposal for a Māori Education Foundation, but noted that he would outline that at the meeting rather than in writing. More detailed consideration would be sought once ‘the Dominion Council has been properly constituted’.²²⁰

215. Hunn to Hanan, 17 April 1961 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 201)

216. Perry to Hanan, 4 April [sic: actually 4 May] 1961 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), pp 195–196)

217. Perry to Hanan, 4 April [sic: actually 4 May] 1961 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 196)

218. Hunn to Hanan, 24 May 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 42)

219. Hanan to Hunn, 25 May 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 41)

220. Hanan to Perry, no date [early June 1961]; Hunn to Hanan, 1 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 39–40)

SIR NORMAN PERRY

David Norman Perry was born in 1914. As a young man, he was secretary and assistant to Sir Āpirana Ngata. He was also the only Pākehā to serve in the 28th Māori Battalion, serving as a Young Men's Christian Association officer at the battalion's request. Perry was seriously wounded in Italy and returned to New Zealand in 1944. Living in Ōpotiki, he joined the Māori Affairs Department after the war as a Māori Welfare Officer, and acted as secretary for the Waiariki District Māori Council in the 1950s, playing a key role in the 1959 Dominion Māori conference, the Provisional Māori Council of 1961, and later as associate secretary of the New Zealand Māori Council. Perry worked with many Māori organisations during his career, and set up a garment factory at Ōpotiki to employ and train Māori workers. In 1964, Perry was elected the lay Moderator of the Presbyterian Church, and he was deeply involved in the Church's Māori Synod and the New Life Movement. He has been recognised as one of the most significant lay leaders in the history of the Presbyterian Church, and was also involved in world church affairs. Perry served on many community and government bodies, including the Roper committee of inquiry on prison reform and the Mahi Tahi Trust. He was knighted in 1977. Sir Norman Perry died in 2006 at the age of 92.

For more information, see Presbyterian Church of Aotearoa New Zealand, 'Sir Norman Perry Kt, MBE: A Mighty Tōtara Has Fallen', www.presbyterian.org.nz; accessed 19 June 2014.

Thus, the members and secretary of the Provisional Dominion Council only had a week to consider the draft clauses for the amendment Bill, before meeting with the Minister and Secretary on 10 June 1961.

(2) *The Provisional Dominion Māori Council amends the Bill, June 1961*

The Provisional Dominion Māori Council met in Wellington on 10 June 1961. Major Te Reiwhati Vercoe was once more elected chair, with Perry as secretary and Claude Anaru as assistant secretary. Our sources as to the meeting itself are scant. No minutes or reports of the meeting were included in the evidence put before the Tribunal, although we do have Hunn's notes for the Minister's address. The key issue for us is the council's response to the draft Bill, for which we are reliant on:

- ▶ Hunn's copy of the Bill, which he annotated at the meeting with the council's requested amendments; and

MEMBERS OF THE PROVISIONAL DOMINION MĀORI COUNCIL OF TRIBAL EXECUTIVES, 1961

Tokerau	Sam (Hamiora) Maioha, Jack Rogers
Auckland	Matiu Te Hau, Waaka Clark
Waikato–Maniapoto	P Katu, Charles Davis
Waiariki	Major Reiwahati Vercoe, J Boynton
Tairāwhiti	Arnold Reedy, Henare Ngata, Turi Carroll
Ikaroa	Steve Watene, John Bennett, Rangi Tutaki
Aotea	Pateriki Hura, Pei Te Hurinui Jones
South Island	[?] McDonald, Joseph Karetai
Secretaries	Norman Perry, Claude Anaru

Source: *Te Ao Hou: The New World*, no 36 (September 1961) (doc B26(a), p 88)

- ▶ A detailed letter from Perry as the council’s secretary, dated 19 June 1961, reiterating the council’s requested amendments and adding some further requests from the council’s executive committee.

On 19 June 1961, Perry summed up the Provisional Council’s response to the draft Bill as ‘very satisfied.’²²¹ In terms of the two questions put by the Minister, the council rejected ‘New Zealand Council’ – which had been used in both the 1960 and 1961 drafts – in favour of ‘Dominion Māori Council of Tribal Executives,’²²² and it preferred not to include any representatives from the Māori Women’s Welfare League.²²³ In his speech, Hanan had explained: ‘The idea behind this suggestion is nothing more than that the women folk might be heard on appropriate subjects,’²²⁴ but the council was not persuaded.

Although generally satisfied with the Bill, the council had requested the following amendments at the meeting:

- ▶ any four or more tribal executives can form a district Māori council (instead of the original requirement for five or more executives);
- ▶ the Minister’s power to dissolve a district Māori council was to be modified, so that the Minister could only exercise that power ‘on the recommendation of the Dominion Māori Council of Tribal Executives’;
- ▶ the council’s full title should be the ‘Dominion Māori Council of Tribal Executives’, shortened to the ‘Dominion Māori Council’ where appropriate;

221. Perry to Hanan, 19 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 26)

222. Perry to Hanan, 19 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 26)

223. ‘Māori Social and Economic Advancement Act 1961’, annotated by Hunn, 10 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 38)

224. ‘Speech Notes for Minister of Māori Affairs, Hon JR Hanan, Address to Provisional National Council of Māori Tribal Executives, 10 June 1961’ (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 180)

KA TIPU TE WHAKAARO / A CHERISHED THOUGHT EMERGES 3.4.7(2)

- ▶ the Dominion Māori Council should consist of ‘up to 3’ representatives from each district council, and not be limited to two representatives (as had been specified in the draft Bill); and
- ▶ a special clause should be inserted to cover the Auckland council, if the Māori Land Court district was not to be split (as currently proposed).²²⁵

The main thrust of these amendments was to loosen the somewhat stringent requirements in the Bill, so that the district councils could have more members on the Dominion Council, and fewer tribal executives were required to form a district council. Also, the new limitation on the Minister’s power to dissolve district councils was an important one. Otherwise, the Provisional Council basically accepted that the Government had properly recast the 1959 constitution to suit the requirements of statutory bodies acting in association with a Minister of the Crown. This acceptance, in particular of the Minister’s quite limited roles, was likely facilitated by common agreement that the Department of Māori Affairs would have no representation on or control over the councils. The department’s only responsibility would be to convene the inaugural meetings and to prepare draft *Gazette* notices for the Minister.

The council’s executive committee – which had had time to study the draft Bill further – asked for some additional changes. These were all machinery changes, except for one: the draft constitution had originally provided for one of the council’s roles to be ‘to promote and maintain fellowship and understanding between Māori and European’. Although such a role might be implied in the Act, the council wanted it stated specifically in clause 13e as an aim or function.²²⁶ Because it is important to establish whether or not an agreement was negotiated between the Crown and the NZMC, we set out the requested machinery changes in detail here. These changes were:

- ▶ a quorum to be inserted for the Dominion Council, on the same basis as for the district councils in section 13D(1);
- ▶ the Bill provided for members of the councils to sit ‘during the pleasure of’ their appointing bodies, which the Provisional Council preferred to change to a definite term of three years (a change which Hunn had suggested at the meeting);
- ▶ the draft constitution had modelled the term of office on that of trust boards and incorporations, providing for rotating members so as to avoid the replacement of all members at a single election – the council asked that Hunn consider this and decide whether a change should be made; and

225. Perry to Hanan, 19 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 26); ‘Māori Social and Economic Advancement Act 1961’, annotated by Hunn, 10 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 36–38)

226. Perry to Hanan, 19 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 27)

3.4.7(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

- ▶ the council asked for the deletion of clause 13(9), providing a mechanism for tribal executives to withdraw from membership of a district council,²²⁷ which it considered controversial and unnecessary.²²⁸

All of the Provisional Council's amendments were accepted,²²⁹ with the exception of rotational membership, which Hunn had been asked to decide. In Hunn's view, it was too 'awkward' to manage without a set number of delegates from each DMC to the Dominion Council.²³⁰

By the end of June 1961, another milestone had thus been reached: the Government and the Provisional Māori Council had reached agreement about the provisions of the amendment Bill – except for an unexpected road block that emerged over the use of the words 'dominion' and 'Māori' in the council's title. As will be recalled, the Minister had specifically asked the Provisional Council to decide whether the title should be the 'Dominion Council' or the 'New Zealand Council', and it had responded by selecting 'Dominion Māori Council'. In late June, however, Major Vercoe wrote to Hunn, pondering whether the word 'Māori' should be removed from the title:

Since our meeting held in Wellington earlier in the month I have given some thought to the inclusion of the word 'Māori' to the title of our Council. It has occurred to me that the inclusion of this word could be embarrassing to a number of our Pākehā friends who are actively engaged in the work of Tribal Committees and Tribal Executives. It could also be misinterpreted or misconstrued by many.

I am passing this thought over to you so that you yourself could consider as to whether or not the word 'Māori' should be left out. You will appreciate that the one important object of the Council is to create greater understanding and unity with our Pākehā friends.²³¹

Hunn replied that there was nothing inappropriate in using the term 'Māori Council':

It can be said at once that I am with you all the way in the desire to remove marks which, however remotely, might be capable of causing embarrassment or putting obstacles in the way of friendly co-operation. Still, I have some doubt that the use of the word 'Māori' in relation to the Council would have that effect. The thought that has been in my mind is that the Council will assume an important part in Māori affairs and its doings will be pretty much in the notice of the public. There is always a tendency to foreshorten the title of organisations, and it occurs to me that if the Council

227. Clause 13(9) read: 'No Tribal Executive shall cease to be a member of a District Council unless the District Council gives its permission to withdraw its membership. Any such withdrawal permitted by the District Council shall be reported to the Minister, who shall give notice thereof in the Gazette.' ('Māori Social and Economic Advancement Act 1961', annotated by Hunn, 10 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 37).

228. Perry to Hanan, 19 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), pp 26–27)

229. Hanan to Perry, 21 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 25)

230. Hunn to Perry, 28 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 18)

231. H Te Rei Vercoe to Hunn, 21 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 20)

KA TIPU TE WHAKAARO / A CHERISHED THOUGHT EMERGES 3.4.7(3)

is properly known as the Māori Council, then it will popularly be referred to in that way. It is necessary to have a name which distinguishes this Council from other councils. For this reason and for no other, it seems to me that the use of the word 'Māori' is justified, and it is appropriate. The word 'Māori' has been used in the draft legislation and, unless you see some compelling reason for a change, I am inclined to think that it might best be left that way.²³²

At the same time, Hunn raised another issue with Vercoe and Perry. The Department had given its draft clauses to the Law Draftsman for conversion into a Bill:

The Law Draftsman has drawn the Minister's attention to the fact that, New Zealand having lost its status as a Dominion [in 1947], it no longer accords with constitutional practice to refer to 'Dominion' in legislation whether for the purposes of description or otherwise. That being so, it is intended to call the Council the 'New Zealand Māori Council'. I take it that there will be no objection to this.²³³

Thus, the 1961 Bill contained the title 'New Zealand Māori Council' when it was introduced to the House in July 1961. The Ikaroa District Māori Council wrote immediately to the Minister, pointing out that the new title was not the one agreed to by their delegates at the conference.²³⁴ Although many Māori complained to their members of Parliament about the change, Tirikātene and his colleagues accepted the necessity of it.²³⁵

(3) *The Māori Social and Economic Advancement Amendment Act 1961*

The 1961 Amendment Bill received enthusiastic support from both sides of the House. In particular, the Māori members spoke in support of it.²³⁶ The Government was able to congratulate itself – in giving effect, it was stressed, to the wishes of the Māori people – at producing a 'bipartisan or non-political' measure, endorsed by the Opposition.²³⁷ The wishes of the Māori people, explained the Minister, had been consulted through the Provisional Māori Council, which was 'widely representative' of Māori but had no official standing. By means of an 'informal chat' with this non-statutory body, the Māori Council had approved the Bill with 'minor amendments'.²³⁸

232. Hunn to Vercoe, 28 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 19)

233. Hunn to Vercoe, 28 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 19); see also Hunn to Perry, 28 June 1961 (first Waitangi Tribunal document bank, vol 8 (doc B26(h)), p 18)

234. JM Durie to Hanan, telegram, 10 July 1961 (first Waitangi Tribunal document bank, vol 10 (doc B26(j)), p 165). See also Hanan to Durie, 20 July 1961, in which the Minister explained that the Law Draftsmen were instructed to use 'Dominion Council' but they pointed out that 'as New Zealand has for some time ceased to be a Dominion, it does not accord with constitutional practice to use the word "Dominion" in statutes, whether for the purpose of description or otherwise. It is in these circumstances that the words "New Zealand" were substituted for "Dominion"' (first Waitangi Tribunal document bank, vol 10 (doc B26(j)), p 161)

235. NZPD, 1961, vol 327, pp 1974–1975 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 112)

236. NZPD, 1961, vol 327, pp 1969–1982 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 109–116)

237. NZPD, 1961, vol 327, p 1982 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 116)

238. NZPD, 1961, vol 326, p 343 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 108)

**THE MĀORI SOCIAL AND ECONOMIC ADVANCEMENT
AMENDMENT ACT 1961**

The Māori Social and Economic Advancement Amendment Act repealed section 13 of the 1945 Act and inserted a new section 13 into that Act. We summarise the key provisions of the Amendment Act here.

District Māori Councils

Section 13(1), (5): Any four or more tribal executives in a Māori Land Court district may, at a meeting of at least one representative from each executive, resolve to establish a District Māori Council of Tribal Executives (DMC). Each tribal executive will have one vote, and the decision to form a DMC will be made by a majority vote.

Section 13(4): The Minister may, by notice in the *Gazette*, authorise Auckland City tribal executives to form an Auckland DMC.

Section 13(6)–(11), (14): When tribal executives have resolved to form a DMC, the secretary of the meeting will inform the Minister of the results, including which tribal executives voted in favour of the resolution. After receiving this resolution, the Minister ‘may’ gazette approval of the formation of the DMC, which will constitute only those executives which voted in favour of establishing it. Once the Minister’s approval has been gazetted, the Secretary of Māori Affairs will convene a meeting of the DMC to elect a chair and secretary (and any other officers). As soon as these officers have been elected, the DMC will become a body corporate. The DMC will consist of two representatives nominated by each tribal executive, unless there are more than 10 executives on the DMC – in which case each executive will have one representative. The term of office for the representatives will be three years, with eligibility for reappointment. No welfare officer (other than Honorary Welfare Officers) can be elected to represent a tribal executive on a DMC.

Section 13(12): Any tribal executive in the district can vote later to join the DMC, and the Minister will (by *Gazette* notice) declare that executive to be a member of the DMC.

Section 13(13): The Minister may, on the recommendation of the New Zealand Māori Council of Tribal Executives (NZMC), dissolve any DMC.

Section 13A: The general function of the DMCS is to consider questions of common interest to their members and to communicate any recommendations or representations on those matters to the Minister. Where such matters would affect other DMCS, any recommendations or representations should be referred to the NZMC as well as the Minister. In addition, the DMCS will have all the general functions of the tribal executives. (This was a significant change from the Māori conference’s 1959 constitution, which had restricted

representations at ministerial level to the Dominion Council. Hanan explained in Parliament: 'This will ensure that no district council, even though it may be in a minority in the New Zealand Council, will be deprived of the opportunity of putting its views on any subject before the Minister.' (NZPD, 1961, vol 327, p 1972 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 111)) We note that this power was short-lived: it was removed again the following year when the Māori Welfare Act 1962 was passed.)

Section 13B (quorum): Half of the tribal executives which are members of the DMC must be represented at the meeting by at least one representative. A tribal executive may appoint a proxy if a representative is unable to attend. Decisions will be made by a majority vote of the tribal executives present at the meeting (each executive has one vote). In the event of a tie, the chair will have a casting as well as a deliberative vote. Otherwise, the DMCs may regulate their own procedure.

Section 13C: DMCs may decide the proportions of their expenses to be borne by their member executives and the tribal committees.

Section 13D: Tribal executives may delegate to a DMC their power to make bylaws.

The New Zealand Māori Council

Section 13E: There will be a New Zealand Māori Council of Tribal Executives, the members of which will consist of all DMCs constituted under the Act. Each DMC will be represented by up to three members, who will hold office for three years and can be reappointed. Once a minimum of four DMCs has been established, the Secretary for Māori Affairs will convene a meeting of the NZMC to elect a president, secretary, and any other officers.

Section 13F: The function of the NZMC will be to advise and consult the DMCs, tribal executives, and tribal committees on matters referred to it by those bodies, or any other matter 'necessary for the purpose of the social and economic advancement of the Māori race'. In exercising this function, the NZMC may make representations to the Minister or to any other person or authority 'as seem to it advantageous to the Māori race'. Without limiting this general function, it will also be the NZMC's function to consider and put into effect 'any measures that will conserve and promote harmonious and friendly relations between members of the Māori race and other members of the community'.

Section 13G: Procedural arrangements for the NZMC in respect of quorum, voting, proxies, and so forth were the same as for DMCs, with the additional requirement that the president would chair all meetings. In the absence of the president, a chair would be elected by the representatives present at the meeting.

Section 13H: Arrangements for allocating expenses were the same as for DMCs.

3.4.7(3) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

Hanan's speeches in Parliament made some (by now) familiar arguments, although they were no doubt new to some members of the House. In particular, the Minister emphasised the way in which the district and New Zealand Māori councils would provide the upper tiers of an already-existing democratic system, through which Māori would manage their own affairs and their interface with the State. These councils would be entirely independent from the Government and, it was hoped, would breathe new life into the lower committees and the social and economic welfare organisation as a whole. The new national body would create a two-way channel of communication, fostering cooperation between Māori and the Government. Integration of Pākehā and Māori was the ultimate goal of government policy but it depended on the Government being able to ascertain Māori views and wishes on the means and emphases, especially on vexed issues relating to Māori land and the retention of Māori identity and culture.²³⁹ Would Māori, for example, be 'willing for home ownership to replace the tūrangawaewae?' asked Hanan. 'Only the Māori people,' he said, 'can tell us that.'²⁴⁰

The Minister's final summation is worth quoting:

This Bill will help the Māori people to govern their own affairs to a large extent, and to preserve the important features of Māoritanga, the language, arts and crafts, and institutions of the marae. This Bill gives the Māori people the statutory form to work out their own salvation, and I only wish we could have more debates of this class, where we are concerned with the welfare of a section of the community without any question of one side [of the House] or the other seeking political advantage.²⁴¹

In part, however, Labour support for this Bill had been won by a compromise as to the relationship between the Māori people's parliamentary representatives and the new national body.

As will be recalled, this issue had been something of a stumbling block for the Labour Government in the late 1950s. When Hanan introduced his Bill in July 1961, he had expected a smooth passage – and had not intended to refer it to the Māori Affairs Committee. But Tirikātene immediately inquired: 'Will there be in the Bill any coordination with the elected members of Parliament representing the Māori race?' Hanan replied that the New Zealand Māori Council would come from 'the grass-roots of Māori representation at the tribal committee level', and no one outside that democratic structure could be a member. A member of Parliament could seek membership through election to a tribal committee (and on up the chain), 'but if we impose it from Parliament we are cutting across that basic representation.' Nonetheless, Hanan offered to send the Bill to the Māori Affairs Committee, at which this issue could be considered afresh.²⁴²

239. NZPD, 1961, vol 327, pp 1969–1973, 1982 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 109–111, 116)

240. NZPD, 1961, vol 327, p 1982 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 116)

241. NZPD, 1961, vol 327, p 1982 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 116)

242. NZPD, 1961, vol 326, p 343 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 108)

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No change was made to the Bill in that respect, but it appears that an agreement was reached nonetheless. Although we do not have the Māori Affairs Committee's records or report, allusions were made to the agreement in the House. HR Lapwood, a member of the committee, said:

The widespread approval given to this measure by both sides of the House encourages me because I believe the Minister has shown his sincerity in *granting an elected representative of the Māori people, regardless of party affiliation, the right to sit in on the meditations of the council*. [Emphasis added.]²⁴³

TP Paikea, the member for Northern Māori, supported the autonomy of the committees and councils, but he understood that the Minister had given an assurance that all the Māori members would be present at council meetings 'so that they may be able to put forward their views'.²⁴⁴

The enactment of the Māori Social and Economic Advancement Amendment Act in 1961, endorsed by both sides of the House and by the Provisional Māori Council, represented another major step in the shaping of a significant and long-term agreement between Māori and the Crown.

The next step was the major revision of the 1945 Act the following year, to which we now turn.

3.4.8 Negotiating the Māori Welfare Act, 1962–63

(1) *The Government decides to overhaul the Māori Social and Economic Advancement Act*

By the end of 1961, the Government was planning a major consolidation and overhaul of the Māori Social and Economic Advancement Act 1945. It was one of the main topics planned for early discussion with the New Zealand Māori Council.²⁴⁵ Overall, the Government's intention was to prune the 'welfare organisation', to make its committees and councils fully independent of the department, and to confine the system more to welfare activities.

As part of the pruning and refocusing, the Government intended to abolish the flax-roots tier of the structure (the hundreds of tribal committees), and to rename the tribal executives as 'Māori Welfare Executive Committees'. The first, more radical part of this plan was dropped due to objections within the department. Assistant-secretary McKay advised Hunn:

Upon general re-consideration, I am of the opinion that we should retain the present structure and NOT remove the basic organisations, ie, the Tribal Committees at present. I do not think that the Executive Committees can adequately reach down to the families, and it is the families we wish to affect, as can the Tribal Committees with their closer contact. [Emphasis in original.]²⁴⁶

243. NZPD, 1961, vol 327, pp 1981–1982 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 115–116)

244. NZPD, 1961, vol 327, p 1980 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 115)

245. Hunn to Hanan, 8 December 1961 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 167)

246. EA McKay to Hunn, 21 May 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 149)

INTEGRATION : A THIN VEIL FOR ASSIMILATION ?

An extract from JK Hunn's speech at the inaugural meeting of the NZMC, 28 June 1962:

The establishment of this Council ought to be proof enough that the policy of integration as far as the authorities are concerned does not mean the obliteration of the Māori race. Integration is different from assimilation which means making everybody the same. Integration means the intermingling of two distinct races, participating together in education, employment, entertainment, transport, social life and all walks of life, but withdrawing now and again according to the tastes of the individual to enjoy each his separate culture the same as we all do in religion, in politics, in our clubs and professional associations. I am sure that the passion for sameness that prevails in this country is not so doctrinaire that we want to eliminate all cultural distinctions. Under a policy of integration all races can preserve their identity and contribute to the national identity.

An extract from Richard Hill's study *Māori and the State: Crown–Māori Relations in New Zealand / Aotearoa, 1950–2000*:

Yet the revamping of the [1945] system [in 1962] was aimed, in the final analysis, at putting an end to 'separate status' for Māori: the Māori associations would work towards their own quick demise, which would come about when Māori had achieved equality with the dominant ethnicity in modern New Zealand. The words 'social and economic advancement' had embodied this 'egalitarian' goal in the 1945 legislation, but mass urbanisation and perceived progress in assimilation had altered the conceptual landscape: the ideological urge for the rapid removal of difference and discrimination of any type between the races (with the planned disappearance of the positive along with the negative, after some temporary tolerance) called for a new terminology. It was far from accidental, then, that in the title of the new legislation the term 'social and economic advancement' was replaced by 'Māori welfare'.

Sources: JK Hunn, speech at inaugural NZMC meeting, 28 June 1962, NZMC, minute book, 1962–70 (doc c3), p [24]; Richard Hill, *Māori and the State: Crown–Māori Relations in New Zealand / Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), p 114

KA TIPU TE WHAKAARO / A CHERISHED THOUGHT EMERGES 3.4.8(1)

McKay recommended retaining the tribal committees as ‘Māori Welfare Committees’, with ‘the same functions and powers as present Tribal Committees.’²⁴⁷ In other words, McKay recommended keeping these committees and saw their change of name as cosmetic. He did, however, suggest abolishing the executive committees’ powers under the 1945 Act to make bylaws and to control Māori fishing reserves.²⁴⁸

In respect of bylaws, McKay stated:

Here we come up against a problem. As far as I know only one Committee (Pangaru) has ever formulated, and had approved, By-Laws for its area. [But] If we omit this section we come up against difficulties because different Sections, especially those dealing with the functions of wardens, make reference to ‘By-Laws’. If not provided in the Bill could a set be devised to be included in the Regulations which shall be By-laws for all the Welfare Committees?²⁴⁹

According to Raeburn Lange, the power to make bylaws had hardly been used by the tribal executives, and thus was dropped without fuss in 1962.²⁵⁰

Thus, Assistant-Secretary McKay suggested retaining the present structure with some new titles:



McKay also suggested that all references to the Controller and welfare officers should be removed from the Act, since ‘the proposed organisation is to be autonomous.’²⁵¹

Hunn accepted all of these recommendations, although he changed the proposed name of ‘Māori Welfare Executives’ to ‘Māori Welfare Group Committees.’²⁵² In Hunn’s view, the name changes were part of modernising the 1945 Act to assist the Government’s overall welfare and integration strategies. The objection to the word ‘tribal’ was explained as practical, not theoretical, and oriented to the needs of urbanised Māori communities. In a paper for the NZMC, Hunn stated:

247. McKay to Hunn, 21 May 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), pp 149–150)
248. McKay to Hunn, 21 May 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 150)
249. McKay to Hunn, 21 May 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 150)
250. Lange, *To Promote Māori Well-Being* (doc B19), p 8
251. E A McKay to Hunn, 21 May 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 149)
252. Hunn, annotations on McKay to Hunn, 21 May 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), pp 149–150)

3.4.8(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

The changes in designation have been made because of views frequently expressed at meetings of various kinds in which it has been stated that the word 'tribal' often causes conflicts between the 'tangata-whenua' and 'new residents' in a community. Too often with the use of this designation people become unduly conscious of their tribal background and parochial attitudes have crept in which in our experience have tended to limit the effectiveness of Committees. There are examples of this situation in certain urban areas.²⁵³

As we shall see, this logic persuaded the council (after intensive debate), because Māori leaders wanted 'to avoid any suggestion that Māoris who had left their tribal districts had no right to join a committee in the area to which they had migrated'.²⁵⁴

In the meantime, while the department was working through the proposed changes to the 1945 legislation, the district Māori councils were in the process of re-establishing themselves formally under the 1961 Amendment Act. The first step was to elect, re-elect, or otherwise confirm that there were functioning tribal committees and executives. This took place in 1961. As noted earlier, the process then required a meeting of representatives from four or more tribal executives, a resolution to form a DMC, a Gazette notice announcing the Minister's approval and the formation of the council, and then an inaugural meeting to elect a chair and secretary. After that, the DMCs could select their representatives for the NZMC. All of the DMCs took advantage of the provision allowing 'up to three' representatives, and selected the maximum number of delegates for the national body. This process was completed by mid-1962, and Secretary Hunn convened the New Zealand Māori Council's first meeting on 28 June 1962.

(2) *The inaugural meeting of the New Zealand Māori Council, June 1962*

At the inaugural meeting of the NZMC, the Secretary for Māori Affairs' statutory responsibility was to convene the meeting and preside over the election of a president and secretary, after which his official role was at an end. Major Vercoe, who had led the council movement during the Dominion conference, the Provisional Council, and the work of the standing committees, had died recently on 23 March 1962. Leadership shifted from Waiariki to Tairāwhiti; Sir Turi Carroll was elected president and H K Ngata became secretary and treasurer. Gisborne was fixed as the seat of the council, and there would be a Gisborne bank account which any three of the Tairāwhiti delegates (the president, the secretary-treasurer, and H T Reedy) could operate. Norman Perry declined to accept the post of secretary, although he did agree (at the council's request) to assist Ngata as an associate secretary.²⁵⁵

After the election of officers, the meeting proceeded to deal with a large amount of business. What concerns us here is the draft Māori Welfare Bill, which had been

253. Hunn, 'Notes on Matters the Secretary of Māori Affairs wishes to place before the Council', no date [June 1962] (first Waitangi Tribunal document bank, vol 12 (doc B26(l)), p 69)

254. 'The Growth of the New Zealand Māori Council: Support Still Needed', *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 2, October 1966 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 287)

255. NZMC, minutes, 28–29 June 1962 (NZMC, minute book, 1962–70 (doc C3), pp 1–2)

MEMBERS OF THE NEW ZEALAND MĀORI COUNCIL, JUNE 1962

Tokerau	Hamiora Maioha, W Weir, J Waetford
Auckland	Matiu Te Hau, P B Taua, P Tapene
Waikato–Maniapoto	B Raukopa, L Rangi, C Davis (apologised, unable to attend)
Waiariki	T Te Kani, W Maxwell, J F Boynton
Tairāwhiti	Sir Turi Carroll (president), H T Reedy, H K Ngata (secretary and treasurer)
Aotea	Pateriki Hura, Pei Te Hurinui Jones (deputy chairman), W Davis
Ikaroa	Rangi Tutaki, P T Watene, J Bennett
Te Waipounamu	M McDonald, W J Karetai, R Whaitiri
Associate Secretary	Norman Perry

Source: ‘Minutes of the Inaugural Meeting of the New Zealand Māori Council Held in the Māori Affairs Committee Room, Parliament Buildings, Wellington on 28th and 29th June, 1962, Commencing at 10am’ (NZMC, minute book, 1962–70 (doc C3, p 1))

drawn up by the Māori Affairs Department and placed before the council, with explanatory notes from Secretary Hunn. The council decided to refer all the Bills before it to the DMCS for consideration, after which it would discuss them at its next meeting. Hunn noted that ‘in light of the urgency he hoped that members would be able to discuss these matters with their District Councils and then meet again before the end of July’. Accordingly, the next meeting was set for 26 July.²⁵⁶

In the meantime, the council made some preliminary observations about the proposed Māori Welfare Bill:

- ▶ the clause about conserving and promoting harmonious relations between Māori and other members of the community, proposed by the Provisional Council and included in the 1961 Act, had been left out of the draft – Hunn agreed to rectify this omission;
- ▶ the reasons for excluding wardens from membership of the tribal committees were not as sound as they seemed at first sight;
- ▶ Welfare Officers could now be elected to committees (they would no longer be ex officio members);
- ▶ the voting requirements for the NZMC should be changed from one vote per district to one vote per member; and
- ▶ tribal committees should be given statutory powers to prevent the desecration of urupā and to permit certain kinds of excavations.²⁵⁷

256. NZMC, minutes, 28–29 June 1962 (NZMC, minute book, 1962–70 (doc C3), pp 6, 8)

257. NZMC, minutes, 28–29 June 1962 (NZMC, minute book, 1962–70 (doc C3), pp 3, 7, 9–10)

3.4.8(3) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

Thus, the Government would have to wait for the DMCS to scrutinise the Māori Welfare Bill and report their views back to the next NZMC meeting in July, before it could proceed with the Bill.

Two additional points should be noted. First, despite whatever arrangement the Labour members believed they had made with Hanan in 1961, the Māori members of Parliament were not invited to attend the council's inaugural meeting. Hunn took the blame for this, telling Tirikātene that the Minister had received no departmental advice on the point because it was the Secretary, not the Minister, who convened the meeting. Hunn did not feel it was his place to invite anyone other than the delegates.²⁵⁸ Secondly, the Māori Welfare Bill was supplied to the NZMC and DMCS on a strictly confidential basis, which meant that its contents could not be disclosed, and no discussions could be held at tribal executive or tribal committee level.²⁵⁹ Both points were to prove crucial in Labour's opposition to the agreed Crown–NZMC position on the Bill when it came before Parliament later in the year.

(3) *The Māori Welfare Bill 1962*

The Bill that was supplied to the NZMC and the DMCS for discussion consisted of 24 clauses, mainly covering the composition, roles, and functions of the committee–council system and the Māori Wardens (see appendix 11).²⁶⁰ It was accompanied by Hunn's explanatory notes, which set out the new features or proposed changes to the 1945 Act. He prefaced his explanation with the following comments:

Many of the provisions of the Māori Social and Economic Advancement Act 1945 have been found, over the years, to be outmoded or unnecessary, and the draft bill makes provision for the functioning of the NZ Council, the District Councils and the Executives and Committees as an autonomous organisation.

In the preparation of the draft, which is here presented [to the NZMC] for critical examination, many ideas and suggestions gleaned from meetings of Tribal Committees, Tribal Executives, the Māori Women's Welfare League organisation, Young Māori Leaders' Conferences and other interested groups have been incorporated. It embodies also certain changes as recommended by Senior officers of the Department of Māori Affairs (Head Office, Management and Field).²⁶¹

According to Hunn, the main changes were:

- ▶ The title of the Act was to be 'shortened' to 'Māori Welfare Act'.
- ▶ Tribal Committees would become Māori Welfare Committees, Tribal Executive Committees would become Māori Welfare Group Committees, District Māori Councils of Tribal Executives would become District Māori Councils, and

258. Hunn to Sir Eruera Tirikātene, 20 July 1962 (first Waitangi Tribunal document bank, vol 10 (doc B26(j)), pp 53–54)

259. A G Hercus, for the Secretary of Māori Affairs, to secretaries of District Māori Councils, 2 July 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 127)

260. Māori Welfare Bill 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), pp 48–61)

261. Hunn, 'Notes on Matters the Secretary for Māori Affairs wishes to place before the Council', no date [June 1962] (first Waitangi Tribunal document bank, vol 12 (doc B26(l)), p 69)

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the New Zealand Māori Council of Tribal Executives would become the New Zealand Māori Council.

- ▶ The NZMC, district councils, and group committees (formerly tribal executives) would be empowered to acquire and hold land.
- ▶ The Act would be administered by the Secretary for Māori Affairs under the general direction and control of the Minister of Māori Affairs.
- ▶ Elections would be triennial at specified months, so that the election of each tier came four weeks before the one immediately above it.
- ▶ The Controller of Māori Welfare and the welfare officers would cease to be statutory appointments (and they would no longer supervise the committees or have ex officio membership of them, although Hunn did not draw specific attention to that point).
- ▶ Annual reports and financial statements would be submitted to the Secretary instead of the Minister as previously.
- ▶ Subsidies would be payable on expenditure upon projects of a capital nature approved by the Minister for that purpose.
- ▶ Provisions would be made for dissolution of a committee which had ceased to function. District councils would take over the assets of defunct committees to meet their liabilities – any residue would be held by the council or, if it decided, paid to the Māori Education Foundation.
- ▶ Māori Wardens would not be eligible for election as a member of a Māori Welfare Committee, they could be assigned for duties in another area, and they would have the power to remove and retain car keys in certain circumstances.
- ▶ Written permits to introduce liquor into a marae could be issued subject to the consent of the marae trustees, and would not be effective until a copy was lodged with the local police.²⁶²

These, then, were the changes to which Hunn drew the councils' attention. He also proposed three matters for them to consider in how they might operate the future Act, revealing how he foresaw the Māori welfare organisation in action:

- ▶ The NZMC could direct the DMCS to reorganise the lowest-level committees and to abolish those that were no longer effective.
- ▶ The councils could try to reduce the Māori youth crime rate by getting the committees to exercise more control over how young people moved to the cities, securing training and employment for them, and assisting them as much as possible. The DMCS could also consider providing voluntary Māori 'social workers' to appear in court and help 'inarticulate' defendants, and also arrange Māori volunteers as prison visitors.
- ▶ More generally, the NZMC should consider making a variety of requests or instructions to the DMCS and committees, with the aim of fostering Māori

262. Hunn, 'Notes on Matters the Secretary for Māori Affairs Wishes to Place before the Council', [June 1962] (first Waitangi Tribunal document bank, vol 12 (doc B26(l)), pp 69–70)

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education, employment, training, and the successful relocation and adjustment of rural Māori families to the cities.²⁶³

The Minister of Māori Affairs, in a later explanation to Parliament, put greater emphasis on the separation of the Māori ‘associations’ from any Government control or interference. This had already been a hallmark of the arrangements for the DMCS and NZMC in 1961. Now, it was to be extended to the renamed tribal committees and tribal executives as well, which had previously been under the superintendence of the Controller of Māori Welfare and structurally linked to the department through the *ex officio* membership of its welfare officers. Hanan told the House:

Now that the organisation is complete with superintending powers in the district councils of the New Zealand Māori Council, which was created in last year’s legislation, the time has come when the welfare officers can be severed from membership of the committees, leaving the committees with a greater responsibility which, with their experience, they can now more readily carry. That does not mean that the welfare officers will drop out of the picture – far from it. On the contrary, they will be obliged to work closely with the committees and to give them any needed guidance and assistance in the developing pattern of Māori welfare.²⁶⁴

(4) *The NZMC debates the Māori Welfare Bill, July 1962*

The DMCS were given three or so weeks to consider four Bills before reporting back to the NZMC at the end of July 1962. In addition to the Māori Welfare Bill, they were also asked for their views on the proposed Māori welfare regulations, the Adoption Amendment Bill, the Māori Purposes Bill, and the Juries Amendment Bill.²⁶⁵ This was not a generous period of time to consider such important legislation, and – as noted above – the councils were not permitted to consult more widely with the tribal executives or tribal committees.

We have little information about these district council meetings. One district officer reported that he had met with the Waikato–Maniapoto council on 15 July at their request, to explain and discuss the draft legislation. For the Māori Welfare Bill, he reported: ‘The revised Act and Regulations met with general acceptance.’ The role of wardens was discussed extensively – the council wanted the wardens’ authority extended throughout the whole of a council district. ‘Cases were quoted in discussion’, he reported, ‘where a warden in certain circumstances outside his area advised that he could not take action because of lack of authority.’ The Waikato–Maniapoto council indicated its ‘general approval of the extension of powers of wardens, particularly the power to retain car keys.’²⁶⁶ We also have a record of the Tokerau council’s minutes for 1962. According to the minute book, however, the

263. Hunn, ‘Notes on Matters the Secretary for Māori Affairs Wishes to Place before the Council’, [June 1962] (first Waitangi Tribunal document bank, vol 12 (doc B26(l)), pp 70–72)

264. NZPD, 1962, vol 333, p 3357

265. A G Hercus, for the Secretary of Māori Affairs, to secretaries of District Māori Councils, 2 July 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 127)

266. District Officer, Waikato–Maniapoto, ‘Proposed Legislation 1962’, 16 July 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 117)

THE CLAIMANTS ACKNOWLEDGE THE WISDOM OF THE ELDERS

In their evidence to the Tribunal, Mr Maanu Paul and Mrs Titewhai Harawira paid tribute to the kaumātua and kuia who worked hard and struggled against political opposition to establish District Māori Councils, the New Zealand Māori Council, and the self-government institutions of the 1962 Act. They acknowledged Te Reiwhati Vercoe of Te Arawa, Sir Turi Carroll of Ngāti Kahungunu, and Sir Graham Latimer of Ngāti Kahu, and the many others who led or developed the council during its early years. Mrs Harawira emphasised that, although the leaders were often farmers and had a special care for issues affecting Māori land, the main kaupapa was to protect the independence of Māori communities and to protect and care for the generation of young Māori people who were moving to the cities. At the time, the kōrero was all about self-government, and Mrs Harawira recalled that 'I thought at the time these men are just running away with themselves as usual'. But by hard work, perseverance, and aroha, the 1962 Act was made to work because it kept the councils separate from government control and allowed the NZMC to 'fight whatever government it is for the rights of all Māori'.

Source: Transcript 4.1.1(a), pp 26–28, 145–147

Māori Welfare Bill was not discussed at the council's 20 July meeting, although there was a discussion of the other three Bills referred to the districts by the NZMC.²⁶⁷

The NZMC reassembled in Wellington on 26 July 1962. At the opening of the meeting, Sir Turi Carroll suggested to the Minister that 'it might be wise to invite the 4 Māori members'.²⁶⁸ Three of them paid a 'visit' to the council later that day for afternoon tea. After a welcome from Sir Turi, Mrs Rātana replied, drawing a link between the original Māori councils of 1900 and the new councils, wishing the NZMC 'every success', and promising to 'support whatever decisions the Council made'. Tiaki Ōmana endorsed Mrs Rātana's remarks, and said that the four members would do 'all they could to assist'. Interestingly, he likened the council to the 'Ombudsman of the Māori Race'.²⁶⁹ (As Minister of Justice, Hanan was in the process of establishing the first ombudsman outside of Scandinavia.)

Sir Eruera Tirikātene addressed the issue of Māori member attendance at the council, stating that 'he had been put out that no invitation had been extended to

267. Taitokerau District Māori Council, minutes, 20 July 1962 (Taitokerau District Māori Council minute book, 1962–1965 (first Waitangi Tribunal document bank, vol 18 (doc B26(r)), pp 36–37). Note that at this time there was debate as to whether the council was properly named 'Tokerau' or 'Taitokerau'.

268. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 17)

269. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 20)

the four Māori members to attend the Council's first meeting'. Sir Turi had later explained to him that there had been 'no desire on the part of the Council to antagonise the four Māori members' – rather, 'the Council wanted their assistance and co-operation'. Sir Eruera advised the council that he had accepted Sir Turi's explanation, and that the council could 'play a very important part in Māori affairs and whatever assistance he and the other Māori members were able to give, he would gladly offer'.²⁷⁰

But the fact was that the members of Parliament were not invited to participate in the business of the council, and the question of how the national Māori body should relate to these representatives of the Māori electorates remained unsettled. It became a major sticking point in winning bipartisan support for the Māori Welfare Bill later in the year.

The council's discussion of the Bill took place on the first day of its two-day meeting. It began with Hunn's verbal explanation of the Bill (which was not recorded). Then, the council debated the proposed name changes. H T Reedy reported that the Tairāwhiti district wanted to keep the terms 'tribal committee' and 'tribal executive', and moved that those names be reinserted in the Bill. This was seconded by R Tutaki of the Ikaroa district.²⁷¹ The details of the debate were not recorded, but we know from a *Te Kaunihera Māori* article of 1966 that council members were anxious to provide committee names which could suit the new circumstances of the cities.²⁷² In the end, Reedy agreed to withdraw his motion in favour of a compromise proposal from P T Watene of Ikaroa: the term 'welfare' should be dropped from the titles, and the term 'Māori' should be used in conjunction with the local name (such as the Pōneke Māori Committee). Tribal committees would become Māori committees, with the local name prefixed, and tribal executives would become 'Māori Executive Committees', again with the local name prefixed. This compromise proposal was seconded by Hamiora Maioha of the Tokerau district and was carried without dissent.²⁷³ Next, the council had a 'lengthy discussion' on the definition of 'marae' as used in the Interpretation section of the Bill. Although the definition had not changed significantly from that used in the 1945 Act, the Ikaroa district objected to the inclusion of a 'church' in the definition, but withdrew the objection on the understanding that it only applied for the purposes of the Bill – presumably, the emphasis was on attracting subsidies.²⁷⁴ (Although the council did not actually vote to change this clause, the Government did take the concern on board and amended the Bill to insert 'meeting places' instead of 'marae' in the Interpretation section.)

270. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 21)

271. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 20)

272. 'The Growth of the New Zealand Māori Council: Support Still Needed', *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 2, October 1966 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 287)

273. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 20)

274. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 20)

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Following afternoon tea with the Māori members of Parliament (who were excluded from business), the council resumed its debate on the Bill. Most of the suggested changes related to machinery matters:

- ▶ The Bill fixed membership of Māori committees at a minimum of five and a maximum of 11 – the council preferred a minimum of seven and no maximum at all.
- ▶ The Bill prescribed that each Māori Welfare Group Committee [Māori Executive Committee] should have two representatives on the DMC, unless there were ten or more executives in a district (when only one representative would be permitted) – the council preferred three representatives in districts with fewer than five executives, and two representatives for districts with five or more executives. (These two changes would ensure significantly larger committees at the lower levels.)
- ▶ In response to a request of R Whaitiri of Te Waipounamu, the council agreed that Māori committees should be able to charge membership fees.
- ▶ The council preferred that the assets of a dissolved tribal committee should vest in an executive, and so on up the chain, without the option of transferring assets to the Māori Education Fund.
- ▶ The council decided that wardens should be eligible to sit on Māori committees, but should not act as a committee member on matters where there might be a conflict (such as fixing remuneration for wardens).²⁷⁵

In addition, two matters in relation to alcohol were the subject of debate. The council resolved that the refusal to allow alcohol at tangi should be deleted, and it also held a ‘lengthy discussion’ as to whether or not wardens should have the power to retain car keys and prevent Māori from driving. In the end, the council had to take a vote – this was the only matter on which unanimity could not be achieved. The majority voted in favour of keeping the wardens’ powers as proposed in the Bill, with the members of the Auckland delegation, R Tuataki (of Ikaroa), and R Whaitiri (of Te Waipounamu) voting against.²⁷⁶

The most important change requested by the council, apart from the renaming of the committees, concerned the statutory functions and roles of the NZMC. In consolidating and pruning the 1945 Act and its amendments, the department had used the the original 1945 prescription for the purposes and functions of tribal committees and executives, and transposed it into the Bill as a single clause covering the councils as well as the committees. Thus, clause 8 of the Bill provided that:

the general functions of the New Zealand Māori Council, the District Māori Councils, the Māori Welfare Group Committees and the Māori Welfare Committees, shall be—

- (a) To prompt, encourage, guide and assist members of the Māori race—
 - (i) To conserve, improve, advance and maintain their physical, economic, industrial, educational, social, moral and spiritual well-being;

275. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 21)

276. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 22)

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- (ii) To assume and maintain self-reliance, thrift, pride of race and such conduct as will be conducive to their general health and economic well-being;
 - (iii) To accept, enjoy and maintain the full rights, privileges and responsibilities of New Zealand citizenship;
 - (iv) To apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and
 - (v) To preserve, revive and maintain the teaching of Māori arts, crafts, language, genealogy and history in order to perpetuate Māori culture:
- (b) To collaborate with and assist State Departments and other organizations and agencies in—
- (i) The placement of Māoris in industry and other forms of employment;
 - (ii) The education, vocational guidance and training of Māoris;
 - (iii) The provision of housing and the improvement of the living conditions of Māoris;
 - (iv) The promotion and improvement of health and sanitation amongst the Māori people;
 - (v) To foster respect for the law and law-observance amongst the Māori people;
 - (vi) The prevention of excessive drinking and other undesirable forms of conduct amongst the Māori people; and
 - (vii) The assistance of individual members of the Māori race in the solution of any difficulties or personal problems.²⁷⁷

In bringing these provisions across from the 1945 Act, which were originally intended just for the tribal committees and executives, and applying them at all levels of the committee-council structure, officials appear to have ignored the special functions and purposes of the NZMC as discussed and agreed with the Provisional Council in 1961. While the NZMC did not disagree with the 1945 roles (especially, we suspect, the ‘self-government’ provision), it did want the special and particular roles of the NZMC brought back into the legislation. The council, therefore, resolved that section 13F, as inserted in 1961, should be carried over in the new Bill.²⁷⁸ Section 13F, it will be recalled, provided that:

(1) The functions of the New Zealand Council shall be to advise and consult with District Councils, Tribal Executives, and Tribal Committees on such matters as may be referred to it by any of those bodies or as may seem to it necessary for the purpose of the social and economic advancement of the Māori race. In the exercise of its functions the New Zealand Council may make such representations to the Minister or any other person or authority as seem to it advantageous to the Māori race.

(2) Without limiting the generality of the provisions of subsection (1) of this section, it is hereby declared that it shall be a function of the New Zealand Council to consider and, as far as possible, put into effect any measures that will conserve and

²⁷⁷. Māori Welfare Bill 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), pp 52–53)

²⁷⁸. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc C3), p 21)

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promote harmonious and friendly relations between members of the Māori race and other members of the community.

In addition to this change, Hunn advised that one of the issues raised at the council's June meeting – an important change to the council's procedure, from one vote per district to one vote per member – would be inserted in the Bill and made retrospective.²⁷⁹

Finally, we note that Hunn made a statement at the end of the council's discussion of the Bill, saying that 'the provisions regarding the appointment of Māori Welfare Officers and Honorary Welfare Officers would be included in the Welfare Bill'.²⁸⁰ It is not clear from the minutes whether this change was requested by the council, or whether Hunn was simply volunteering the information. No dissent was expressed in respect of it, so we assume that the council supported the change.²⁸¹ Correspondence later in the year between Hunn and the council's new secretary, John Booth, reinforces our interpretation. Aroha Harris commented that welfare officers were the preferred and welcome face of the department in local communities:

The council worried in particular that its 'autonomous constitution' might disturb the 'close co-operation' it was used to enjoying with the Welfare Division. John Booth, the associate secretary of the council, sought an assurance from Hunn that working with the council and committees would remain 'one of the essential functions of the Welfare division'. He contended that 'the official and the voluntary aspects of Māori welfare are necessarily inter-dependent and that this close contact must be maintained'. Hunn replied that the council could expect the continued cooperation of the Māori welfare officers. He added the rider, however, that the relationship must necessarily change. The 1962 act excluded the welfare officers and 'other extraneous interests' from membership of the committees, but it was a move that ought to be seen [Hunn said] as 'a step away from paternalism'. The committees had been active since 1945 and they now had the organisational framework to handle welfare work on their own. The Welfare Division could still provide 'assistance and advice' [to the committees] but – reiterating what he said in his report – Hunn commented that the welfare officers ought to dedicate more time to case work and thus achieve 'real progress in Māori welfare'.²⁸²

Broadly speaking, the NZMC was in full support of the 1962 Bill so long as its requested changes were made and the negotiated text of the 1961 Amendment Act was written back into it.

279. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc c3), p 18)

280. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc c3), p 22)

281. NZMC, minutes, 26 July 1962 (NZMC, minute book, 1962–70 (doc c3), p 22)

282. Harris, 'Dancing with the State' (doc B23), p 161; see also 'Welfare Officers to work closely with Committees and Councils', *NZMC Newsletter*, vol 1, no 7 (March 1964) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 59)

(5) The nature or extent of 'self-government' proposed in 1962

Historians have tended to emphasise what they see as the assimilative purpose of the 1962 legislation, and the limited or topic-specific nature of the self-government that it proposed to provide.²⁸³ The Department of Māori Affairs described this limiting of the council system to certain matters (particularly social, cultural, and economic) as 'a form of local government for the Māori people *on matters of particular Māori interest*' (emphasis added).²⁸⁴

As noted above, one of the features of the 1962 reform was the Government's and the NZMC's agreement that the structure of Māori committees and councils should become completely independent of the Government. Although the system would now be autonomous, commentators have suggested that only 'limited' self-government was really on offer.²⁸⁵ Māori leaders of the time were aware of this point, and 'wished to take what they could get and to seek incremental changes thereafter'.²⁸⁶ Sir Edward Taihakurei Durie, who was a law student at the time, told us that the self-government negotiated in this reform of the 1945 Act was seen by his fellow students as *too* limited: 'It was a great deal less than that which the Kīngitanga had foreseen as the vehicle for self-determination.' He recalled that there had been a 'reply to students who said that the government had conferred only limited powers on the committees, that if one could not conduct a full frontal attack on a pa, it was acceptable to sap up to it in stages'.²⁸⁷ In other words, what had been negotiated so far with the Crown was as much as could be achieved in the circumstances of the time.

Māori leaders, however, were comfortable at the committees' lack of statutory powers over their own people, as they preferred to work by persuasion rather than compulsion in any case.²⁸⁸ There were some local powers – particularly for wardens and for the committees in respect of fining low-level offenders – but on the whole the system was oriented towards matters collected under the generic term of 'Māori welfare'.

At the central level, Māori leaders wanted to keep the system which they had just negotiated and agreed with the Crown in 1961, by which Māoridom would be consulted on policy and legislation, as we have discussed above. Also, as Sir Edward put it, 'local concerns [would] be fed up to the national level for the Executive to discuss and develop possible solutions'.²⁸⁹ The leaders were successful in getting the 1961 provisions written back into the Bill. The extent to which the NZMC was able to take advantage of these opportunities in the coming years will be discussed in chapter 4, where we consider how and with what success it represented the lower

283. Hill, *Māori and the State*, pp 107–123; Harris, 'Dancing with the State' (doc B23), chs 5–6

284. Department of Māori Affairs, *The Māori Today*, 3rd ed (1964) (quoted in Hill, *Māori and the State*, p 115)

285. See, for example, Marian Mare and Aloma Palmer, 'Comments on the Review of the Māori Community Development Act 1962' (commissioned research report, Wellington: Te Kauhiera Māori o Aotearoa – The New Zealand Māori Council, 2013) (doc A9), p 36.

286. Sir Edward Taihakurei Durie, brief of evidence, 21 February 2014 (doc B9), pp 11–12

287. Sir Edward Taihakurei Durie, brief of evidence (doc B9), pp 11–12

288. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 12

289. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 6

committees, and (in its turn) made representations to Government on matters of great concern to all Māori. It was feared at the time that the Māori nation ‘might represent its views to the Government and yet have in fact no power.’²⁹⁰ Yet what Sullivan and Hunn had anticipated in 1959–1960 – and had feared, in Sullivan’s case – was that a national Māori body would become a powerful pressure group, capable of adopting an opposing policy agenda to that of the Crown’s and advocating successfully for it.

Apart from this aspect of the council system (that is, getting matters raised and resolved between the Crown and Māori at the national level), the 1962 Bill was oriented towards providing official Māori bodies that could work with the Māori Affairs Department and other departments to advance the social and economic welfare of the people. The same official Māori bodies could also lead and direct community development (cultural as well as socio-economic). As with the system inherited from 1945, it was not intended to provide for them to exercise local government powers per se. But this did not mean it had nothing to offer at the local level.

According to Dr Richard Hill, many Māori believed that the system proposed in 1962 ‘could further, or even embody, a community’s wishes *to assert and control that which was important to its members*’ (emphasis added).²⁹¹ In other words, those ‘welfare’ matters covered in the legislation that were important to Māori could be brought under Māori control. Much would depend on the degree to which Māori communities got behind their committees and chose to use them for that purpose. Hill cited Dr Ranginui Walker, writing in 1975, that the system had the potential to empower Māori communities: ‘real power lay with the people who were prepared to support it, participate in its affairs and accept its authority and leadership’.²⁹²

Some commentators have seen the ‘welfare’ orientation of the 1962 Bill as part of the Government’s overall policy agenda, which was integration (verging on assimilation), and have interpreted the Bill as an instrument of that agenda.²⁹³ Dr Aroha Harris described integration as an ‘undercurrent’, always present beneath the surface of government policy at that time.²⁹⁴ It was certainly the case that the Crown had this agenda and pursued it actively throughout the 1960s.²⁹⁵ As we shall see in chapter 4, this resulted in a crucial showdown between Crown and Council in 1967 over Māori land legislation. But the claimants rejected the idea that the 1962 system itself, negotiated as it was between two parties, was assimilationist. Sir Edward told us:

290. James E Ritchie, ‘The Grass Roots of Māori Politics’, in JGA Pocock (ed), *The Maori in New Zealand Politics* (Auckland and Hamilton: 1965) (quoted in Hill, *Māori and the State*, p113)

291. Hill, *Māori and the State*, p139

292. Ranginui Walker, ‘The Politics of Voluntary Association: A Māori Welfare Committee in a City Suburb’, in Hugh Kawharu (ed), *Conflict and Compromise: Essays on the Māori Since Colonisation*, 2nd ed (Auckland: Reed, 2003), p180 (1st ed 1975) (quoted in Hill, *Māori and the State*, pp139–140)

293. Harris, ‘Dancing with the State’ (doc B23), p141

294. Harris, ‘Dancing with the State’ (doc B23), p156

295. Hill, *Māori and the State*, pp107–143; Harris, ‘Dancing with the State’ (doc B23), ch 6

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The lack of historical appreciation [on the part of the Crown today] seemed evident to me in the advice of Te Puni Kōkiri to the Māori Affairs Select Committee, repeated during the subsequent consultations, that the 1962 Act represented the assimilation policies of the 1960 Hunn Report. I was a fourth year law student in Wellington in 1962 when the 1962 Act was passed. I maintained an interest in the Council, my marae being a strong supporter of it and my grandfather being the chair of the Raukawa Tribal Executive. I did some voluntary work for the Council Secretary John Booth and met, if only briefly, with most of the district representatives on the national body, including the informal national body which existed before 1962. Some had been directly involved in the major cases on Māori rights at that time, on the Ninety Mile Beach, Whanganui River and Aotea District Māori Land Board. They had a particular interest in the reform of Māori Land Law, the Rating Act and the Town and Country Planning Act and there were concerns about the planning laws which were breaking down the papakainga in rural areas. Although Mr Hunn attended some of the New Zealand Māori Council meetings and was accorded utmost respect for the funding of trade training and education schemes, I do not recall hearing of anyone who supported the overall thrust of the Hunn Report and doubt that any would have considered that the 1962 Act reflected assimilationist policies.²⁹⁶

In particular, historians have pointed to the proposed change of name in the 1962 Bill from ‘tribal committees’ and ‘tribal executives’ to ‘Māori’ committees as exemplifying what the Government wanted to achieve in respect of detribalised ‘integration.’²⁹⁷ As we discussed above, the NZMC had its own reasons for agreeing to this change. The point here is that the content of the Bill must be reviewed from the perspectives of both sides to the negotiations, not only the Crown’s. Sir Edward Taihakurei Durie and Mrs Titewhai Harawira recalled the perspective of the Māori leaders of the time.²⁹⁸ They wanted those Māori who were migrating to the cities to be enabled to keep their turangawaewae (defined as their interests in Māori land at home) while forging new Māori communities outside their tribal rohe:

I especially recall the deep affront that one passage in the Hunn report gave to Council members. It was said with reference to multiply owned Māori land that ‘everybody’s land is nobody’s land’. In the reckoning of members, the land that counted the most was the land that belonged to the people, with no-one excluded.

Without exception the Council members were tribal persons but in 1962, people were conscious of the need to manage the rapidly changing Māori demography, and to maintain Māori identity in new environs. To that end there was a willingness to embrace pan tribal developments, like the developing concept of pan tribal marae. I had the impression that our elders were not fundamentalists about customary structures but were pragmatic.²⁹⁹

296. Sir Edward Taihakurei Durie, brief of evidence (doc B9), pp10–11

297. Hill, *Māori and the State*, pp111–112; Harris, ‘Dancing with the State’ (doc B23), p156

298. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p11; Transcript 4.1.1(a), p145

299. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p11

The 1962 Bill, therefore, was intended by each side to meet its own aspirations. The Crown wanted ‘integration’ and a sounding-board for its Māori policies and legislation at the national level. Māori wanted to maintain their culture and to control their own affairs – in particular, to care for the migrants and to establish distinctively Māori communities in the rapidly growing cities.

So, was the nature and extent of self-government negotiated in 1962 too limited? And would it prove to be an instrument of Māori welfare via ‘integration’, as the Crown hoped, or of Māori autonomy and development, as Māori leaders hoped? The proof of all these matters would lie in how the Bill worked in practice, whether the NZMC would be an effective pressure group (with which the Crown would work in partnership), and whether Māori communities would continue to see the councils as representing them for the important matters covered in the legislation. We shall explore these issues further in chapters 4 and 5. Here, we note that the 1962 Bill was not explicitly assimilationist and it had the potential to provide for Māori to influence, even transform, legislation and policy at the national level, and to exercise some authority over the social, economic, and cultural matters covered in its provisions.

(6) *The Māori Welfare Bill is substantially revised and introduced into Parliament, August–December 1962*

Almost all of the changes requested by the NZMC in July 1962 were made in the following months, during the course of which the Bill expanded from 24 to 44 clauses (for the original Bill, as seen by the NZMC, see appendix 11). Many of the original clauses were broken up, moved around, or completely rewritten. This partly involved changes that had been discussed and agreed with the council, such as the reinsertion of welfare officers and of text about the NZMC from the 1961 Amendment Act. But there were some changes which brought in new material that had not been seen or reviewed by the DMCS or the NZMC. Some of this new material was in fact old provisions from the 1945 Act which had been left out of the Bill (whether by accident or design is not clear). Others involved changes consequential on those requested by the council, such as the introduction of the term ‘Māori associations’ to describe the committee system now that ‘welfare’ had been taken out of the titles. A few changes were very significant, including an expansion of the role and powers of Māori wardens from what had been set out in the original 1962 Bill.

We need to note one change in particular. Section 3 of the Māori Social and Economic Advancement Act 1945 had read: ‘This Act shall be administered by the Native Minister, and the powers conferred by this Act shall be exercised under the general control and direction of the Minister.’³⁰⁰ In the new Bill as reviewed by the council, this was to be replaced by clause 3, which stated: ‘The Secretary for Māori Affairs, acting under the general direction and control of the Minister, shall be charged with the administration of this Act.’³⁰¹ This was a very important change, and one to which Hunn had drawn the council’s attention in his explanatory

300. Māori Social and Economic Advancement Act 1945, s3

301. Māori Welfare Bill 1962, cl 3 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 49)

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notes.³⁰² It was no longer proposed to say that the powers conferred by the Act were to be exercised under the general control and direction of the Minister. This version was approved by the NZMC in July 1962. At some point in the revision of the Bill, however, this new clause 3 was replaced by the old section 3 of the 1945 Act, to once again state: ‘This Act shall be administered by the Minister of Māori Affairs, and the powers conferred by this Act shall be under the general direction and control of the Minister.’³⁰³

It is difficult to account for why this section was reinserted into the 1962 Act. As we have seen, Hanan stressed the degree of independence now granted to all four tiers of the council structure. And with the removal of the Controller’s superintendence and the departmental members of the committees, few specific opportunities in fact remained for the Minister to exercise ‘direction and control’. Throughout the Act, ministerial powers of monitoring or approval had mostly been removed. There were few mechanisms, therefore, by which section 3 could be implemented. But we note this change because the Crown has put some emphasis on this ministerial role in its closing submissions.³⁰⁴

When it introduced the Māori Welfare Bill to Parliament on 16 November 1962, the Government clearly considered that it had the NZMC’s approval to proceed with the legislation, in spite of its subsequent revisions. The Minister, in introducing the Bill, stated:

It was known last year that the need to revise the law in this field existed, but the time was not then opportune. It was planned that a new measure, or a rewriting of the law, should go before the [New Zealand Māori] council, so it was necessary to call that body into existence before the proposed consolidation of the law could take place . . . and that point has now been reached because the council has been able to meet and deliberate on the proposals in this Bill.³⁰⁵

Hanan reported the outcome, as the Government saw it: ‘The Bill has the blessing of the New Zealand Māori Council of Tribal Executives, and on that footing I hope that the House will have little difficulty in dealing with its contents.’³⁰⁶

But Hanan was to be disappointed in that hope; his overhaul of the 1945 Act did not receive the friendly reception accorded his Amendment Bill the year before. Labour did not contest the Minister’s statement that the NZMC had given its blessing. Rather, the Opposition challenged the representativeness of the council and the degree of consultation with Māori that had actually taken place. As we noted earlier, the Government was vulnerable to criticism on both points because (a) the parliamentary representatives of the Māori people had been excluded from the council’s deliberations (contrary to what had been understood in 1961), and (b) the

302. Hunn, ‘Notes on Matters the Secretary wishes to place before the Council’, no date [June 1962] (first Waitangi Tribunal document bank, vol 12 (doc B26(l)), p 69)

303. Māori Welfare Act 1962, s 3

304. Crown counsel, closing submissions (paper 3.3.1), p 7

305. NZPD, 1962, vol 332, p 2693 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 125)

306. NZPD, 1962, vol 332, p 2693 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 125)

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councils had not been allowed to share the Bill or discuss its contents with their constituencies, the tribal executives, or at the flax-roots level (at the tribal committees or on the marae).

Nash challenged the Minister immediately as to whether or not the Māori members of Parliament, who had been elected by the majority of the Māori people, should become members of the council or act with it in some official way. Hanan responded that he was willing to consider this idea in committee, but reiterated: 'I can emphasise only that this Bill has the blessing of the New Zealand Māori Council, which is the democratic organisation of the Māori people.' Nash riposted: 'Ought not members of Parliament to be members of the Māori council?' Hanan countered by saying that there were many arguments against such a proposition. The Māori members had to support a particular party and (as parliamentarians) act in the interests of the whole community, whereas the grass-roots structure which produced the NZMC was devoted to the interests and needs of the Māori people.³⁰⁷ And thus the battle lines were drawn.

As will be recalled, the relationship between the indirectly elected councils and the directly elected members of Parliament had been a vexed one since the late 1950s, as theories of democracy and Māori representation were debated. This was a major constitutional question for the council as a statutory body. If it had been established as a voluntary society, which seemed likely for a time in the late 1950s, the Māori members of Parliament would have had no space to query its legitimacy to speak for its voluntary constituencies. But as a statutory body, with the statutory duty to make representations to the Government on behalf of all Māori, the question of how such a body related to the sphere of the Māori members of Parliament remained a valid issue. Tirikātene and his colleagues had supported the council initiative and the Bill establishing it in 1961, partly on the understanding that they would be associated with the council and (as we take it from what was said in the House at that time) would participate in its deliberations. They now turned against the council in the 1962 debate on the Welfare Bill, questioning its representativeness and arguing that the committees should be elected by postal ballot, as were trust boards and some other Māori organisations. Tirikātene argued:

If the New Zealand council is to be regarded by the National Government as the voice of the Māori people, over and above the elected Māori parliamentary representatives, its members must be democratically elected.³⁰⁸

Tirikātene also criticised the council's failure to consult the flax-roots organisations about the Māori Welfare Bill. As chair of a tribal committee, he pointed out that he and his committee knew nothing of the Bill until it was introduced in Parliament, and had no say in the deliberations that had led to the NZMC's

307. NZPD, 1962, vol 332, pp 2693–2694 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 125–126)

308. NZPD, 1962, vol 332, p 2694 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 126)

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endorsement of the Bill. He had checked with other tribal committees and discovered the same result.³⁰⁹

Mrs Rātana supported Tirikātene, arguing that more time was needed for the council to be fully understood (and legitimate) in the eyes of at least some Māori communities, and that it should be an organisation confined to welfare work, not political questions. The Leader of the Opposition also supported him, suggesting that the only truly democratic action would be to add the Māori members of Parliament to the council.³¹⁰

The Government's response was to emphasise that Labour – and Tirikātene himself – had designed the form of democracy embodied by the committees and their manner of election, and that it was not always possible to refer measures back to the people in a democracy. 'There must be the right of action at the top', said Prime Minister Holyoake:

there must be confidence in the men on the council. To take a parallel, we in Parliament would never decide any matter if we first had to refer it to our committees and our electorates. That would be the negation of democracy.³¹¹

Tirikātene then distinguished his position from that of Nash, arguing that he was not seeking for the Māori members of Parliament to become council members (as the Leader of the Opposition was), but a different kind of election process:

When matters were considered by tribal committees and tribal executives without having to go to district and New Zealand councils we were down to earth; we were functioning among the Māori communities. There a man could be elected, as has always been the case, by a whole meeting of the people. That is how representatives were elected at Kaikoura, Canvastown, and Picton. But now the hierarchy has become larger, it has grown to include the district councils and now the New Zealand council. The time has thus come when it should follow the same process as other responsible bodies said to represent their members through the democratic election of representatives. . . . Now we have left the grassroots and risen to the district and New Zealand level it is time to consider elections similar to all other elections. . . . I am not against the New Zealand council nor against the district councils. I supported the formation of the tribal committees and the tribal executive, but I believe the time has come when tribal committee members should be elected by secret postal vote of all eligible to participate, if its hierarchy is to be granted as much power as the Minister is giving it.³¹²

We have quoted this at length because, from the evidence available to us, this was the first time that a major criticism had been levelled in Parliament at the foundations of the 1961 council structure. The 1961 Amendment Act, as discussed

309. NZPD, 1962, vol 332, pp 2694–2695 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 126)

310. NZPD, 1962, vol 332, pp 2692–2697, 2700–2701 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 127, 129)

311. NZPD, 1962, vol 332, p 2700 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 129)

312. NZPD, 1962, vol 332, pp 2702–2703 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 130)

above, had passed with the support of both sides of the House. And, as we have also mentioned, the question here revolved around the nature of Māori democracy – Nash argued for adding the Māori members to the council (which could be seen as politically self-serving), but Tirikātene questioned whether the time had come to change the flax-root committees from marae and hui-based selections of members to postal ballots. This, he argued, would make the system more truly democratic. Prime Minister Holyoake raised the spectre in reply of having to strictly define the membership of all Māori communities so as to create registers and hold postal ballots.³¹³ The Government later accepted that Tirikātene might have a valid point but decided that ‘the suggestion should come from the Māori people’, and should be explored directly with them. ‘I agree that more and more we should expect our Māori people to come to a greater appreciation of democracy as we understand it’, explained Hanan, ‘but on the other hand we must be careful not to cut too sharply across Māori tradition and Māori custom.’³¹⁴ In other words, it was for Māori to decide and to raise the matter with the Government if they so chose.

As far as we are aware, this sudden emergence of criticism in 1962 ran counter to the thinking that had come before it in the period from 1952 to 1961, when the flax-roots nature of Māori democracy (selecting committee members at hui) had been accepted unchallenged by all sides as the basis for creating a representative structure all the way up to the national level. The question at that time had been whether such a structure should consist of voluntary associations or should wield statutory authority. And, as Aroha Harris explained, even when the name was changed from ‘tribal committee’ to ‘Māori committee’ in 1962, the committees – and this level of the structure – continued to be marae-based, with some exceptions in the cities.³¹⁵ As will be seen below, Tirikātene’s call for postal ballots to elect these committees was repeated in later years, and seems to have arisen from the shock the Labour members felt in 1962 when the NZMC suddenly endorsed a far-reaching government measure, without input from either the Māori members of Parliament or the tribal committees. How could that have happened? And did it mean that the National Government could now rely on ‘Māori opinion’ in the policy sphere to trump the Labour members?

We have no information as to the Māori Affairs Select Committee’s inquiry into the 1962 Bill, but it appears from Hanan’s subsequent speech to the House that three controversial points were discussed by the committee:

- ▶ The first was the question of whether elections to Māori committees, District Māori Councils, or the NZMC should be by postal ballot. As noted, the Government was ‘unwilling to express an opinion on that’ because such an initiative should ‘come from the Māori people’.
- ▶ The second point was the deletion of certain 1945 provisions from the new Act: (a) local government powers for tribal executives to undertake water and sanitation schemes, (b) power for the Governor-General to reserve Māori

313. NZPD, 1962, vol 332, p 2704 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 131)

314. NZPD, 1962, vol 333, p 3357

315. Harris, ‘Dancing with the State’ (doc B23), p 154

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fishing grounds (to be controlled by tribal committees or executives), and (c) restrictions on manufacturing liquor in Māori communities. In all cases, the Government considered that these matters no longer required distinct provisions for Māori. (We note that the abolition of these 1945 provisions had not been drawn to the attention of the NZMC in Hunn's briefing.)

- ▶ The third point was the repeal of the Tohunga Suppression Act (which was included in the schedule of repealed Acts).³¹⁶

Noting these points of controversy, Hanan reiterated that the Bill had 'been before the New Zealand Māori Council' as well as the select committee, and that now – he believed – the Māori members of Parliament were 'substantially in agreement with it'.³¹⁷ While Tirikātene's reply certainly cast doubt on that suggestion, since he argued (among other things) that District Māori Councils and the NZMC were entirely unnecessary, the committal of the Bill took place rapidly under urgency.³¹⁸ The Māori Welfare Act³¹⁹ received its third reading on 14 December 1962 and came into force on 1 January 1963. The full text of the Act as passed in 1962 is located at the end of this report in appendix III.

Is it correct to say, as the claimants have done, that this 1962 Act constituted an agreement between the Crown and the New Zealand Māori Council (and one that had been some years in the making)?

We have no hesitation in saying that the creation of the District Māori Councils and the NZMC in 1961 represented a negotiated agreement between Māori and the Crown. This agreement was developed between 1959 (when the Dominion conference put forward its draft constitution) and 1961 (when the Provisional Māori Council compared that constitution to the Government's draft Bill and signed off on it, with amendments, and the New Zealand Parliament enacted the agreed Bill with the support of both sides of the House). But the process in 1962 was less straightforward. Many important additions or alterations were made to the Māori Welfare Bill after it had received the 'blessing' of the NZMC in July of that year.

To answer the question properly, we need to consider the NZMC's response to the Māori Welfare Act in 1963, after the full extent of the changes and omissions was discovered. We turn to that next.

(7) *The NZMC's response to the Māori Welfare Act, 1963*

In October 1963, the Council reported in its newsletter:

A draft of the [1962] Welfare Act had been shown to this Council at its second meeting in Wellington in July of last year. After proposing several amendments the draft was approved by the Council, but later it was found that the Act, as passed, had

316. NZPD, 1962, vol 333, pp 3357–3359

317. NZPD, 1962, vol 333, p 3359

318. NZPD, 1962, vol 333, pp 3347, 3359–3361

319. In this chapter of our report, which deals with the historical evolution of the statute, we use the term 'Māori Welfare Act' in preference to the name 'Māori Community Development Act', which was introduced in 1979. In other chapters, we use the name 'Māori Community Development Act' retrospectively, as is the normal legal convention.

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been changed in some important respects from what the Council had accepted in the draft. . . .

When the changes that had been made were pointed out to Mr Hanan, Minister of Māori Affairs, he offered to introduce an Amendment Act in line with the Council's wishes. This has been done, except in the Section dealing with subsidies, where there will need to be further discussion.³²⁰

In early 1963, the NZMC held a preliminary meeting at Waitangi on Waitangi Day, taking advantage of the presence of a large number of councillors. It was already clear by then that significant changes had been made to the Māori Welfare Bill in 1962 after the council had approved it.³²¹ Discussion of those changes was put on the agenda for the first full meeting of the council (scheduled for March), and a data paper was prepared to inform that discussion.³²²

The council's first full meeting for 1963 was held at Ngāruawāhia on 16 and 17 March, in response to an invitation from King Korokī (see box for the full text of the King's earlier message to the council).³²³ When the Māori Welfare Bill had been discussed in 1962, the council, it noted, had examined the Bill clause by clause 'and had the statement from the Minister that he accepted the Council recommendations'. But it was 'not correct for the Minister to say, when speaking in the debate, that the Bill had the blessing of the NZ Council when in fact alterations had been made with which the Council did not agree'. The council reaffirmed its previous decisions and recommendations about the contents of the Act. It also decided that arrangements would need to be made from then on, to ensure that the NZMC was advised 'at the right time to enable representatives to appear at the Committee stages'. In other words, the NZMC now realised that it would need to monitor the parliamentary process and ensure that it could contribute to select committees and keep an eye on changes to previously agreed Bills. In the short term, a committee consisting of T P Watene, P Hura, and associate secretary J M Booth was appointed to 'go into the details of the Act and prepare the necessary amendment proposals to present to the Minister'.³²⁴

The council met again in Wellington in July. By that time, the council's Māori Welfare Act committee had completed its work and the Minister had agreed to all but one of its recommendations.³²⁵ The approved amendments were:

- ▶ Māori wardens 'will again be placed under the control and authority of Māori Committees'.³²⁶ This restored a draft provision which had been included in the Bill as approved by the council in July 1962 and then deleted before the Bill's introduction into Parliament.

320. *NZMC Newsletter*, vol 1, no 2 (October 1963) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 22)

321. NZMC, minutes, 6 February 1963 (NZMC, minute book, 1962-70 (doc C3), p 33)

322. NZMC, agenda for 16-17 March 1963 meeting (NZMC, minute book, 1962-70 (doc C3), p 34)

323. NZMC, minutes, 27 July 1962 (NZMC, minute book, 1962-70 (doc C3), p 29)

324. NZMC, minutes, 16-17 March 1963 (NZMC, minute book, 1962-70 (doc C3), p 38)

325. NZMC, minutes, 5-7 July 1963 (NZMC, minute book, 1962-70 (doc C3), p 45)

326. NZMC, minutes, 5-7 July 1963 (NZMC, minute book, 1962-70 (doc C3), p 45)

**KING KOROKĪ'S MESSAGE TO THE INAUGURAL MEETING OF THE NZMC,
28 JUNE 1962**

'During the meeting a message as follows was received from Ngāruawāhia:

'Kanui te koa te hari o tōku ngākau kua rongō ake nei kua tinana te take i wawatatia nei e te iwi mai ano o ngā rā ki muri ā tae noa mai ki tēnei rā. Tēnei taku mihi kia koutou kua tohungia nei to tātou pāpā ā Tā Turi Kara hei tumuaki mo te Kaunihera o Niu Tīreni.

'Tēnā koutou kei te aroha atu kia koutou e hāpai nei i ngā pīkaunga me ngā taumahatanga o te iwi.

'Kia rite te hoe i tēnā o tātou waka.

'Ma te Atua koutou e manāki e arataki i roto i ngā rā e tū mai nei.

'Kei te tuwhera ngā tūpuna whare a Mahinārangi rāua ko Tūrongo ki te Kaunihera.

'Korokī.'

(I am very happy indeed to hear that the dream of the people from much earlier times, carried forward to our time, has been realised. I greet you all on the occasion of the appointment of our uncle Sir Turi Carroll as the inaugural Chair of the New Zealand Māori Council.

I salute you all, who carry on your shoulders the tasks and difficulties of our people.

Make sure to paddle that canoe of ours in unison.

May God bless you and guide you in days to come.

I wish to advise that the ancestral houses Mahinārangi and Tūrongo here are both awaiting their use by the Council for hui.

Korokī.)

Source: NZMC, minutes, 28 June 1962 (NZMC, minute book, 1962–70 (doc C3), p 10

- ▶ The 1962 Act had set the number of members for Māori Committees at seven. The council's feedback in 1962 had been that seven should be a *minimum*, with no upper limit. 'This was done', the council noted, 'because most Committees try to give representation to each important group in their community, and this would require a membership of more than seven in many cases.'³²⁷ The Minister agreed to an amendment that would restore seven as a minimum,

³²⁷ NZMC Newsletter, vol 1, no 2 (October 1963) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 22)

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with the requirement that the District Māori Council had to approve increases above that number.³²⁸

- ▶ Where there were fewer than five executives in a district, each executive would now be able to appoint three members to the District Māori Council.³²⁹ Again, this change had been stipulated by the council in 1962 but had not made it into the Bill. This provision had been intended to cover the circumstances of the Tairāwhiti district, which only had four executive committees at the time.³³⁰
- ▶ ‘The NZ Māori Council is to be given power to dismiss members of Māori Associations for proved misconduct or neglect of duties.’³³¹ Section 22(a) of the 1962 Act had given the Minister power to remove a member of any Māori association for disability, bankruptcy, neglect of duty, or misconduct ‘proved to the satisfaction of the Minister.’³³² This provision had not been in the Bill when the NZMC reviewed it in July 1962. The agreed amendment in 1963 transferred this power from the Minister to the relevant committee or council, with a right of appeal to the NZMC.³³³ Hanan explained in Parliament: ‘As the control and discipline of members of Māori associations is a domestic [ie internal] matter I think it is incontestable that the more independence we can give these Māori organisations the better.’³³⁴
- ▶ The Minister’s precedent (prior) consent for Māori associations to ‘deal in land will no longer be required’, including for mortgages.³³⁵ Hanan emphasised the importance of this change as further enhancing Māori autonomy and self-government, balancing that enhancement against the need for protection. He told the House that it had ‘been represented’ (by the NZMC) that the Māori associations were ‘sufficiently responsible to be entrusted with these powers without having the safeguard of the Minister’s precedent consent’. The requirement was thus removed ‘in accordance with the principle of giving as much autonomy and self-government as possible to these Māori associations.’³³⁶

The council approved of its sub-committee’s achievements at its July meeting but wanted to revisit two matters with Hanan: first, the power of the Minister to approve subsidies to bodies outside the official associations created by the Act; and, secondly, the requirement that only persons resident in an area could be elected to a Māori Committee. ‘It is proposed’, the council resolved, ‘to ask that those with marae affiliation in the area should also be eligible for election, with the proviso

328. Māori Welfare Amendment Act 1963, s 3

329. NZMC, minutes, 5–7 July 1963 (NZMC, minute book, 1962–70 (doc c3), p 46)

330. NZMC Newsletter, vol 1, no 2 (October 1963) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 25)

331. NZMC, minutes, 5–7 July 1963 (NZMC, minute book, 1962–70 (doc c3), p 46)

332. Māori Welfare Act 1962, s 22

333. Māori Welfare Amendment Act 1963, s 7

334. NZPD, 1963, vol 337, p 2337

335. NZMC, minutes, 5–7 July 1963 (NZMC, minute book, 1962–70 (doc c3), p 46)

336. NZPD, 1963, vol 337, p 2337

**SUMMARY OF THE PROVISIONS OF THE MĀORI WELFARE
AMENDMENT ACT 1963**

Section 2: Every Māori warden, while exercising a warden's functions in a Māori Committee area, will be under the control and authority of that Māori Committee, and may be assigned such duties as the Committee determines.

Section 3: A District Māori Council can pass a resolution to increase the number of members to be elected to any Māori Committee 'to such number as it thinks fit'.

Section 4: If the number of Māori executives in a district is less than five, each executive may appoint three members to the District Māori Council.

Section 5: A non-resident may be elected to a Māori Committee if he or she 'has marae affiliations in the area', provided that no one can be a member of more than one Māori Committee at a time.

Section 6: The name of every member of a Māori association will be advised to the NZMC secretary, who will keep a list of members (which will be available for inspection at any reasonable time).

Section 7: Any member of a Māori association may resign or may be removed from office by the association for disability, neglect of duty, or misconduct, provided that any person removed from office may appeal to the NZMC, which will confirm or reverse the decision.

Section 8: Acquisitions and dealings in land can be conducted without the precedent (prior) consent of the Minister.

that no person shall be a member of more than one Māori Committee at any one time.³³⁷ On these two matters, Hanan agreed to the second one but not the first.³³⁸

We note that the council did not seek a change to the revised section 3, under which the powers conferred by the Act were to be exercised under the general direction and control of the Minister.

The only additional provision in the Māori Welfare Amendment Act 1963, over and above what the NZMC had requested, was to change the official recording of association members. Under the 1962 Act, members of the Māori associations had to be reported to the Secretary of Māori Affairs and gazetted, whereas the 1963 Act reassigned this role to the secretary of the NZMC, and took away the requirement for the names to be gazetted. Otherwise, the Māori Welfare Amendment Act 1963 consisted of changes requested by the NZMC, as was noted by the Minister when he explained the provisions of the Bill to Parliament in October 1963.³³⁹

337. NZMC, minutes, 5–7 July 1963 (NZMC, minute book, 1962–70 (doc c3), p 46)

338. See Māori Welfare Amendment Act 1963, s 5.

339. NZPD, 1963, vol 337, p 2337

KA TIPU TE WHAKAARO / A CHERISHED THOUGHT EMERGES 3.4.8(7)

In the House, Tirikātene agreed with the Minister that the proposed changes to the 1962 Act would make the Māori bodies ‘absolutely autonomous’, but he was worried that this might also make the Government less inclined to provide funding ‘if the Minister is not there to watch expenditure and so on.’³⁴⁰ Tirikātene and the other Māori members supported the Bill but expressed some concerns. They wanted more clarity on why certain changes had been requested by the council.³⁴¹ In particular, there was some suspicion of the provision to allow non-residents to sit on Māori committees, and also a question as to how representative the NZMC really was. Tirikātene told the House:

I hope that some day the Māori committees will be elected in the same way as Māori trust boards are, so that we will know how wide the council’s powers are and the number of Māori people it really represents. The time must arrive for us to know whom these people represent, and that could be achieved only by postal elections similar to those for trust boards. Then we would know exactly how many people the New Zealand Māori Council does represent when it purports to promote something on behalf of the Māori race.³⁴²

The new member for Northern Māori, Matiu Rata, stated:

I am not trying to be critical of the council, which I believe is vitally necessary. However, there seems to be a certain lack of knowledge about its activities, and I should like to know exactly why that provision concerning eligibility for membership [of non-residents] was asked for. It is generally agreed that it is desirable to have an independent view on matters affecting the welfare of the Māori people. [But] At times opinions differ as to exactly how great a following the New Zealand Māori Council has.³⁴³

The nature of Māori democracy (and the representativeness of the NZMC) was once again at issue.

Hanan responded, as he had the year before, by emphasising that Māori committees were elected at hui according to Māori custom. He acknowledged that the ‘European way of doing these things would be to take a postal ballot’. The Government accepted that such a ballot would ‘embrace the opinion of people who could not turn up at the meeting, but any Government is loath to interfere with the long-standing customs of the Māori people’. The Māori way of doing these things, he stated, ‘is basically democratic if the Māori people will take an interest, but I do concede that the European way would be to take a postal ballot’. Again, as he had in 1962, Hanan emphasised that ‘any move for a change in the system of voting should properly come from the Māori people themselves.’³⁴⁴

340. NZPD, 1963, vol 337, p 2338

341. NZPD, 1963, vol 337, pp 2337–2341

342. NZPD, 1963, vol 337, pp 2338–2339

343. NZPD, 1963, vol 337, p 2339

344. NZPD, 1963, vol 337, pp 2340–2341

Thus, although there was still some disquiet among Māori members of Parliament as to the representativeness of the NZMC, the position of the Government and the council was that statutory arrangements had been negotiated in 1961 and 1962, and were now being amended in 1963, in keeping with the wishes of the Māori people (as represented by their democratically elected, autonomous council). Major changes to the 'domestic' parts of this system, it was held, ought to come from the Māori people through their chosen representatives, not from the Government. There was a significant emphasis on Māori autonomy, self-government, and self-determination in the parliamentary speeches of the time, and also in the recorded views of Ministers, officials, and the NZMC itself. And when the Government did want to make changes so as to advance its welfare and integration policies, the principle had emerged by 1963 that such changes ought to be run past the NZMC and receive its endorsement.

This is not to say that there was no merit in the issues raised by the Opposition. The NZMC was not indifferent to the kinds of criticism or queries put by Tirikātene in 1962 and 1963; further changes to the Act were contemplated by the NZMC as well as the Crown. In the mid-1960s, the council was debating whether to request amendments to the Act, so as to make its structures more representative. Tirikātene had pointed to three issues: the need to consult grass-roots Māori opinion at committee level when major issues arose; the electoral system for Māori committees; and the relationship between the NZMC and the Māori members of Parliament. The council debated changes to deal with all of these, including:

- ▶ The possibility of having the Māori committees directly represented on the district councils, which would 'make the connection between the New Zealand Māori Council and the grass-roots Committees more direct and so make for better communication.'
- ▶ The possibility of changing the mode of election to the committees, which in some cases had become a process of persuading people to serve rather than a community-wide meeting to elect representatives, so that the committees would instead be made up of representatives from all the Māori organisations in their areas.
- ▶ Inviting representatives from other national Māori organisations, including the Māori members of Parliament, to attend all council meetings as 'observers' who could participate and 'make their voices heard in its discussions.'³⁴⁵

Not all of these possibilities were endorsed by the council's constituents. Observers from other Māori organisations did begin attending NZMC and district council meetings, and a direct link between Māori committees and the district councils was eventually made possible in 1971. Also, some of the heat was taken out of the question about the relationship between the council and the Māori members of Parliament when NZMC member P T Watene was elected to the Eastern Māori seat in 1963, and performed a dual role thereafter.

³⁴⁵ 'Annual Report of the New Zealand Māori Council 1966-67', *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 4, April 1967 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 295)

In any case, the 1963 Amendment Act was not the end of the process of refining, altering, and amending the 1962 legislation. As submitted by the claimants, additional changes were made in the 1960s, usually either at the request of or with the agreement of the NZMC. For our purposes, the most important of these relate to the governance and management of Māori wardens, to which we turn next.

3.4.9 Forging agreement on the governance of Māori wardens, 1962–69

In this chapter, we are concerned with the origins and significance of the 1962 Act and the self-government structure for which it provided. We have not focused on the Māori wardens' part in that structure, which is dealt with in chapter 5. In this section, we are concerned rather with a specific issue: how did the Act provide for the management and governance of the wardens? Under the Māori Social and Economic Advancement Act 1945, the management and control of wardens had been undertaken by Tribal Executive Committees.³⁴⁶ As we noted above, the version of the Māori Welfare Bill shown to the NZMC and the DMCS in June and July of 1962 vested the control of wardens in the Māori Committees, but the Bill was significantly altered before it was introduced into Parliament. In the draft Bill as seen and approved by the NZMC, clause 18 provided for:

1. The Minister to appoint Māori Wardens.
2. The wardens to exercise powers and carry out duties as authorised by or under the Act.
3. No Māori Warden to be eligible for election to a Māori Committee.
4. 'Each Māori warden shall be under the control and authority of the Māori Welfare Committee for the area in which he is resident and may be assigned such duties within the Committee's area as the Committee may approve.'
5. Wardens may also perform duties in other committees' areas 'by arrangement with the committees concerned' or when requested to do so by the Executive Committee (as it became) or the DMC.
6. The Minister may remove any Māori Warden from office.
7. A Māori Committee may, subject to any regulations, pay remuneration or allowances to wardens as it may determine.³⁴⁷

As we noted earlier, the NZMC requested a change to this clause: the council wanted wardens to be eligible to sit on Māori committees, so long as they did not act as committee members whenever wardens' issues were being dealt with. Otherwise, the council approved this part of the draft 1962 Bill.

When the 1962 Bill was introduced into Parliament, however, clause 18 had become clause 7, and it had been significantly revised. As requested by the council, subclause (3) had been removed. For our purposes, however, the most important revision was the deletion of clause 18(4), which had placed the wardens under the

346. Richard Hill, *State Authority, Indigenous Autonomy: Crown–Māori Relations in New Zealand/Aotearoa, 1900–1950* (Wellington: Victoria University Press, 2004), p 252; Augie Fleras, 'From Village Rūnanga to the New Zealand Māori Wardens' Association: A Historical Development of Māori Wardens' (Wellington: Department of Anthropology and Māori, Victoria University, 1980) (doc c1), p 20

347. Māori Welfare Bill 1962 (first Waitangi Tribunal document bank, vol 9 (doc B26(i)), p 57)

control and authority of the Māori committees. We have no information as to why this subclause was taken out of the Bill. Its deletion was one of the primary concerns of the NZMC when it was discovered. The council successfully proposed the reinstatement of the Māori Committees' authority over wardens in 1963. When speaking on the Amendment Bill of that year, Hanan admitted that the 1962 Act had not defined 'the lines of responsibility for [the wardens'] duties', and that it was necessary to make the wardens responsible to 'the Māori committees exercising control of the areas in which the wardens are carrying out their duties'.³⁴⁸ Thus, section 2 of the Māori Welfare Amendment Act 1963 read:

Every Māori warden shall, when exercising his functions in a Māori Committee area, be under the control and authority of the Māori Committee for that area and may be assigned such duties consistent with this Act within the area as the Committee shall determine.³⁴⁹

Thus, this was a deliberate reinstatement of the Māori committees' authority over wardens, carried out by agreement between the NZMC and the Crown, and at the request of the NZMC.

The next significant change that we need to consider came about largely as a result of urbanisation and the growing number of Māori in the cities. By the mid-1960s, there was debate about whether the Māori committee 'area' was the appropriate unit for the supervision and assignment of duties to urban wardens. Also, not all committees were active, and wardens faced new and difficult challenges in urban environments. Guidance seemed to be missing or ineffective just when it was most needed.

The NZMC's administration committee discussed the issue in August 1965, especially the 'lack of control by Executives and Māori Committees in some areas'. The administration committee asked the District Māori Councils to report back on 'the control of Wardens in their districts' and other, related matters.³⁵⁰ At the next NZMC meeting in August 1965, the council held a 'lengthy discussion' about the control and payment of wardens, and decided that 'all aspects of the policy regarding Wardens' needed a full debate at a later meeting. DMCS were asked to complete a questionnaire on the issues, and to invite wardens' representatives to attend the NZMC's meeting to discuss their future.³⁵¹ At its September meeting, however, the council's administration committee decided to go further and hold a full conference with Māori wardens,³⁵² although this was later amended to holding a series of district conferences.³⁵³ The issue of control of wardens came back before the committee in early 1966, when ways of achieving 'greater uniformity in the control of

348. NZPD, 1963, vol 337, p 2337

349. Māori Welfare Amendment Act 1963, s 2

350. NZMC, administration committee minutes, 3 August 1965 (NZMC, minute book, 1962-70 (doc C3), p 156)

351. NZMC, minutes, 26-27 August 1965 (NZMC, minute book, 1962-70 (doc C3), p 160)

352. NZMC, administration committee minutes, 27 September 1965 (NZMC, minute book, 1962-70 (doc C3), p 167)

353. NZMC, administration committee minutes (NZMC, minute book, 1962-70 (doc C3), p 175)

Wardens and their appointment were discussed. It was hoped that the council's next meet-the-people meeting would see the subject 'fully aired'.³⁵⁴

In 1966, the council's annual meet-the-people session took place at Waitara on 18–20 March. At that meeting, the Waiariki district put forward its local solution to helping wardens 'improve their techniques, to standardise their methods and to discipline their members'. This was the formation of a district Wardens' Association, which meant that wardens would no longer need to work on their own in circumstances where local Māori committees were inactive or unable to provide direction. 'Differences between the Wardens and the Committees have now been reconciled', it was reported, 'and the principle of Wardens having an association of their own is recommended to other districts'.³⁵⁵ In debating this report, the council approved the formation of a wardens' association for the Aotea district, and agreed to consider the idea of a national wardens' association 'under the control of the Māori Council'.³⁵⁶

This crucial development in 1966 diverted attention to wardens' associations (both local and national) as a possible means of solving problems and controlling the activities of wardens, so long as the associations themselves were subject to the ultimate authority of the NZMC. The council's administration committee decided to convene a council sub-committee in Rotorua 'to prepare recommendations for a constitution, forms of control etc for District Wardens' Associations and for a National Association'.³⁵⁷ This wardens' sub-committee was assisted by John Rangihau, the Rotorua District Welfare Officer, and its recommendations (including a draft constitution) were then referred to the DMCS for discussion,³⁵⁸ after which the NZMC adopted the committee's report (and constitution) in August 1966.³⁵⁹ If the local Māori Committee failed to carry out its functions, the wardens would now agree to be governed by the Māori Executive Committee or the Māori Wardens' Association.³⁶⁰ Thus, possible gaps in the exercise of authority over wardens were to be plugged by their voluntary submission to either the executive committees or the new wardens' associations. In that circumstance, the NZMC would not need to seek a change to the Act.

In the meantime, District Māori Councils (except for Ikaroa) and the NZMC took the lead in fostering the formation of district wardens' associations and a national association.³⁶¹ They did so in the face of opposition from the Minister and the department. We will discuss that in more detail in the next chapter. Here, we note that the council continued to back the formation of a national wardens' association, the New Zealand Māori Wardens Association (NZMWA), which was established

354. NZMC, administration committee minutes, 28 February 1965 (NZMC, minute book, 1962–70 (doc c3), p177)

355. NZMC, minutes, 18–20 March 1966 (NZMC, minute book, 1962–70 (doc c3), p184)

356. NZMC, minutes, 18–20 March 1966 (NZMC, minute book, 1962–70 (doc c3), p185)

357. NZMC, administration committee minutes, 30 March 1966 (NZMC, minute book, 1962–70 (doc c3), p187)

358. NZMC, minute book, 1962–70 (doc c3), p189

359. NZMC, minute book, 1962–70 (doc c3), p209

360. NZMC, wardens' committee minutes, 14 August 1966 (NZMC, minute book, 1962–70 (doc c3), p236)

361. NZMC, minute book, 1962–70 (doc c3), p249

in 1967. It also debated more radical measures, such as the abolition of executive committees and the establishment of specialist local committees to supervise wardens. Finally, in late 1968, the NZMC received a submission from the newly established NZMWA that wardens should be appointed to serve in district council areas, because the current system 'gives rise to some difficulties in connection with jurisdiction and to delays in the transfer of Wardens from one area to another'. The council resolved that 'the Minister of Māori Affairs should be asked when appointing Wardens to give them authority by their warrants to work throughout a District Council area but subject to the overall control of the District Council concerned'.³⁶²

Thus, the NZMC sought to bring about a significant change informally via the terms of the warrants, but it is difficult to see how the wardens' jurisdiction could have been altered in this way – and the wardens made subject to the DMCS – without changing the Act. Even so, the council's resolution was reversed at its meet-the-people meeting in Gisborne in May 1969. There, the NZMC minutes record:

The difficulty of control by Māori Committees of Wardens in cities was discussed. It had been suggested that all Wardens should be placed under the control of District Councils but this suggestion met with little support and it was resolved that the control of Wardens should remain as at present.³⁶³

The council's administration committee, which consisted of the president, Pei Te Hurinui Jones, T S Johnson (Ikaroa), and the secretary, queried this decision soon after.³⁶⁴ The committee noted that the Waiariki council members had proposed keeping the status quo because 'the present position is quite satisfactory' in their district. 'However,' observed the committee, 'in some areas, notably in the cities where wardens' duties take them through the territory of more than one committee and sometimes more than one Executive, the present system is not satisfactory'. It was noted that the Wardens' Association had recommended that, at the least, there needed to be special arrangements for Auckland.³⁶⁵

The council's secretary had also held discussions with the Controller of Māori Welfare. In those discussions,

it was suggested that the Act might be amended to give District Councils authority to make other arrangements if the present system is not working satisfactorily and this may be done by amending the Act to put control of the Wardens into the hands of the appropriate 'Māori Association'.³⁶⁶

These discussions between the council's secretary and the Controller appear to have been the origin of the 1969 amendment.

362. NZMC, minutes, 29 November – 1 December 1968; NZMC, minute book, 1962–70 (doc c3), p 295

363. NZMC, minutes, 9–11 May 1969 (NZMC, minute book, 1962–70 (doc c3), p 311)

364. The other members of the committee, Sir Turi Carroll and R K Bailey, were absent from this meeting.

365. NZMC, administration committee minutes, 18 June 1969 (NZMC, minute book, 1962–70 (doc c3), p 314)

366. NZMC, administration committee minutes, 18 June 1969 (NZMC, minute book, 1962–70 (doc c3), p 314)

The administration committee decided to report these discussions to the DMCS, and to place the matter on the agenda for the next meeting of the NZMC,³⁶⁷ which was scheduled for August 1969. Controller Herewini was put on the agenda to attend and deal with item 14: 'Control of Wardens – Proposed amendment to the Act'.³⁶⁸

At the council's August meeting, it appears that the members were unable to reach agreement:

Control of Wardens: After some discussion on the proposed amendment to the Act concerning the control of Wardens and the existing situation where Wardens were appointed to Executive areas but came under direct control of their own Māori Committees, it was agreed that the Secretary should apply to the Department of Māori Affairs for a definite ruling on this matter and should notify all Wardens Associations accordingly.³⁶⁹

In other words, the NZMC decided to leave this matter for the department to resolve. This was duly done in the Māori Purposes Bill for 1969, which proceeded along the lines discussed by Controller Herewini and the council's secretary, JM Booth, earlier in the year. The 1962 Act would be amended, placing wardens under the control of DMCS, but also empowering the councils to delegate this authority to Māori Executives or to Māori Committees.³⁷⁰ This compromise solution enabled both sides of the council debate to be satisfied: districts where the current system was working well could delegate authority to the committees, whereas those districts in need of a district-wide approach to governance and management of wardens could now use their DMCS.

The NZMC's administration committee monitored the passage of the Bill and clearly supported this compromise. It planned to distribute a form 'delegating District Council powers to Executive or Māori Committees in accordance with the new section of the Act', as soon as the Bill was passed.³⁷¹ The amendment was also supported by the Māori Wardens' Association, although it did not do away with the need for further action on a number of issues affecting the wardens.³⁷² We will discuss these in the next chapter.

Here, we note that there were four major changes in the governance and management of wardens in the 1960s:

- ▶ The 1962 Act left out the draft provision for Māori committee control of wardens, which was a provision that the NZMC had agreed to when it discussed and proposed amendments to the draft Bill.

367. NZMC, administration committee minutes, 18 June 1969 (NZMC, minute book, 1962–70 (doc C3), p 314)

368. NZMC, agenda for 30 August 1969 meeting (NZMC, minute book, 1962–70 (doc C3), p 323)

369. NZMC, minutes, 30 August 1969 (NZMC, minute book, 1962–70 (doc C3), p 328)

370. Māori Purposes Act 1969, s13

371. NZMC, administration committee minutes, 17 October 1969 (NZMC, minute book, 1962–70 (doc C3), p 329)

372. NZMC, minutes, 4–5 December 1969 (NZMC, minute book, 1962–70 (doc C3), p 334)

- ▶ The 1963 Amendment Act restored this provision for Māori committee control of wardens, at the request of the NZMC.
- ▶ Māori wardens formed district associations and a national Māori Wardens' association, facilitated and encouraged by their DMCS and the NZMC, with the understanding that the councils would retain ultimate authority. This was done against the wishes of the Minister of Māori Affairs, whose views on this matter were not accepted by the NZMC.
- ▶ And, finally, the control of wardens was transferred to the DMCS, which could delegate it back to the Māori committees or to the executive committees. This change was made with the support of the council's secretary and administration committee but without the active support of the full council. Ultimately, the NZMC had left this amendment for the Department of Māori Affairs to decide upon.

3.4.10 Conclusions about the forging of an agreement between Māori and the Crown

Māori efforts to exercise their autonomy and work in partnership with the Government on a national scale had a long history, beginning with the Kīngitanga, the Kohimarama Conference, and then Te Kotahitanga (the Māori Parliament) in the nineteenth century. Governments had been notoriously reluctant to accept Māori autonomy in the form of a national body, including when major self-government agreements were negotiated in 1900 (the Māori Councils Act) and 1945 (the Māori Social and Economic Advancement Act). But, despite these set-backs, Māori leaders did not abandon their pursuit of autonomy, the right to manage their own affairs and determine their own destinies at the national and regional as well as tribal levels.

In 1945, the Māori Social and Economic Advancement Act gave statutory recognition and powers to self-government institutions that had been established by Māori before the Act. This included the Māori tribal committees and Māori tribal executives, which had been established by tribal communities during the Second World War, led at the national level by a committee of Māori members of Parliament. It also included the Māori Wardens, which was the new name for the 'native constables' appointed by marae committees (operating under the Māori Councils Act 1900). As we shall discuss in chapter 5, the wardens' whakapapa stretched back to the Kīngitanga in the mid-nineteenth century, which established wātene (wardens) as part of its self-government arrangements.

But the self-government structure provided for in the 1945 Act was truncated because the Government of the day had not been prepared to agree to Māori bodies at a regional or national level. The closest the Government was prepared to go was a section in the Act authorising the Minister to call district conferences of the tribal executives, a provision which Māori leaders took advantage of in the 1950s in their efforts to combine at the regional level. They wanted to pursue their goals with

the weight of a regional and even a national Māori body behind them, to work with and influence the Government.

As we have seen, this pursuit intensified in the 1950s, ultimately resulting in the negotiation of a new compact by collaborative agreement between the Crown and Māori leaders between 1959 and 1963.

There was a promising start in the early 1950s, when the Government gave its support to a Dominion Council for the Māori Women's Welfare League. It seemed that the Secretary of Māori Affairs, T T Ropiha, might also persuade his Minister, Ernest Corbett, to agree to district and dominion-level bodies for the tribal committee system. Beginning in the Waiariki region, Māori leaders organised district councils and made representations to the Government on behalf of their people – but it was these very representations which caused Corbett to pull back from his initial approval. The Minister had under-estimated the potential for Māori self-government institutions – if given official recognition – to embarrass or pressure the Government with their independent views. From 1953 to 1959, the official leadership of the Māori Affairs Department under Corbett and Rōpiha, and then under Mortimer Sullivan as secretary, was hostile to the establishment of a national Māori self-government institution. Māori leaders had greater success influencing the National Party (partly because of the potential for such an institution to counter Labour's official monopoly of national Māori opinion through the four Māori seats). After Corbett's retirement in 1957, Prime Minister Keith Holyoake, who took over the Māori Affairs portfolio, agreed in principle to a national Māori body against Sullivan's advice, and made it an election promise.

When National lost the 1957 election, Māori leaders sought to persuade the new Prime Minister (and Minister of Māori Affairs), Walter Nash, to agree to statutory recognition for district Māori councils and a Dominion Māori Council, to be added as top layers to the existing structure of flax-roots tribal committees and executives. Nash was slow to agree. He, too, saw the potential for a national Māori body to counter his members of Parliament. Sullivan remained strongly opposed, arguing that Māori should establish their own organisations on a voluntary basis, rather than the Government giving statutory recognition and powers to 'pressure groups' that were likely to disagree with it on Māori policy. Faced with government opposition, Māori throughout the country went ahead in 1959 and organised district conferences of the tribal executives to elect district Māori councils, which then elected delegates to a Dominion Māori conference. This conference acted as Māoridom's constitutional convention, drawing up a constitution for District Māori Councils (which already existed informally) and a Dominion Māori Council. The Māori leaders assembled at the conference agreed to formalise such institutions as incorporated societies or – if the Government agreed and in line with Māoridom's preference – as statutory bodies. If the latter course was followed, the delegates stipulated that the district and national councils must be entirely independent of the Government. There would be no ex officio members, and the Māori Welfare Controller would have no authority over the councils.

The Dominion conference appointed a deputation which met with Prime Minister Nash in December 1959 and requested legislation to give effect to their draft constitution. This marked the formal opening of negotiations with the Government, which were not to be finally completed until 1963.

Sullivan's retirement at the end of 1959 had cleared the way for a change of policy in the Māori Affairs Department. Acting Secretary Jack Hunn advised that tribal leaders were going to establish a national body of some kind, and that it was better (in political terms) for such a body to have a formal relationship with the Government so that a two-way dialogue could be commenced on issues of concern to both. Nash was persuaded by 3 June 1960, when he sent a letter to the conference delegates to signify the Government's formal agreement to their request. Draft legislation, adapting the the terms of the Māori-drawn constitution to statutory bodies, was prepared. At the last minute, however, Nash's agreement with the conference leaders was scuttled by the Māori members of Parliament, the day before the legislation was due to be introduced to the House. The Labour Government lost office at the end of 1960 without having carried out its agreement with Māori. But the National Party had once again made an election promise to legislate for a national Māori body, so it was by now only a matter of time before the Government would act.

In 1961, the new National Government formally agreed to establish a Dominion Māori Council, making the announcement at a hui with the Waiariki council. The Minister, Ralph Hanan, invited the already-existing district councils to send delegates to a Provisional Dominion Council, so as to consider and agree the terms of the legislation with the Government. This engagement between the Crown and Māori delegates took place in June 1961, at which the provisional councillors negotiated the changes they wanted to the Government's Bill. Thus, an important milestone was reached: the Māori Social and Economic Advancement Amendment Act 1961 gave effect to an agreement between the Crown and the Provisional Dominion Māori Council. This Act accorded recognition to District Māori Councils (which Māori had already established) and the New Zealand Māori Council of Tribal Executives (which, again, already existed in provisional form) as the apex of the tribal committee system. The Act gave these bodies the statutory powers and responsibilities that had been agreed between the Treaty partners. It was passed with the support of both sides of the House, the Minister explaining:

This Bill will help the Māori people to govern their own affairs to a large extent, and to preserve the important features of Māoritanga, the language, arts and crafts, and institutions of the marae. This Bill gives the Māori people the statutory form to work out their own salvation . . .³⁷³

The enactment of the Māori Social and Economic Advancement Amendment Act in 1961, endorsed by both sides of the House and by the Provisional Māori Council, represented another major step in the shaping of a significant and long-term

373. NZPD, 1961, vol 327, p 1982 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 116)

collaborative agreement between Māori and the Crown. This history of forging an agreement between the Treaty partners might have ended there had the Crown not decided that it was timely to overhaul and modernise the 1945 Act, which the 1961 legislation had amended. The result was the Māori Welfare (later Community Development) Act 1962, the subject of the present claim.

One aim of the new Act, as agreed between Māori and the Crown, was to free the council structure from any remaining vestiges of government control. The Government also wanted to remove the word ‘tribal’ from the names of the lower committees, to which the NZMC agreed on the basis that Māori communities would continue to define themselves and to elect the committees at the flax-roots level, and urban Māori would be free to forge their own, multi-tribal committees and executives as they chose. Although it cannot be denied that the Government had an assimilationist agenda, including in this removal of ‘tribal’ from the committee names, its agenda had only limited success. That is because the NZMC in negotiations ensured as far as possible that its own agenda for Māori autonomy and the strengthening and preservation of Māori culture was met. Both sides wanted greater cooperation between Māori community leaders and Government agencies to assist Māori with housing, employment, and other socio-economic development matters falling under the catch-all phrase of ‘Māori welfare.’ For the Council, the Act was designed to assist Māori to preserve their culture and autonomy while adapting and developing in a new, urban environment, as well as developing socially and economically in rural areas. As we shall see in chapter 5, Māori Wardens were to be a key instrument of Māori self-government and development in both environments.

We note, however, that the compact could not be said to have been finalised as at 1962, because the Government made a series of significant changes to the Bill after it had been debated, amended, and approved by the NZMC but before it was passed into law. The following year, the Council resolved that it was ‘not correct for the Minister to say, when speaking in the debate, that the Bill had the blessing of the NZ Council when in fact alterations had been made with which the Council did not agree.’³⁷⁴ Negotiations followed in 1963, after which Minister Hanan accepted all the requested changes of the NZMC, which were then embodied in the Māori Welfare Amendment Act 1963. One such change restored Māori Wardens’ accountability to their local committees, which had been removed from the 1962 Bill without the NZMC’s consent.

Thus, our view is that the compact between Māori and the Crown, embodied in the Māori Community Development Act 1962, was negotiated between the Treaty partners over the years 1959 to 1963.

The claimants argued that the 1962 Act arose from a Māori-led process of self-determination, beginning long before in the nineteenth century, in which Māori established their own self-government institutions and then sought recognition and statutory powers from the Crown. This makes the 1962 Act ‘no ordinary statute but, when seen in the context of a century old search for rangatiratanga/

374. NZMC, minutes, 16–17 March 1963 (NZMC, minute book, 1962–70 (doc c3), p 38)

self-government, it is an agreement to recognise a structure that contributes to the exercise of self-government.³⁷⁵ In the claimants' view, this essential context

requires the Crown to honour the spirit and text of the agreement which is given the force of statute law by the 1962 Act. It also requires that any change to the 1962 Act today similarly requires a genuine search for an agreed position.³⁷⁶

We agree with the claimants' propositions on these points, which are clearly substantiated by the evidence discussed in this chapter. In the 1960s, the need for negotiation to modify the agreement was understood.

In the next two chapters, we explore how the compact fared in later decades, examining some of the history of the council system, Māori Wardens, and the changing Māori political and representational landscape into the twenty-first century. We then consider the significance of the compact today, and the fact that the 1962 Act is still – as was said when the Tribunal determined urgency – the only statute which explicitly provides for Māori institutions to promote, encourage, and assist Māori in their self-government, and to make representations to the Crown at a national level on matters of importance to all Māori. Section 71 of the Constitution Act 1852, of course, had also provided for Māori self-government but only at the district level, and it was repealed in 1986.

375. Claimant counsel, closing submissions (paper 3.3.5), p1

376. Claimant counsel, closing submissions (paper 3.3.5), p1

CHAPTER 4

**TE HUARAHI KI TE MANA MOTUHAKE /
THE PATHWAY TO MANA MOTUHAKE**

4.1 INTRODUCTION

As we discussed in chapter 3, the Māori pursuit of mana motuhake (self-determination and autonomy) has been constant ever since the Crown agreed to recognise and protect their tino rangatiratanga on 6 February 1840. It has taken many institutional forms – such as komiti, rūnanga, councils, parliaments, trusts, incorporated societies – and it did not end with the creation of District Māori Councils (DMCs) and the New Zealand Māori Council (NZMC) over 1961 and 1962. This chapter offers an account of the history of the New Zealand Māori Council within the setting of the broader social and cultural developments of the second half of the twentieth century, with a particular focus on how the Crown has engaged with the NZMC. While we are prevented by our legislation from making findings on any alleged Treaty breaches prior to 1992, it is our view that the events of these decades provide essential historical context to the issues before the Tribunal in this inquiry.

Both the Crown and the claimants emphasise, in various ways, the importance of history in shaping the issues which are before us in the present inquiry. As we have seen in the previous chapter, the claimants have pointed us to the historic significance of the Māori Community Development Act 1962 (the 1962 Act) which established the NZMC as a compact between Māori and the Crown. In chapter 3, we provided our view that the 1962 Act and subsequent amendments can be regarded as a series of self-government agreements amounting to a compact between Māori and the Crown. However, five decades have now passed since the passage of the 1962 Act. It would be incomplete to recount the origins of the 1962 Act without an accompanying description of how the structures established under that Act have fared in the intervening decades, and particularly in the context of what the Crown terms the ‘changing Māori representational landscape’ of the past 50 years.

Crown counsel, while stating that they are ‘conscious of the history and importance of the Act’s origins’, have not offered any argument on the view of the 1962 Act presented by the claimants. Instead, the Crown has emphasised the need to see its current review of the 1962 Act and the Māori Wardens in the context of the changes to the ‘landscape of Māori representation’ that have taken place since the passage

of the 1962 Act, in particular with the rise of iwi structures representing tribal constituents.¹ The extent of change in Māori communities since the 1960s, the Crown argues, makes it appropriate for Government to cast its net more broadly than the NZMC in seeking to introduce changes to the 1962 Act.

In addition to offering essential historical context and setting the scene for our findings in chapters 6 to 8, we also offer our views in this chapter on a number of specific points raised in claimant closing submissions. The claimants submit that past Governments respected the unique statutory role of the NZMC, and introduced changes to the 1962 Act only after having obtained the prior consent of the NZMC. Citing the oral evidence of Titewhai Harawira, and passages from the *New Zealand Parliamentary Debates* of the 1960s and 1970s, the claimants assert that a practice existed by which ‘the NZMC would take the lead in proposing changes to the 1962 Act or, if changes came from the Crown, then NZMC consent was required for them.’² The inference we draw from the claimants’ argument here is that this past conduct of the Crown should also guide its behaviour in the present.

Further, the claimants point to the broader role that the NZMC played in shaping Government legislation during this period.³

We have grouped our analysis into six chronological sections:

- ▶ Section 4.2: the 1960s – a period of mass Māori urbanisation and social transition;
- ▶ Section 4.3: the 1970s – land, the Treaty of Waitangi, and the rise of the modern Māori protest movement;
- ▶ Section 4.4: the 1980s – the Māori cultural renaissance, tribal revitalisation, and the emergence of biculturalism in Government policy;
- ▶ Section 4.5: 1980s and 1990s – important NZMC achievements of this era;
- ▶ Section 4.6: the 1990s – Treaty settlements and the search for a pan-tribal or pan-Māori body.
- ▶ Section 4.7: the 2000s – the Māori representational landscape.

4.2 THE 1960S: A PERIOD OF MASS URBANISATION AND SOCIAL TRANSITION

The NZMC was established in the midst of what historian Aroha Harris has described as a period of ‘unprecedented change’ in Māori society.⁴ In the decades following the Second World War, Māori communities were transformed by the wholesale migration of their populations from predominately rural and tribal communities to the multi-tribal worlds of New Zealand’s towns and cities. In 1945, the year of the Māori Social and Economic Advancement Act, only 26 per cent of Māori lived in urban areas. By 1966, the figure was 62 per cent. By 1988, 83 per cent of the Māori population would live in towns and cities. By around 1960, the year

1. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3), p 7; Mereana Kim Ngārimu, brief of evidence (doc B13), p 2

2. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p 11

3. Claimant counsel, closing submissions (paper 3.3.5), p 12

4. Aroha Harris, ‘Dancing with the State: Māori Creative Energy and Policies of Integration, 1945–1967’ (PhD thesis, University of Auckland, 2007) (doc B23), p ii

DEPARTMENT OF MĀORI AFFAIRS AND TE PUNI KŌKIRI / MINISTRY OF MĀORI DEVELOPMENT

The Government ministry now known as Te Puni Kōkiri / the Ministry of Māori Development has undergone a number of changes since 1962. Until 1968, it was known as the Department of Māori Affairs. From April 1968, following the amalgamation of the department with that of Island Territories, it became known as the Māori and Island Affairs Department. This change was reversed in 1975. During 1989, the Department of Māori Affairs was phased out, and replaced by an Iwi Transition Agency (Te Tira Ahu Iwi or Te TAI), and a new policy-focused Ministry of Māori Affairs (Manatū Māori). On 1 January 1992, both the Iwi Transition Agency and Manatū Māori were abolished and replaced with the current Ministry of Māori Development / Te Puni Kōkiri.

MINISTERS OF MĀORI AFFAIRS OR FOR MĀORI DEVELOPMENT, 1960–

Ministers of Māori Affairs

J R Hanan	<i>December 1960 – July 1969</i>
Duncan MacIntyre	<i>July 1969 – December 1972</i>
Matiu Rata	<i>December 1972 – December 1975</i>
Duncan MacIntyre	<i>December 1975 – December 1978</i>
Ben Couch	<i>December 1978 – July 1984</i>
Koro Wētere	<i>July 1984 – November 1990</i>
Winston Peters	<i>November 1990 – October 1991</i>
Doug Kidd	<i>October 1991 – November 1993</i>
John Luxton	<i>November 1993 – August 1996</i>
Tau Hēnare	<i>December 1996 – December 1999</i>
Dover Samuels	<i>December 1999 – June 2000</i>
Parekura Horomia	<i>July 2000 – November 2008</i>
Pita Sharples	<i>December 2008 – October 2014</i>

Minister for Māori Development

Te Ururoa Flavell	<i>October 2014 – present</i>
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**ADMINISTRATIVE HEADS OF THE DEPARTMENT OF MĀORI AFFAIRS
AND ITS SUCCESSORS, 1960–**

Secretaries for Māori Affairs

JK Hunn	<i>January 1960 – July 1963</i>
BE Souter	<i>July 1963 – October 1963</i>
JM McEwen	<i>October 1963 – February 1975</i>
IW Apperly	<i>February 1975 – November 1977</i>
IP (Kara) Puketapu	<i>November 1977 – December 1983</i>
Tamati Reedy	<i>December 1983 – June 1989</i>

Chief Executives of Iwi Transition Agency

Harawira Gardiner	<i>October 1989 – December 1991</i>
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Chief Executives of Manatū Māori

John Clarke	<i>July 1989 – December 1991</i>
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Chief Executives of Te Puni Kōkiri

Harawira Gardiner	<i>January 1992 – December 1995</i>
Ngātata Love	<i>December 1995 – December 2000</i>
Leith Comer	<i>January 2001 – November 2013</i>
Michelle Hippolite	<i>December 2013 – present</i>

before the passage of the Act that would establish the NZMC, Māori had become ‘a predominately urban people.’⁵ Māori people were motivated to migrate to urban areas for a variety of reasons, including economic and job opportunities and the novelty and excitement of city life. From 1961, it was also official Government policy to encourage rural Māori to move to the cities, with the 1967 annual report of the Department of Māori Affairs noting that, since the introduction of the policy, 557 families had been assisted to move to the city, while a further 663 ‘who moved to new areas of their own accord’ had been helped with housing or employment upon arrival.⁶

As we have seen in chapter 3, the early leaders of the NZMC inherited a network of tribal committees and tribal executives established by Māori during the Second World War and given formal powers under the Māori Social and Economic Advancement Act 1945. As their names suggest, the tribal committees and tribal

5. James Belich, *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000* (Auckland: Auckland University Press, 2001), pp 471–472

6. Department of Māori Affairs, ‘Report of the Department of Māori Affairs for the Year Ended 31 March 1967’, AJHR, 1967, G-9, p 15

executives had been closely grafted onto tribal structures.⁷ While the process for electing the committees and executives made any Māori adult eligible to stand for election, and could in theory have led to an undermining of traditional leadership, in reality, most tribal committees were made up of ‘local kaumātua’ and were ‘tribal in outlook and male- and elder-dominated.’⁸ Aroha Harris has found of the tribal and executive committees under the 1945 Act that their fortunes could vary greatly between different areas, as they operated in local contexts and responded to local needs: ‘Some were consistently active over time, whereas others operated intermittently, and others still were, in the main, defunct.’⁹ By 1961, the year before the passage of the 1962 Act, 110 out of 330 tribal committees in existence were reported to be inactive, while 20 out of 67 tribal executives were no longer functioning.¹⁰

The Māori Welfare Act 1962 renamed the existing tribal committees and tribal executive committees as Māori committees and Māori executive committees. In addition, it created eight District Māori Councils (DMCs) to coordinate matters at a regional level and to represent the views of the Māori committees and Māori executive committees at the national level, on the NZMC. The boundaries of each DMC were based upon those of the Māori Land Court districts, with an additional council for Auckland, the urban area with the highest concentration of the Māori population.

4.2.1 Spreading the word: promoting the work of the NZMC

In establishing the DMCs and NZMC on top of the existing structure of tribal committees and executives, the backers of the 1961 and 1962 legislation hoped that empowering Māori through these upper layers would also lead to a reinvigoration of the work of the lower-level structures. In introducing his Bill to Parliament in 1961, Minister of Māori Affairs Ralph Hanan told the House that one of the shortcomings of the tribal committee system had been its lack of a national body. The earlier system of tribal committees and tribal executives, he stated, had ‘had no head, it had no direct contact with the Government’. As a result, he argued, it had only been effective in relation to matters concerning a particular tribe or group of tribes.¹¹ Similarly, writing in September 1963, NZMC secretary John Booth stated that he wished to see Māori committees become:

much more active than they have been in some cases in the past. Now that you have District Councils and a New Zealand Council there is nothing to stop every important matter being followed right through to the top.¹²

7. Harris, ‘Dancing with the State’ (doc B23), p 66

8. Harris, ‘Dancing with the State’ (doc B23), p 74

9. Harris, ‘Dancing with the State’ (doc B23), p 77

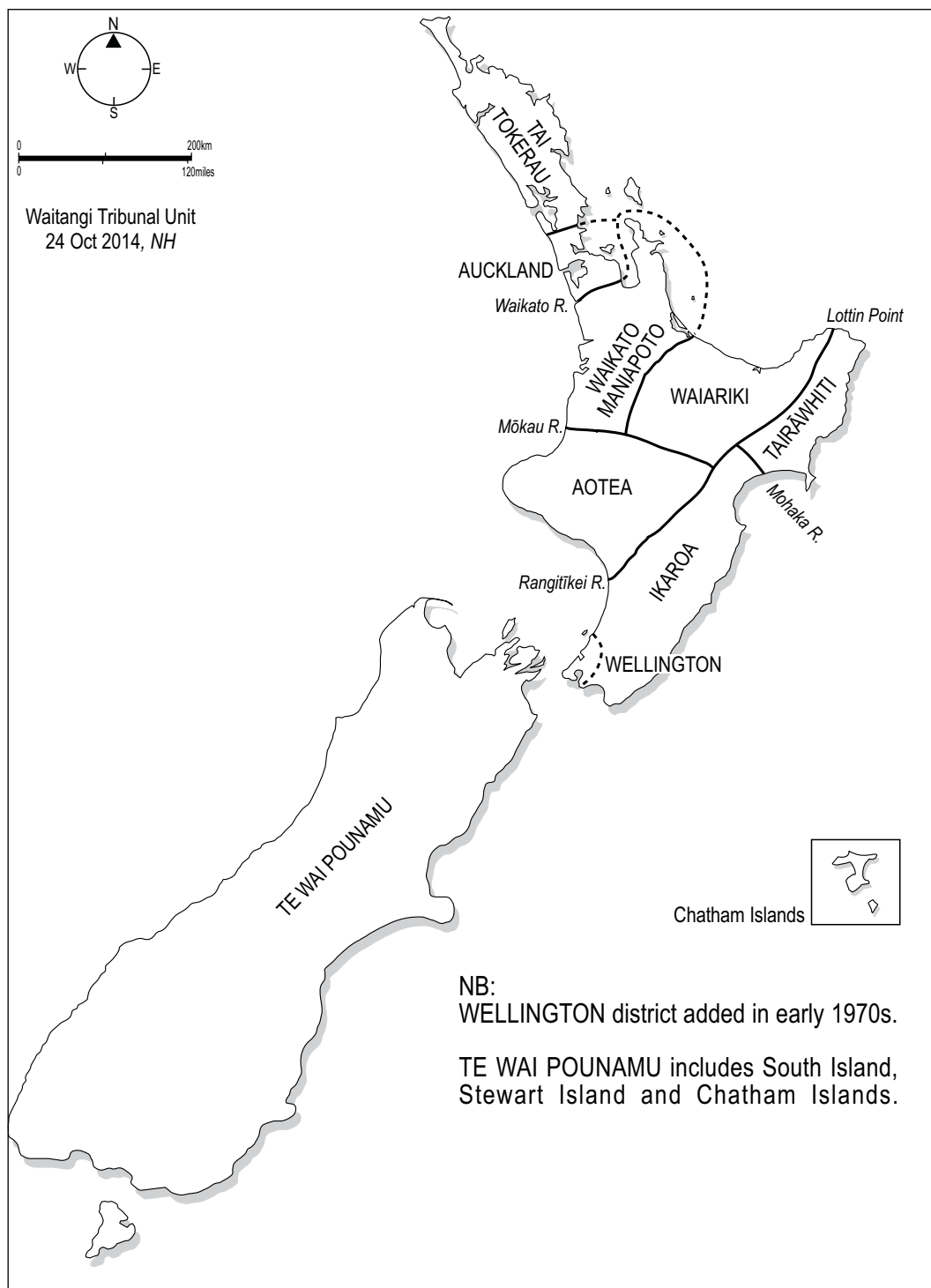
10. Andrew Francis and Jonathan Sarich, ‘Aspects of Te Rohe Pōtae Political Engagement, 1939-c.1975: Government Provision for Local Self-government for Te Rohe Pōtae Hapū and Iwi’ (commissioned research report, Wellington: Waitangi Tribunal, 2011) (doc B22), p 165

11. NZPD, 1961, vol 327, pp 1969–1982 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 109–116)

12. John Booth, ‘NZ Māori Council: Some Important Issues’, *Te Ao Hou*, no 44, September 1963 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 202–204)

4.2.1

WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION



Map 1: The original eight Māori Council Districts, 1962

Source: Nga Tumanako National Conference of Maori Communities, Turangawaewae Marae, 18–20 August 1978, ed Evelyn Stokes (Hamilton Centre for Maori Studies and Research University of Waikato for New Zealand Maori Council, 1978)

As seen in chapter 3, the NZMC held its inaugural meeting in June 1962. Representatives from all eight of the newly constituted Māori council districts were present, and Sir Turi Carroll was appointed as the NZMC's first president, while H K Ngata became its first secretary. The early leaders of the NZMC were aware that the success of their new body would depend upon its ability to reflect the views of its local communities, as represented by the Māori committees and Māori executive committees. Sir Turi Carroll expressed his hope that 'all our Māori Associations, right down to individual Māori committees, should be able to express their views on all matters coming before the Council so that our decisions will truly reflect Māori opinion'.¹³ One of the most formidable challenges for national organisations like the NZMC, its secretary John Booth acknowledged in 1965, was 'keeping in touch with its "grass roots", in our case the Māori Committees scattered throughout the country'.¹⁴ Booth would go on to spearhead the NZMC's ambitious programme to promote its work and encourage Māori communities to make use of the council structure to make their views known to Government.

One of the NZMC's first initiatives to gather the views of the Māori people was through annual 'Meet the People Hui'. Writing in the magazine *Te Ao Hou* in June 1963, Booth described the objective of the 'Meet the People' hui as to 'make sure the point of view of the ordinary Māori is not overlooked by the Council'.¹⁵ As stated in the previous chapter, the first of these inaugural 'Meet the People' hui was held at Ngāruawāhia, the heart of the Kīngitanga, in March 1963.¹⁶ Around this time, the NZMC also embarked upon a series of regional surveys around the country 'to get from the ordinary man and woman an outline of their main problems'.¹⁷ In promoting its surveys, the council stated: 'We have heard from a great many well-wishers about what is wrong with the Māori. We are going to get our answer directly from Māoris themselves, and these answers, both from the people and from Māori experts, will help guide the Council in what it places first on its list of important matters to be dealt with'.¹⁸ Members of the NZMC's first executive also undertook regional tours, with the president and secretary touring Māori committees in the South Island in 1965. The NZMC leadership viewed such personal visits as an 'essential part of keeping in touch'.¹⁹ As Booth put it in a 1965 article: 'Nothing can replace the face-to-face talk in the meeting house, where simple questions can be answered,

13. *Te Ao Hou*, no 47, June 1964 (doc B22), p 176

14. John Booth, 'Spreading the Word', *Te Ao Hou*, no 49, November 1964 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 232–233)

15. John Booth, 'The NZ Māori Council Begins Its Work', *Te Ao Hou*, No 43, June 1963 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 195–196)

16. NZMC, minutes, 16–17 March 1963 (NZMC minute book, 1962–1970 (doc C3), pp 36–42)

17. John Booth, 'NZ Māori Council: Some Important Issues', *Te Ao Hou*, no 44, September 1963 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 202–204)

18. John Booth, 'NZ Māori Council: Some Important Issues', *Te Ao Hou*, no 44, September 1963 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 202–204)

19. John Booth, 'Spreading the Word', *Te Ao Hou*, no 49, November 1964 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 233)

EARLY LEADERS OF THE NEW ZEALAND MĀORI COUNCIL**Sir Turi Carroll**

Sir Alfred (Turi) Thomas Carroll, of Ngāti Kahungunu and Irish descent, was born at Wairoa in 1890. His early education was supported by his uncle, the Māori leader and member of Parliament Sir James Carroll, who saw in his nephew a likely political heir. In 1911 he graduated from the Canterbury Agricultural College before managing the family farm at Huramua station. Carroll recruited for the Māori Contingent during the First World War and became a sergeant despite being first denied active service due to partial blindness. In 1926 he achieved a rare Māori political achievement by being elected to the Wairoa County Council, serving as chairman from 1938 to 1959. He also served as chairman of the Wairoa Co-operative Dairy Company, and worked with Āpirana Ngata to establish Māori farming schemes. Following the Second World War, his attention turned to the welfare of Māori veterans. Carroll became a member of the Kahungunu Tribal Executive and in 1949, supported by Prime Minister Peter Fraser, he set up the East Coast Māori Trust Council. In 1952 Carroll was made an OBE and in 1959 he presided over the Young Māori Conference to assist Māori welfare. Carroll's politics at this time became more nationally focused. In 1962, he was elected president of the New Zealand Māori Council. He was knighted in the same year. Carroll remained at the helm of the NZMC until 1967, and continued to involve himself in community affairs until his death at Huramua station on 11 November 1975.

Pei Te Hurinui Jones

Pei Te Hurinui Jones, of Ngāti Maniapoto and European descent, was born in 1898 on the Coromandel Peninsula. As an infant, Pei Te Hurinui was adopted by his mother's grand-uncle, Te Hurinui Te Wano, who instilled in Pei Te Hurinui a lifelong devotion to his Māori heritage. His willingness to challenge more conservative Māori elders also favourably impressed Āpirana Ngata. Pei Te Hurinui's biculturalism and bilingualism assisted his involvement with the Kīngitanga, variously advising Te Puea, King Korokī, and Queen Te Ātairangikaahu. In 1928 he became active in negotiating compensation for the confiscation of Waikato lands resulting from the 1860s wars. His parliamentary aspirations were, however, consistently denied, unsuccessfully running seven times between 1930 and 1963. In his youth Pei Te Hurinui had recorded Tainui whakapapa and traditional stories, a project which culminated in a Māori language tribal history, later published as *Ngā iwi o Tainui*. He became a frequent writer and publisher of literary and historical works, including *King Pōtatau* and the translation of a collection of Māori waiata into English. The resulting three volumes, collected as *Ngā Moteatea*, were major literary and cultural achievements. Pei Te Hurinui earned

an Honorary Doctorate in Literature from the University of Waikato in 1968. A respected Māori leader, Pei Te Hurinui became the second president of the New Zealand Māori Council, in addition to serving on other Māori councils and boards. He was made an Order of the British Empire in 1961. Pei Te Hurinui Jones died on 7 May 1976.

For more information on Sir Turi Carroll, see Jinty Rorke, 'Turi Carroll', from the *Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand*, last modified 6 June 2013. For more information on Pei Te Hurinui Jones, see Bruce Biggs, 'Pei Te Hurinui Jones', from the *Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand*, last modified 29 October 2013.

local conditions examined and special problems discussed and, if necessary, taken up for investigation by the Council.²⁰

The council also sought to promote its work through printed publications such as *Te Ao Hou*, a quarterly magazine published by the Department of Māori Affairs from 1952 to 1976. Readers of *Te Ao Hou*'s June 1963 issue, for instance, were told:

The New Zealand Māori Council has not been formed for the good of the 24 members who represent the eight District councils throughout New Zealand. . . . One thing that they are most anxious to do is to make sure that you, the ordinary Māori reader of 'Te Ao Hou', know what the Council is doing and that you may feel that you can come to the Council, through your Committee, Executive and District Māori Council for help in solving your problems. . . . The Council is out to win your support by doing what you want it to do and by being your mouth-piece in all matters that affect our well-being.²¹

In addition to promoting its work through existing publications, the Māori council had, by September 1963, established its own monthly newsletter, 'a small paper designed to keep people in the know', with free copies circulated to all Māori ommittees.²² The *New Zealand Māori Council Newsletter* was succeeded in October 1964 by *Te Kaunihera Māori: New Zealand Māori Council Newsletter*. It was replaced by *Te Māori: The Official Journal of the New Zealand Māori Council* in 1969. The NZMC ceased to issue an official publication in 1981.

20. John Booth, 'Spreading the Word', *Te Ao Hou*, no 49, November 1964 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 233)

21. John Booth, 'The NZ Māori Council Begins Its Work', *Te Ao Hou*, no 43, June 1963 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 196–197)

22. John Booth, 'The NZ Māori Council Moves Forward', *Te Ao Hou*, no 45, December 1963 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 207)

4.2.2 The Māori Associations in the context of urbanisation

The 1962 Act had been introduced at a time in which most Pākehā, including those in Government, believed that the tribal affiliations of the Māori people would gradually ebb in strength, to be replaced by a ‘modern’ and national form of Māori identity. The expectation that urbanising Māori would gradually lose their links to tribal homelands was signalled in the Government’s proposed nomenclature for the 1962 Act, in which tribal committees and tribal executives became Māori committees and Māori executive committees, although this was not how it was seen by the NZMC. As will be recalled from chapter 3, the council hoped to accommodate the new urban Māori communities, with their diverse tribal affiliations, under the new committee names. In the case of rural committees, the change in name proved largely superficial. In rural areas, Dr Harris concluded that the committees of the 1960s probably remained ‘more-or-less marae-based’.²³ However, there is some evidence that by the 1960s some rural committees were in decline due to rural depopulation.²⁴

Evidence from the 1960s and 1970s suggests that some of the most successful DMC areas continued to be those which drew their strength from existing tribal relationships and structures. For instance, by 1971, the Waiariki DMC was overseeing approximately 100 committees – a quarter of the total Māori committees in existence in the entire country – as well as 17 Māori executive committees.²⁵ The editor of the NZMC magazine, Graham Butterworth, described the Waiariki DMC that year as ‘to some extent at least . . . the Māori Parliament for its area and an example of the potential of District Councils and the New Zealand Māori Council’.²⁶ He attributed the Waiariki DMC’s success to the fact that most of the district’s Māori committees were ‘well-established bodies based on tribal communities in individual localities’, and he noted: ‘As far as possible the Council has tried to draw upon tribal loyalties to strengthen it . . . Indeed the weakest Executives are those which can draw least on tribal loyalties’.²⁷ In Te Urewera, for example, the Māori Executive Committees continued to be known popularly as ‘tribal’ executive committees, and remained an important part of how Māori communities managed their affairs.²⁸ The extent to which Māori Associations remained linked to existing tribal structures also influenced the ability of their DMCs to meet their financial commitments to the NZMC. Those districts which were consistently able to meet their

23. Harris, ‘Dancing with the State’ (doc B23), p 154

24. Harris, ‘Dancing with the State’ (doc B23), p 154

25. ‘A Well-Run District Council’, *Te Māori*, vol 2, no 5, October-November 1971 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 337–338)

26. ‘A Well-Run District Council’, *Te Māori*, vol 2, no 5, October-November 1971 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 355–356)

27. ‘A Well-Run District Council’, *Te Māori*, vol 2, no 5, October-November 1971 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 355–356)

28. Waitangi Tribunal, *Te Urewera: Pre-Publication, Part III* (Wellington: Waitangi Tribunal, 2012), pp 493–495; Waitangi Tribunal, *Te Urewera: Pre-Publication, Part IV* (Wellington: Waitangi Tribunal, 2012), pp 131–132, 349

payments were frequently those who were able to draw upon tribal funds to do so.²⁹ A *Listener* article from the early 1970s noted that the varying financial fortunes of DMCS could be attributed to the differences between rural committees more or less integrated into the tribal structure, and urban committees whose members could be drawn from multiple tribes:

In general it is fair to say that the rural Councils where there is still a functioning community and tribal loyalty is strong Councils are able to meet their financial commitments; where the population is highly urbanised and drawn from a large number of areas Councils have often had difficulty paying their full levies.³⁰

Conversely, however, the strength of existing tribal structures in some areas could also render the need for the Māori committee structure unclear. In the Waikato, for example, the Māori committee system failed to develop due to the strength of the Kīngitanga in that area. As it was put in a 1978 paper reflecting back upon the history of the NZMC system:

It is well known in the Waikato that Māori Committees are not very effective where the Kīngitanga is strong for many Waikato people perceive the Kīngitanga as a more effective direct means of communication with government.³¹

The new urban Māori committees became important features of Māori life in the towns and cities in which increasing numbers of Māori people, particularly young Māori, found their homes. Māori urbanisation of the 1950s and 1960s was accompanied by a shift in Māori organisational energies to the cities. The Māori committees took on new significance and functions in the context of urban life. Historian Ranginui Walker has described the Māori committees, along with Māori Women's Welfare League branches, churches, and community centres as the 'key to the successful adjustment of the Māori to urban life' and essential vehicles for 'perpetuating Māori identity, values and culture' in the new environment.³² One contemporary observer stated that urban Māori committees 'fill[ed] the vacuum in the lives of those who migrate from the face-to-face tribal community to urban society and anonymity'.³³ The movement of Māori people to the city to establish new lives thus did not necessarily entail the rejection of tribal ties. Instead, as Aroha Harris has argued, participating in voluntary groups and activities – such as Māori committees

29. Ranginui Walker, *Ka Whawhai Tonu Mātou: Struggle without End*, revised ed (Auckland: Penguin, 2004), p 205

30. 'The Role of the New Zealand Māori Council – An Assessment', *Te Māori*, vol 1, no 5, August-September 1970 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 331–332)

31. Stokes, *Ngā Tūmanako*, p 38

32. Walker, *Ka Whawhai Tonu Mātou*, p 199

33. RJI Walker, 'The Politics of Voluntary Associations: The Structure and Functioning of a Māori Welfare Committee in a City Suburb', in *Conflict and Compromise: Essays on the Māori since Colonisation*, ed Ian Hugh Kawharu (Auckland: Reed Books, 2003), p 180 (quoted in Richard Hill, *Māori and the State: Crown-Māori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), p 139)

– provided a means of ‘transplanting . . . tribal home[s] into the modern urban environment’, and of ‘laying down roots in the city, while retaining tribal life-ways’.³⁴

For newcomers to cities such as Auckland and Wellington, urban Māori committees could provide crucial support networks. By 1966, 33 Māori committees were already operating in Auckland, offering services to assist new migrants to the city. This included budgeting advice and advocacy on behalf of Māori people in their relations with Pākehā landlords or the authorities.³⁵ In Ōtara, for instance, the local Māori committee was, by the late 1960s, operating a budget service and leading a project to construct an urban marae in the suburb, as well as overseeing the work of up to 40 Māori Wardens.³⁶ By 1973, Māori committees in the Wellington district were active in a range of areas, including coordinating Māori culture programmes in the region’s prisons, lobbying local authorities on rates, and performing ‘welfare work’ among local communities.³⁷

4.2.3 ‘All the canoes are united’: the NZMC–Crown relationship during the 1960s

As we have seen, the Māori founders and supporters of the NZMC hoped that their new body would offer a forum through which Māori of all tribes could come together and present a unified stance to Government on the most important matters affecting their people. This was also the hope of the government of the day. The claimants noted an important speech made in Parliament on the 1961 Bill that established the NZMC: ‘The greatest thing that this New Zealand council can do will be to make recommendations to a Government, and the Māoris will be able to speak with one voice on many problems . . . and will be able to state what they believe the solution should be.’³⁸ The establishment of the NZMC was also welcomed by the magazine *Te Ao Hou* which stated:

For the first time, all the canoes are united; the tribes speak with a single voice . . . there is a democratic, unbroken line of communication from the individual Māori, through the local tribal committee, to the District Council, and now on to the New Zealand Council of Tribal Executives: a vehicle for the formation and expression of Māori views on a national level.³⁹

In the years immediately following the NZMC’s establishment, the Minister and Department of Māori Affairs officials made frequent references to the special status of the NZMC as the only body authorised by statute to endorse legislation on

34. Harris, ‘Dancing with the State’ (doc B23), pp 59, 176–177

35. ‘Auckland District Māori council’, *Te Kaunihera*, vol 1, no 1, July 1966 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 275–279)

36. Graham Butterworth, ‘Men of Authority’: *The New Zealand Māori Council and the Struggle for Rangatiratanga in the 1960s-1970s* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2008) (doc B21), p 16

37. ‘Wellington District Māori Council. Māori and Sub-Committee Reports. October 1973’ (First Waitangi Tribunal document bank, vol 7 (doc B26(g)), p 14)

38. NZPD, 1961, vol 327, p 1977 (quoted in claimant counsel, closing submissions (paper 3.3.5), p 10)

39. ‘NZ Council of Tribal Executives’, *Te Ao Hou*, no 40, September 1962 (Francis and Sarich, ‘Aspects of Te Rohe Pōtae Political Engagement’ (doc B22), p 166)

behalf of all Māori. Speaking to a meeting of the NZMC in June 1964, Hanan stated that, while his personal preference would be to see all ‘special provisions for Māoris eventually removed from the law’, as Minister of Māori Affairs ‘he was not prepared to take any such action without a lead being given by the Māori people through the Māori Council’. He went on: ‘The future of the Māori people . . . depends more on the Council than on any other body. He hoped that it would be prepared to “grasp the nettles” and give a lead to the Minister and to Parliament.’⁴⁰

The annual reports of the Department of Māori Affairs from the early 1960s affirm that it was a widespread expectation among officials at that time that all legislative changes pertaining to Māori should be passed by the NZMC for its approval, before they were introduced to Parliament. The Department of Māori Affairs’ annual report for 1963 noted: ‘At its second meeting in Wellington on 26 and 27 July 1962, the council was given an opportunity to consider legislative proposals affecting Māori people and gave its support to legislation which was subsequently introduced into the House.’⁴¹ The following year, the department noted that ‘certain . . . proposals had been held over from previous years to enable the views and the support of the Māori Council to be obtained before legislative effect was given to them.’⁴² Reporting back upon its activities in an early annual report, the NZMC stated that ‘a general survey of the work shows that it has fulfilled an important function in representing the views of the members of our Māori Associations and in opening the way for fuller consultation between the government and other authorities and the people.’⁴³ However, it was quick to stress that it did not intend to be ‘simply a rubber stamp for government proposals. We can sense a change of attitude within the [Department of Māori Affairs] and we anticipate that there will be a willingness to fall in with our ideas on many subjects.’⁴⁴

In the first few years of its existence, NZMC meetings were filled with a busy legislative agenda. In addition to providing its views on amendments to its own Act – as discussed in chapter 3 – the NZMC also offered input on a range of other items of Government legislation in the early 1960s. These included providing Māori views upon ‘proposed amendments to legislation governing adoptions and governing juries, the Māori Education Foundation, crime, education, relocation, Māori land titles and Māori farming.’⁴⁵ The Juries Amendment Bill, which removed legal differentiations between Māori and Pākehā in relation to juries, was agreed to by the NZMC and passed in 1962.⁴⁶ The process of gaining NZMC consent for the Adoptions Amendment Bill – which proposed to transfer Māori adoptions from the jurisdiction of the Māori Land Court to that of the Magistrates’ Court – was

40. NZMC, minutes, 12–14 June 1964’ (doc C3), p 79

41. Department of Māori Affairs, ‘Report for the Department of Māori Affairs for the year ending 31 March 1963’, AJHR, 1963, G-9, p 7

42. Department of Māori Affairs, ‘Report of the Department of Māori Affairs for the year ending 31 March 1964’, AHJR, 1964, G-9, p 15

43. Francis and Sarich, ‘Aspects of Te Rohe Pōtae Political Engagement’ (doc B22), p 176

44. Francis and Sarich, ‘Aspects of Te Rohe Pōtae Political Engagement’ (doc B22), p 176

45. Harris, ‘Dancing with the State’ (doc B23), p 162

46. Harris, ‘Dancing with the State’ (doc B23), p 162

less straightforward. While Hunn viewed the change as just another ‘step towards equality between the races’, the Māori members of Parliament, along with some Māori Council members, opposed the Bill.⁴⁷ However, while two District Māori Councils had initially rejected the draft legislation, and two others remained divided, the full NZMC eventually voted to support the Government’s Bill, with only two dissenting votes recorded.⁴⁸

Tensions quickly emerged, however, between the tight timeframes of legislators and what the NZMC regarded as its duty to consult widely among its flaxroots Māori committees before arriving at its position on a particular issue or item of legislation. The council observed in its annual report for 1964 that ‘[a]t first the Council seemed to have too much thrust upon it and not enough time to take matters on to the maraes where the opinions of all the people could be gathered’.⁴⁹ From an early stage in its existence, the council resisted Government pressure to rush it into decisions, insisting that its first duty lay with its Māori communities. In 1962, pressed by Secretary for Māori Affairs Jack Hunn for the NZMC’s views on proposed Government amendments to land titles, an Ikaroa delegate to the NZMC appealed to Hunn ‘for forbearance and understanding’. Hunn was reminded that:

Council members . . . had a duty not only to give careful consideration to the matters now before them but to make decisions which they considered were in the best interest of the Māori communities they represented. . . . The Council ought not to be hurried into decisions on matters which required a great deal of thought and reflection.⁵⁰

Three years later, in 1965, NZMC President Sir Turi Carroll again underscored the NZMC’s ‘duty to study legislation prepared by the Government and to take its directions from the Māori people in dealing with this and other matters’.⁵¹

The working relationship between the Crown and the NZMC encountered its first major obstacle when the Government sought to introduce sweeping changes to Māori land titles. The Government had first placed a series of proposed changes to Māori land titles before the NZMC in 1962. The proposed amendments – which sought to address the issue of fragmented Māori land titles by removing the distinctions between Māori and European land – bore the clear imprint of Hunn’s 1961 report. Other proposed changes included a measure to address the issue of ‘uneconomic shares’ in Māori land by compulsorily conferring the status of European land onto any Māori land interests amounting to less than five acres, and vesting all Māori land interests worth less than £10 in the Māori Trustee.⁵² The NZMC rejected

47. Harris, ‘Dancing with the State’ (doc B23), p 163

48. Harris, ‘Dancing with the State’ (doc B23), p 163

49. John Booth, ‘Māori Council Awaits Election Results’, *Te Ao Hou*, no 47, June 1964 (First Waitangi Tribunal Bank, vol 1 (doc B26(a)), pp 224–226)

50. NZMC, minutes, 26–27 July 1962 (NZMC minute book, 1962–1970 (doc C3), pp 17, 23)

51. NZMC, minutes, 4–6 February 1965 (NZMC minute book, 1962–1970 (doc C3), pp 117–122)

52. Harris, ‘Dancing with the State’ (doc B23), pp 163–164

all the Government's suggested amendments to land titles at a July 1962 meeting.⁵³ The Government's intended reforms were at clear odds with the retentionist stance towards Māori land mandated by Māori communities and therefore adopted by the NZMC at an early stage in its existence.

The NZMC's position was set out by John Booth, in a 1964 article in *Te Ao Hou*:

Broadly, the Council's attitude is that Māori land should be retained in Māori hands and used for the direct benefit of the owners. The Council opposes anything that will make it easier for the land to slip through the owners' fingers, but it favours every move that will encourage Māoris to use their land in the most efficient way possible.⁵⁴

In 1965, the Government appointed a Commission of Inquiry on Māori land. The two commissioners were Ivor Prichard, a former chief judge of the Māori Land Court, and Hemi Waetford, a Department of Māori Affairs official. At the same time, a sub-committee of the NZMC was busy preparing its own proposals for improvements to Māori land title. Sir Edward Taihakurei Durie recalled at hearings that, as a young law student in Wellington in the 1960s, he had been approached by John Booth to prepare a paper for the NZMC on the likely impact of the Government's proposed land legislation upon Māori land.⁵⁵ The NZMC's suggested changes to land legislation, which were circulated to DMCS in August 1965, would include the establishment of a Māori Land Trust to preserve and promote the better utilisation of Māori land.⁵⁶ The NZMC, the sub-committee believed, would be 'the obvious body to exercise leadership' in such a Trust.⁵⁷ We do not know whether the NZMC submitted its suggestions for a land trust to Prichard and Waetford. We do know, however, that the NZMC's proposals for a land trust were not reflected in Prichard and Waetford's final report. While the commissioners had consulted widely among Māori communities in compiling their report, including attending a meeting of the NZMC in October 1965, their final report did little more than endorse the existing direction of Government policy on Māori land.⁵⁸

The NZMC was at the forefront of Māori opposition to the Prichard–Waetford report.⁵⁹ During 1966, a conference on the recommendations of the report, co-hosted by the NZMC and the Extension Department of the University of Auckland, rejected almost all of its recommendations, and in response, formulated its own suggestions for reform.⁶⁰ The council's growing frustration at the Government's apparent unwillingness to pay heed to its views was reflected in a July 1966 NZMC resolution authorising its secretary 'to send a letter to the Minister saying that in

53. Harris, 'Dancing with the State' (doc B23), pp 163–164

54. John Booth, 'First Session of New Council,' *Te Ao Hou*, no 48, September 1964 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 228–229)

55. Transcript 4.1.1(a), p 255

56. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), pp 178–179

57. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 179

58. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 179; Hill, *Māori and the State*, p 157

59. Hill, *Māori and the State*, p 158

60. Hill, *Māori and the State*, p 158

view of his repeated assurances it would be surprising if legislation should be introduced without prior consultation of the views of the Council.⁶¹

The following year, despite the widespread opposition of Māori, including the NZMC and the Māori members of Parliament, the Māori Affairs Amendment Act 1967 was passed into law. The Act largely reflected the ‘essence’ of the Prichard–Waetford proposals, with only minor concessions to their report’s opponents.⁶² Under the Act, it became possible to compulsorily convert Māori freehold land with four or fewer owners into general land, while the Māori Trustee gained authority to compulsorily acquire and sell ‘uneconomic’ interests in Māori land. As historian Andrew Francis has written, the Act sought to ‘eliminat[e] . . . differences between European and Māori land legislation’, in the process effectively removing the few protections for Māori land offered by the Māori Land Court system.⁶³ The Act has been described by later scholars as the ‘last land grab’ and as fuelling the widespread discontent out of which arose the modern Māori protest movement.⁶⁴ Following the Māori Affairs Amendment Bill’s introduction in the House, the NZMC joined with the Māori members in opposing it but to little avail. In its annual report for 1967, the Tai Tokerau DMC described this Bill as having ‘caused the greatest concern ever over Legislation throughout the people and the Council discussed and made representation to Parliament but have received very little satisfaction.’⁶⁵ The DMC’s report added that ‘the government and Department of Māori Affairs must accept responsibility for the poor relationship in which this Bill has been received . . . For these reasons the Council has rejected the bill at all stages.’⁶⁶ In passing the Act, the Government was seen as demonstrating its willingness to ‘forgo not only council approval but also the support of Māori generally in order to achieve its aims.’⁶⁷

Ralph Hanan died suddenly in July 1969. His successor as Minister of Māori Affairs, Duncan MacIntyre, signalled his intention to proceed with caution in implementing the provisions of the Māori Affairs Amendment Act 1967.⁶⁸ Despite this assurance, in the period from the Act’s introduction until its repeal in 1974, the legislation had a significant impact on the alienation of Māori land.⁶⁹ According to Aroha Harris, in the year 1970 alone, the Māori Land Court made 3,410 declarations changing the status of Māori land to European land, with only 17 per cent of these being at the owners’ instigation.⁷⁰ In a gesture aimed at regaining Māori support for the Government, MacIntyre announced his intention to place a NZMC

61. NZMC, minutes, 30–31 July 1966 (NZMC minute book, 1962–1970 (doc C3), pp 200, 203)

62. Hill, *Māori and the State*, p 158

63. Francis and Sarich, ‘Aspects of Te Rohe Pōtae Political Engagement’ (doc B22), p 181

64. Walker, *Ka Whawhai Tonu Mātou*, p 212; Harris, ‘Dancing with the State’ (doc B23), p 166

65. ‘Annual report of the Tai Tokerau District Māori Council 1967’ (First Waitangi Tribunal document bank, vol 19 (doc B26(s)), pp 40–41)

66. ‘Annual report of the Tai Tokerau District Māori Council 1967’ (First Waitangi Tribunal document bank, vol 19 (doc B26(s)), p 41)

67. Harris, ‘Dancing with the State’ (doc B23), p 166

68. Hill, *Māori and the State*, p 160

69. Francis and Sarich, ‘Aspects of Te Rohe Pōtae Political Engagement’ (doc B22), p 184

70. Aroha Harris, ‘Māori Land Title Improvement since 1945: Communal Ownership and Economic Use’, *New Zealand Journal of History*, vol 31, no 1 (April 1997), p 148

nominee on the Board of Māori Affairs, a statutory body which exercised control over some of the department's activities, including those to do with the development and settlement of Māori land, Crown acquisition of Māori land, and housing assistance to Māori and Island families.⁷¹ However, this gesture did little to arrest a rising sense of grievance among Māori over the Government's policies, particularly those surrounding Māori land.

We return to the NZMC's involvement in the modern Māori protest movement later in the chapter. For now, we turn to the question of the council's finance. As we have just discussed, the NZMC had to make representations to the Government about matters affecting Māori, and it had to make those representations as effectively as possible. This meant not only ascertaining the views of multiple, scattered communities and leaders, it also meant backing them up with expert research and professional advice so as to try to change the Government's mind about issues like compulsory acquisition or conversion. It had to do this very important work with limited funding. While the Government had its array of legal and other experts, the council, as Sir Edward explained, had to ask for help from Māori law students. In the 1950s, the Māori Affairs Department had opposed establishing the council, because it feared the consequences of an official pressure group that could challenge and potentially embarrass the Government on its Māori policies (see chapter 3). But how much pressure could such a group exert if it was starved of funds? We now turn to the issue of how the council's work was financed in the 1960s.

4.2.4 'A Bird Without Feathers'? Funding the NZMC structure

One of the early challenges faced by the NZMC was how to obtain funding to cover the expenses of its operations. Speaking at the inaugural meeting of the NZMC in June 1962, Hanan had provided an assurance that the new organisation would be adequately resourced to fulfil its statutory functions. 'Having launched the canoe,' he stated, 'I do not wish to see it sink.'⁷² However, while the Department of Māori Affairs had provided the NZMC with a one-off grant of £2,000 to cover its first year of operations, lack of funding quickly emerged as a perennial issue for the NZMC – with 'finances' frequently forming the first agenda item at NZMC meetings.⁷³ Section 26 of the 1962 Māori Welfare Act had given the NZMC the ability to levy its constituent bodies 'for funds to meet expenses.'⁷⁴ Contributions from Māori Associations (and the Government subsidies on those payments) were not the only source of finance available to the NZMC: during the 1960s the NZMC was successful in attracting grants from a number of other sources, such as the Māori Purposes Fund Board and the McKenzie Trust.⁷⁵ However, throughout this period, the NZMC's most significant source of funding would continue to come from annual contributions from Māori committees.

71. Hill, *Māori and the State*, p 160

72. NZMC, minutes, 28–29 June 1962 (NZMC minute book, 1962–1970 (doc c3), pp 4–13)

73. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 172

74. Māori Welfare Act, s 26

75. 'Financial Help: Grants Made to Māori Council', *Te Kaunihera*, vol 3, no 3, November 1965 (First Waitangi Tribunal document bank, vol 7 (doc B26(g)), p 84)

The NZMC had resolved in March 1963 to calculate the level of annual contributions from each of its DMCS based on the number of Māori committees in that district (in 1963 the sum was £5 per Māori committee).⁷⁶ This approach ran into problems, however, in districts where large numbers of Māori committees were either defunct or in recess, as it placed a greater financial burden on the functioning Māori committees to cover the payments of those no longer in existence. The issue of inactive Māori committees – inherited from the earlier tribal committee system – appears to have been a particular problem for specific DMCS. At a February 1964 meeting of the NZMC, for instance, the Tai Tokerau DMC appealed for the ‘amalgamation or deletion of [inactive] Māori Committees’ as ‘[m]any Māori committees [are] not functioning but are still used as the basis for levy on Māori Executive Committees.’⁷⁷ By August 1964, the combined total of arrears from all districts stood at £760.⁷⁸ In September 1964, the NZMC resolved to alter the system of calculating contributions, so that the annual contribution of £200 per district would be spread evenly across the eight DMCS.⁷⁹ The financial burden that this funding system placed upon Māori committees was exacerbated by the fact that the Māori committees who contributed to the NZMC also had to cover the costs of the remaining layers of the system: the executive committees and DMCS.⁸⁰ In 1963, for instance, the £5 contribution on Māori committees in the Tai Tokerau district was expected to meet the costs of the DMC as well as contributing to the expenses of the NZMC.⁸¹

Evidence from the 1960s and 1970s suggests that many Māori committees struggled to pay these annual contributions, due to the difficulties of raising funds from often impoverished Māori communities who could ill afford to pay. The multiple financial demands faced by Māori communities were acknowledged by *Te Kaunihera Māori* in 1970:

It is impossible for most Māoris to ignore demands for support of family and community gatherings and organisations of one sort or another . . . While he pays his full tax load to support social services, he also frequently sacrifices his time and his pocket to help look after his own old people and others less fortunate than himself. On top of this, he is asked to donate to the Māori Council (or other organisations under the Council), and this is something that can be a burden unless he sees that he is getting good value for his money.⁸²

76. NZMC, minutes, 16–17 March 1963 (NZMC minute book, 1962–1970 (doc C3), p 37)

77. Tai Tokerau District Māori Council, minutes, 22 February 1964 (Tai Tokerau District Māori Council minute book, 1962–1965 (First Waitangi Tribunal document bank, vol 18 (doc B26(r)), pp 60–63)

78. NZMC, minutes, 19 August 1964 (NZMC minute book 1962–1970 (doc C3), p 91)

79. NZMC, minutes, 26–27 September 1964 (NZMC minute book 1962–1970 (doc C3), pp 94–95)

80. Tai Tokerau District Māori Council, minutes, 20th April 1963 (First Waitangi Tribunal document bank, vol 18 (doc B26(r)), pp 52–55)

81. Tai Tokerau District Māori Council, minutes, 9 November 1963 (First Waitangi Tribunal document bank, vol 18 (doc B26(r)), pp 56–59)

82. ‘Ngā Take a Te Kaunihera,’ *Te Māori*, vol 1, no 4, June–July 1970 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 323)

Higher up the NZMC hierarchy, DMCS also struggled to serve their communities on the meagre income obtained from Māori committee contributions. In its annual report for 1967–68, the Tai Tokerau district council noted that: ‘Our finance for the coming year will have to be considered for there is a saying, “that a bird cannot fly without feathers” and at present, two of the birds are moulting badly.’⁸³ Similarly, in 1970, the Tai Tokerau District Māori Council was said to have been looking ‘for ways to improve its finances, for each year the Council’s work is expanding, and if it is to become the eyes and ears of the people at local level then it is a job worth doing, and doing thoroughly, and it can only do this with a sound financial platform.’⁸⁴

The national leadership of the NZMC recognised the ongoing difficulties experienced by its districts in meeting their annual levies. The NZMC acknowledged in a 1966 *Te Kaunihera Māori* article that the £200 annual contribution required of DMCS ‘has not always proved easy to meet and several districts have fallen behind.’⁸⁵ This was a considerable understatement of the position: of the eight DMCS, only two – Tairāwhiti and Waiariki – had paid their full contribution in 1967, while half had paid nothing.⁸⁶

The proposal that the NZMC should seek further Government assistance was raised on a number of occasions at NZMC meetings during the 1960s. However, the early leaders of the NZMC were by no means unanimous in the view that the NZMC should seek further funding from Government. NZMC president Sir Turi Carroll believed that it was important for the council to demonstrate its self-reliance by proving that Māori people could fund their own institutions. When the possibility of approaching the Government for a direct grant was raised at an April 1965 meeting, Carroll and other speakers:

pointed out that the Council was set up to meet the wishes of the people. The President appealed to all members to ensure that the work of the Council was carried on forever. It must show what Māoris are capable of doing.⁸⁷

Similar arguments were repeated at a meeting of the Council at Ōmāhu in April 1967. At the meeting, ‘Mrs Henry (Taumaranui) spoke forcefully of the need to raise our own funds instead of depending on outside help. We must try to instil some interest in the young people.’⁸⁸

By the late 1960s, however, the NZMC’s financial situation had deteriorated to the extent that the organisation would have little choice but to seek further Government funding to ensure its own survival. By 1968, the NZMC faced the possibility of being

83. Tai Tokerau District Māori Council, Annual Report for 1967–1968 (First Waitangi Tribunal document bank, vol 19 (doc B26(s)), p 60)

84. Tai Tokerau District Māori Council, Annual Report for 1970 (First Waitangi Tribunal document bank, vol 19 (doc B26(s)), p 104)

85. ‘Council’s Annual Accounts. Income and Expenditure Both Up’, *Te Kaunihera*, vol 1, no 1, July 1966 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 282)

86. NZMC, minutes, 19 December 1967 (NZMC minute book, 1962–1970 (doc C3), p 266)

87. NZMC, minutes, 2–4 April 1965 (NZMC minute book, 1962–1970 (doc C3), p 145)

88. NZMC, minutes, April 7–9 1967 (NZMC minute book, 1962–1970 (doc C3), p 248)

Section 25 of the Māori Welfare Act 1962 provided for Māori committees and Māori executive committees to, with the approval of the Minister of Māori Affairs, receive a pound for pound subsidy from Government on expenditure, provided that the expenditure had, as a principal objective, 'the promotion of the welfare of the Māori people'. Historian Andrew Francis has concluded that, while the scope for expenditure under the 1962 Act was fairly broad, in reality the subsidy system appears to have been used mainly to fund marae improvements. Between 1964 and 1969, the Department of Māori Affairs received a total of 261 applications and allocated subsidies totalling just over £84,594 to Māori committees. By 1965, a system put in place by the NZMC whereby the District Māori Councils were made responsible for ranking the applications for subsidy in their areas according to priority, was reported to be 'working very satisfactorily'. The total sum of Government funds available for subsidies steadily increased over the early 1970s. In 1972 the total sum available for subsidies was \$35,000, and by 1975 it had increased to \$150,000. As Dr Francis points out, Māori committees seeking marae subsidies sought to ensure that 'tribal culture and traditions were safeguarded at a time of increasing urbanisation'. Responsibility for paying out the marae subsidies (following the recommendation of District Māori Councils) remained with the Department of Māori Affairs and its successor agencies until at least December 1991, after which it was 'mainstreamed' following the establishment of TPK. The Marae Subsidies programme is now administered by the Ministry of Culture and Heritage.

Sources: Andrew Francis and Jonathan Sarich, 'Aspects of Te Rohe Pōtae Political Engagement, 1939–c 1975: Government Provision for Local Self-government for Te Rohe Pōtae Hapū and Iwi' (commissioned research report, Wellington: Waitangi Tribunal, 2011) (doc B22), pp 194–195, 203–207; 'Annual Report of the Department of Māori Affairs for the year ending 31 March 1965', AJHR, 1965, G-9, p 15; 'Community Services Division. Business Plan 1 July '91 – 30 December '91' (Te Puni Kōkiri, Head Office files document bank part 6 (doc C18(i)), pp 77–79).

unable to pay its bills. In May that year, the NZMC issued a request to DMCS to send in all outstanding contributions immediately, 'as the Council's funds were depleted and the Bank would allow only a limited overdraft'.⁸⁹ The NZMC's finances were little improved in 1969, when members were informed that the contributions received in the past few days were 'just enough to pay outstanding accounts'.⁹⁰ Secretary John Booth informed his organisation that, while the NZMC's administration was able to 'just scrape through' on its present income, 'if the Council wanted to get out and work amongst the people more income would be required'.⁹¹ Finances were

89. NZMC, minutes, 3–5 May 1968 (NZMC minute book, 1962–1970 (doc C3), p 280)

90. NZMC, minutes, 14–15 March 1969 (NZMC minute book, 1962–1970 (doc C3), p 301)

91. NZMC, minutes, 4–5 December 1969 (NZMC minute book, 1962–1970 (doc C3), p 333)

prominent on the agenda of a meeting between the NZMC and the Minister and secretary, Duncan MacIntyre and Jock McEwen, in December 1969. NZMC representatives at the meeting highlighted the ‘serious drop’ in the council’s bank balances over the previous four years.⁹² Raising the level of contributions from DMCS was not an option, as the NZMC ‘pointed out that the demands on Māori communities are already very heavy and that more should not be expected from that source’.⁹³ Soon after this meeting, MacIntyre approved an amendment to the 1962 Act to replace the existing subsidy system with the payment of an annual Government grant to the NZMC.⁹⁴ From 1970, the NZMC would receive a direct Government grant of \$6,000 per annum.⁹⁵ The commencement of the annual Government grant appears to have temporarily eased the NZMC’s financial woes. However, the council’s struggle for resources to meet its costs, as we will see throughout this chapter, would become a recurring theme in its history over the subsequent five decades.

Another recurring theme was to be amendments to (and reviews of) the legislation under which the council system operated. We turn next to consider how amendments were dealt with in the 1960s.

4.2.5 NZMC input into amendments to the 1962 Act, 1963–71

Counsel for the claimants submit that the legislative history of amendments to the 1962 Act proves that, at least up until the 1980s, Governments obtained the prior consent of the NZMC before implementing any changes to the Act. Furthermore, the claimants suggest that many of the changes that were introduced to the Act during this period were at the NZMC’s own request.⁹⁶ In this section, we discuss the evidence of the NZMC’s involvement in changes to the 1962 Act between 1963 and the early 1970s; in later sections we cover the NZMC’s role in amendments to the Act during the mid 1970s and in relation to the 1981 Māori Affairs Bill.

We have already covered in chapter 3 the NZMC’s response to the Government’s changes to the Māori Welfare Bill before it was passed into law in 1962. As we found in that chapter, all bar one of the corrections requested by the NZMC were agreed to by the Government in the Māori Welfare Amendment Act of 1963.

Following the passage of the Māori Welfare Amendment Act 1963, all subsequent amendments to the Act (up until the introduction of a new Amendment Act in 1996) were made through the Māori Purposes Act, an annual omnibus piece of legislation incorporating changes to legislation relating to Māori or Māori land.

The first changes to the Act under the Māori Purposes Act occurred in 1965, when the Government inserted an uncontroversial amendment transferring lands previously vested in tribal committees and tribal executives over to the newly formed Māori Associations.⁹⁷ While the member for Eastern Māori, Puti Tīpene Wātene,

92. NZMC, minutes, 4–5 December 1969 (NZMC minute book, 1962–1970 (doc c3), p 333)

93. NZMC, minutes, 4–5 December 1969 (First Waitangi Tribunal document bank, vol 7 (doc B26(g)), p 54)

94. NZMC, minutes, 27 February 1970 (NZMC minute book, 1962–1970 (doc c3), p 338)

95. ‘Ngā Take A Te Kaunihera. Council’s Role Assessed’, *Te Māori*, vol 2, no 6, December-January 1972 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 370–371)

96. Claimant counsel, closing submissions (paper 3.3.5), pp 11–14

97. NZPD, 1965, vol 344, pp 3133–3134; Māori Purposes Act 1965, s 12

raised objections to the change, on the grounds that it had not been put before the NZMC for approval, it appears that the NZMC had itself suggested the change to the Minister of Māori Affairs at a July 1963 meeting.⁹⁸

The next major revisions to the Act were introduced in the years from 1969 to 1971, when the department – now known as the Māori and Island Affairs Department – cooperated with the NZMC on a series of reforms to the Act. These changes were aimed at streamlining the operations of the NZMC structure as well as altering the governance arrangements for Māori Wardens. The 1969 amendment transferred the control of Māori Wardens from Māori committees to DMCS. We have already discussed this particular amendment in chapter 3. Our discussion here is therefore concerned with the other revisions to the 1962 Act introduced in this period.

The first of these amendments was included in the Māori Purposes Act 1970, which amended section 25 of the 1962 Act and altered the NZMC's funding arrangements by replacing the pound-for-pound subsidy system on money raised by Māori Associations with the payment of a Minister-approved annual grant.⁹⁹ As we have seen earlier in this chapter, the NZMC had raised the issue of its finances directly with the Minister at a meeting in December 1969, and this measure was probably a direct outcome of that meeting.¹⁰⁰ The issue of the NZMC's poor financial state came up again when the Bill was discussed in Parliament. While welcoming the change in funding arrangements for the NZMC, the Opposition member for Northern Māori, Matiu Rata, expressed his opinion that the measure was long overdue. The NZMC, he said, had been in financial difficulties for some time, and it was 'totally impossible for any national organisation to be run efficiently on an amount of only \$2,600 a year' (the amount then allocated to the NZMC in the Parliamentary budget).¹⁰¹ It is clear that this 1970 amendment to the system of funding the NZMC was made as a result of a direct request by the NZMC to the Minister.

The next amendment was enacted in December 1970, when the Age of Majority Act 1970 passed into law. The Age of Majority Act specified that a person should be considered as having attained full adulthood for legal purposes at 20 years of age.¹⁰² The Act contained a range of amendments to other Acts, including an amendment to section 19 of the Māori Welfare Act 1962 and to the Māori Welfare (later Community Development) Regulations 1963, changing the voting age for Māori committee elections from 21 to 20.¹⁰³ This particular amendment received no specific mention when the Bill was debated in Parliament. It was, however, discussed by DMCS during 1969, and in May of that year, the Tai Tokerau DMC recorded a minute stating their objection to the change in voting age.¹⁰⁴ It appears that their

98. NZPD, 1965, vol 345, pp 3669–3670; NZMC, minutes, 5–7 July 1963 (NZMC minute book, 1962–1970 (doc c3), pp 45–46)

99. Māori Purposes Act 1970, s18

100. NZMC, minutes, 4–5 December 1969 (NZMC minute book, 1962–1970 (doc c3), p 333)

101. NZPD, 1970, vol 370, p 4915

102. Age of Majority Act 1970, s4

103. Age of Majority Act 1970, sch 1

104. Tai Tokerau District Māori Council, minutes, 24 May 1969 (Tai Tokerau District Māori Council minute book, 1962–1965 (First Waitangi Tribunal document bank, vol 19 (doc B26(s)), p 76)

view was not shared by other DMCS, and in August 1970 the NZMC passed a measure in support of lowering the voting age for Māori committee elections even further to 18 years of age.¹⁰⁵

We have no other information on the origins of this 1970 amendment to the 1962 Act, although it seems likely that it was initiated by the Government simply in order to align the Māori Welfare Act with the other changes then being introduced under its Age of Majority legislation, and then passed to the NZMC for approval. The Government's desire for uniformity across all legislation impacted by the Age of Majority Act is a likely explanation for the discrepancy in the voting age agreed upon by the NZMC and that which was eventually introduced under the Age of Majority Act. Nevertheless, while the 1970 Act represented a compromise from the NZMC's original position, the amendment introduced under the Age of Majority Act resulted from a negotiated agreement between the NZMC and the Government.

The next three changes to the 1962 Act were incorporated into the Māori Purposes Act 1971, enacted in December of that year. The 1971 amendments included an amendment to section 10 of the 1962 Act to allow for direct representation of Māori committees on DMCS (thus bypassing the executive committee level), changes to section 14 to give the NZMC the power to divide or amalgamate existing DMC boundaries, and a change to section 19 to give DMCS the powers to forgo elections in the case of Māori committee members who had been in office less than six months prior to the election date.¹⁰⁶

In relation to the section 10 change, the four-tiered council structure had been criticised in the NZMC's annual report for 1967 as 'cumbersome' and ineffective.¹⁰⁷ By the mid-1960s Māori committees were already experimenting with eliminating the executive committee layer of the system by allowing Māori committee representatives to sit on DMCS.¹⁰⁸ For instance, in 1966, the Manukau Executive Committee had submitted a remit for its own abolition, requesting instead that its Māori committees be given direct representation on the Auckland District Māori Council.¹⁰⁹ The possibility of direct representation for Māori committees had also been discussed at a special meeting of the NZMC in August 1970.¹¹⁰ All this evidence points to the conclusion that the change to section 10 was included in the Māori Purposes Act 1971 at the request of the NZMC.

The Māori Purposes Act 1971 amended section 14 of the 1962 Act to give the NZMC the ability to create new council districts and divide or amalgamate existing

105. 'Ngā Take a Te Kaunihera', *Te Māori*, vol 1, no 6, October-November 1970 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 334-335)

106. Māori Purposes Act 1971, ss 9-11

107. 'Annual Report of the New Zealand Māori Council 1966-1967', *Te Kaunihera*, vol 1, no 4, April 1967 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 295)

108. 'Annual Report of the New Zealand Māori Council 1966-1967', *Te Kaunihera*, vol 1, no 4, April 1967 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 295)

109. 'Auckland District Māori Council', *Te Kaunihera*, vol 1, no 1, July 1966 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 277)

110. 'Ngā Take a Te Kaunihera', *Te Māori*, vol 1, no 6, October-November 1970 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 335)

council districts.¹¹¹ This change had been discussed at the August 1970 special meeting of the NZMC, and was likely a response to calls by Ikaroa delegates for a separate DMC for the Wellington region.¹¹² Thus it was likely that this change was also requested by the NZMC. This appears to be confirmed by the fact that, soon after the amendment was introduced, Ikaroa moved to split its district in two by getting the NZMC to create a new Wellington district.

We have no information as to why the section 19 amendment to the Māori committee elections occurred, although the measure appears to have been introduced to simplify the process for Māori committees to reform themselves after a period of recess, and was probably also an initiative of the NZMC. There is no direct evidence on that point.

From the evidence available to us for the period from 1963 to the early 1970s, we accept the claimants' contention that amendments to the 1962 legislation were, for the most part, introduced either in consultation with the NZMC, or at the NZMC's own request.

We discuss the NZMC's input into a series of changes introduced to the 1962 Act during the mid- to late-1970s below. Before doing so, however, it is necessary to set the scene by describing the NZMC's role in the modern Māori protest movement of the late 1960s and 1970s. As we shall see, this decade of Māori protest brought about changes that would be key to the reshaping of the Māori representational landscape in subsequent decades.

4.3 THE 1970S: A DECADE OF MĀORI PROTEST

The late 1960s and early 1970s witnessed the rise of a new generation of Māori protesters. Informed by radical protest movements overseas, young radical groups such as Ngā Tamatoa (founded at a Young Māori leaders' conference convened by the NZMC in 1970) seized upon a number of long-standing Māori grievances – the continuing alienation of Māori land, the loss of *te reo*, and the non-observance of the Treaty of Waitangi – as a target for their protests.¹¹³ The NZMC would be at the centre of many of the key achievements of this protest movement during the 1970s. The willingness of protest groups such as Ngā Tamatoa to use radical tactics such as marches, pickets, demonstrations, and occupations soon gained them notoriety among the national news media, as well as alienating them from some of the more traditional Māori leadership.¹¹⁴ While the NZMC continued to make its views known to Government through less confrontational means, such as by making public submissions, or writing to or meeting with Ministers, it too proved increasingly willing to employ less orthodox and more radical methods to achieve its goals for Māori.

111. Māori Purposes Act 1971, s 10

112. 'Ngā Take a Te Kaunihera', *Te Māori*, October-November 1970 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 335)

113. Walker, *Ka Whawhai Tonu Mātou*, p 210

114. Aroha Harris, *Hikoī; Forty Years of Māori Protest* (Wellington: Huia Publishers, 2004), pp 25–26

Some of the new generation of radical protestors rejected the NZMC, seeing it as ‘overly timid or compromised’ due to its relationship with the Crown.¹¹⁵ Ngā Tamatoa was, from the outset, openly critical of the council structure, which it regarded as ineffective and a European construct inappropriate to represent Māori. An early Ngā Tamatoa pamphlet criticised the Māori committees for having ‘done very little’ for the advancement of the collective Māori cause.¹¹⁶ The NZMC also clashed with some of the newer generation of Māori protestors over issues such as the 1970 All Black Tour of apartheid South Africa (in which Māori players had been permitted to participate as ‘honorary whites’). The NZMC came out publicly in support of the tour, much to the ire of protestors.¹¹⁷

While they differed in their tactics, the NZMC and the more radical Māori protest groups shared a great deal of common ground on the issues that Aroha Harris describes as the ‘cornerstones of Māori protest’ since European colonisation: ‘land, the Treaty of Waitangi, te reo, mana Māori motuhake and tino rangatiratanga.’¹¹⁸ As Dr Harris has written, the distinctions between the newer generation of protest groups such as Ngā Tamatoa and earlier Māori leaders at this time ‘were more a matter of means than ends: the goals and aspirations of Māori development have long been shared across the spectrum of Māori politics.’¹¹⁹

Furthermore, the leadership of the NZMC was itself becoming more radical by the late 1960s, with the appointment of a number of young and vocal leaders to urban DMCS. The Auckland DMC, for example, maintained a high profile during the 1970s due to the appointment of three young university lecturers – Ranginui Walker, Matiu Te Hau, and Pat Hohepa – to its membership.¹²⁰ As historian Richard Hill writes, Māori leaders such as Walker and Hohepa were ‘aiming to fight “the establishment” from within the official system, while at the same time trying to push it in more radical directions.’¹²¹ During the early 1970s, the NZMC was also undergoing change at the top, with the appointment of Graham Latimer as its president. Latimer would remain at the helm of the NZMC and steer the organisation’s affairs for the next 30 years. The radicalisation of its leadership, as well as its vocal opposition to key Government legislation such as the Māori Affairs Amendment Act 1967, went some way towards countering earlier criticisms of the NZMC as simply existing to rubber stamp Government policy.

4.3.1 The Crown–NZMC relationship during the 1970s

While the protest action of more radical Māori groups such as Ngā Tamatoa dominated the public spotlight in the 1970s, the NZMC continued to work away in the background to achieve change for Māori. Writing in 1975, the anthropologist Joan

115. Hill, *Māori and the State*, p 147

116. Hill, *Māori and the State*, p 174

117. Harris, *Hikoi*, p 35

118. Harris, *Hikoi*, p 13; Walker, *Ka Whawhai Tonu Mātou*, p 243

119. Harris, *Hikoi*, p 25

120. Butterworth, ‘*Men of Authority*’ (doc B21), p 20

121. Hill, *Māori and the State*, p 161

RECENT LEADERS OF THE NEW ZEALAND MĀORI COUNCIL

Sir Graham Stanley Latimer

Sir Graham Stanley Latimer was born at Waihārara on the Aupōuri Peninsula in 1926. He belongs to the Ngāti Kahu, Te Aupōuri, and Te Rarawa hapū and also has Irish, Scottish, and English ancestry. In the 1950s he became a Māori warden. Then, in 1962, Sir Graham became a member of the Tai Tokerau DMC and was one of its representatives on the NZMC. He served as the district council's secretary and became its president. He became vice president of the NZMC in 1969 and president in 1973. His wife, Lady Emily Latimer, also served as secretary of the Tai Tokerau District Māori Council. In 1982, Sir Graham Latimer was knighted for his services to the Māori people. He remains an honorary president of the New Zealand Māori Council today.

Cletus Maanu Paul

Cletus Maanu Paul is of Ngāti Moewhare, Ngāti Haka-Patuheuheu, Ngāti Pūkeko, Ngāti Awa, Tūhoe, Te Arawa, and Tainui descent. Maanu Paul was appointed as co-chair of the New Zealand Māori Council in June 2012. Mr Paul has had a long history of involvement with the NZMC, and is a former chair of the Waiariki District Māori Council and current chair of the Mataatua District Māori Council.

Sir Edward Taihakurei Durie

Sir Edward Taihakurei Durie is of Rangitāne, Ngāti Kauwhata, and Ngāti Raukawa descent. Sir Edward has had a long and distinguished legal career. He was the first Māori appointed as a Justice of the High Court of New Zealand and is a former chairperson of the Waitangi Tribunal. Sir Edward is currently the chair of the Raukawa District Māori Council as well as a co-chair of the New Zealand Māori Council.

For more information on Sir Graham Stanley Latimer, see Noel Harrison, *Graham Latimer: A Biography* (Wellington: Huia Publishers, 2002).

Metge described the NZMC's significant impact on Government policy in the 1960s and 1970s as follows:

With three delegates from each of nine District Māori Councils, the New Zealand Māori Council is a sizeable body drawing members from all parts of New Zealand and most tribes. It maintains a number of sub-committees on special topics with

powers to co-opt outside advisers, and over the years has made extensive and thoroughly researched submissions to Parliament on every issue of concern to Māoris, especially on the 1967 and 1974 Māori Affairs Amendment Acts, land, education, town and country planning, rating, the taking of land for public works, race relations, youth, and access to fishing resources. It has representatives on the Māori Education Foundation and the Māori Health and Education Advisory Committees, and close ties with the Māori Women's Welfare League.¹²²

The NZMC's input on the Town and Country Planning Act in this period was, for example, 'instrumental' in the amendment of the Act to require planners to take Māori culture and traditions into account in their decisions.¹²³ An amendment to the Public Works Act secured with NZMC support made possible the return to former owners of public works land no longer required for its original purpose.¹²⁴ But while the NZMC remained active in its behind-the-scenes work of writing submissions and letters to Government, the disastrous experience of the 1967 Māori Affairs Amendment Act meant that the NZMC's leadership was also open to more direct means of achieving their goals for Māori. In discussing a Government Bill on Race Relations in 1971, the Tai Tokerau DMC noted that 'the NZ Māori Council had spent a lot of time preparing documentation on the Bill for submission to the Parliamentary committee on Race Relations' but noted that it was the council's position that 'after making submissions . . . if there was little satisfaction it would call on all Māori organisations to travel to Wellington in protest'.¹²⁵

Alarm at the continuing alienation of Māori land and a desire to retain the land in Māori hands was central to the Māori protest movements of the 1970s. The NZMC had firmly set out its own retentionist stance towards Māori land during the battle over the Māori Affairs Amendment Act in 1967. As previously mentioned, the passage of this Act had fuelled widespread Māori discontent on the issue of Māori land. The momentum for the Māori land rights movement continued to build during the 1970s, with several notable struggles over Māori land – such as at Raglan from the early 1970s and Bastion Point from 1977 – also acting to mobilise Māori opinion on land issues.¹²⁶

Labour defeated National in the election of 1972, and New Zealand gained its second ever Minister for Māori Affairs of Māori descent in the appointment of the member for Northern Māori, Matiu Rata, to the portfolio. The election of the 1972 Labour Government marked the beginning of a 'close and complementary' relationship between the NZMC and the Māori members of Parliament. A 1975 account of the NZMC's history noted that all 'new legislation has been drafted and revised in consultation with the Council, and in addition to the members of Parliament

122. Joan Metge, *Rautahi: The Māoris of New Zealand* (London: Routledge and Kegan Paul, 1976 [1967]), p 210

123. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 183

124. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 183

125. Tai Tokerau District Māori Council, minutes, 25 September 1971 (Tai Tokerau District Māori Council minute book, 1962–1965 (First Waitangi Tribunal document bank, vol 19 (doc B26(s)), pp 117–118)

126. Harris, *Hikoī*, pp 68, 78–87

serving on the Council in their private capacity, the Minister of Māori Affairs has regularly attended the Council's quarterly meetings as a means of maintaining contact and cooperation.¹²⁷

Two years later, in consultation with both the NZMC and the Māori members, Rata repealed the controversial 1967 Amendment Act.¹²⁸ Its replacement Act, the Māori Affairs Amendment Act 1974, signalled a major shift in Government policy towards Māori land. Rather than hastening the alienation of Māori land, the new policy would be focused upon its retention.¹²⁹ The Act repealed the ability of the Māori Trustee to compulsorily acquire 'uneconomic' interests, permitted Māori owners of 'European' land to have its status reverted to Māori land, and replaced the Board of Māori Affairs with a Māori Land Board including five Māori representatives, one of which was to be nominated by the NZMC.¹³⁰ As Matiu Rata stated in a 1973 policy document outlining the Government's intended changes to Māori land legislation: 'With the strong ties between people and their land, the Government recognises the right of kin-groups to remain proprietors of their land, and intends to ensure the retention of as much as possible of the remaining land in Māori ownership and management.'¹³¹ The NZMC expressed its approval of the draft legislation, stating: 'the spirit which animates the Bill is one [with] which the Council finds itself in complete harmony'.¹³²

While the 1974 Amendment Act represented a significant step in the direction of ensuring the retention of Māori land, Māori groups continued to agitate for better legal protections for Māori land. Early in 1975, representatives of Ngā Tamatoa, the Auckland DMC, and the Māori Women's Welfare League joined forces to protest against the loss of Māori land. The protest was to take the form of a hīkoi, 'a sacred march – for a sacred purpose, to hold on to our lands'.¹³³ The group appointed Whina Cooper to lead them and adopted a name: Te Matakite O Aotearoa. The hīkoi organising committee would include Graham Latimer for the NZMC and Ranginui Walker for the Auckland DMC, as well as members of the league and Ngā Tamatoa.¹³⁴ After months of fundraising and gathering support, the Hīkoi departed from Te Hapua Marae in Te Tai Tokerau on 14 September 1975.¹³⁵ Over the next month, the marchers – comprising of a core group of 50 people – would walk the length of the North Island, drawing 30,000 to 40,000 Māori and Pākehā supporters over its duration.¹³⁶ On the final day of the hīkoi, 13 October 1975, an estimated 5,000 people joined Whina and the group in their march to Parliament to present

127. Metge, *Rautahi*, p 210

128. Walker, *Ka Whawhai Tonu Mātou*, p 213

129. *Government White Paper on Proposed Amendments to the Māori Affairs Act 1953, the Māori Affairs Amendment Act 1967, and Other Related Acts* (Wellington: Government Printer, 1973), p 8

130. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 185

131. *Government White Paper on Proposed Amendments to the Māori Affairs Act 1953, the Māori Affairs Amendment Act 1967, and Other Related Acts* (Wellington: Government Printer, 1973), p 8

132. Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 184

133. Michael King, *Whina: A Biography of Whina Cooper* (Auckland: Hodder and Stoughton, 1983), p 207

134. Butterworth, *Men of Authority* (doc B21), pp 45–46

135. King, *Whina*, p 216

136. Harris, *Hīkoi*, p 74

a Memorial of Rights on Māori land to Prime Minister Bill Rowling.¹³⁷ The memorial 'demanded that all statutes that could alienate, designate or confiscate Māori land be repealed, and that the control of the last remaining tribal lands be vested in Māori in perpetuity'.¹³⁸

Another key issue for the Māori protest movements of the 1970s (and early 1980s) was the observance of the Treaty of Waitangi. From the 1970s, the annual Waitangi Day commemorations increasingly became a focal point for Māori protest. In 1973, Ngā Tamatoa declared Waitangi Day a day of mourning for the loss of Māori land.¹³⁹ The 1973 Waitangi Day protests highlighted how the actions of radical groups like Ngā Tamatoa could strengthen the hand of the NZMC in its negotiations with Government. Following Ngā Tamatoa's national day of protest, the Government sought out the NZMC's views on the items of Government legislation which contravened the Treaty. To the Government's surprise, the NZMC responded by supplying it with a list of 14 statutes.¹⁴⁰ In October the following year the Labour Government introduced the Treaty of Waitangi Act 1975, which established the Waitangi Tribunal to inquire into Crown breaches of the Treaty. However, its powers under the Act confined it to making non-binding recommendations on new policies and legislation only, not historical grievances.¹⁴¹ A month later, the Labour Government – which had suffered a major blow following the sudden death of Prime Minister Norman Kirk – was defeated in a general election and succeeded by a National Government under Robert Muldoon, with Duncan MacIntyre resuming his place at the helm of Māori Affairs.

Waitangi Day protests continued throughout the 1970s and into the 1980s. By the early 1980s, the Waitangi Action Committee, established in 1979, had replaced Ngā Tamatoa as the group at the fore of the Waitangi Day protests.¹⁴² The Waitangi Action Committee 'made the Treaty of Waitangi the focal point for their activism' and called for a boycott of Waitangi Day celebrations.¹⁴³ Speaking on the topic of Waitangi protests to his district council in the early 1980s, Graham Latimer had voiced his disappointment at the disruption of Waitangi Day commemorations by what he termed the 'anti-element', whose actions 'make it sad for those who love Waitangi and all the mana it generates'.¹⁴⁴ In 1981, Waitangi protestors targeted the investiture ceremonies of Whina Cooper and Graham Latimer, and the latter would subsequently call for protestors to be banned from future Waitangi Day celebrations.¹⁴⁵ Waitangi Day protests culminated in a Hikoī ki Waitangi in 1984, beginning from Ngāruawāhia. Like the land march of the previous decade, the hikoī attracted

137. Walker, *Ka Whawhai Tonu Mātou*, p 214; Harris, *Hikoī*, p 76

138. Harris, *Hikoī*, p 72

139. Harris, *Hikoī*, p 27

140. Walker, *Ka Whawhai Tonu Mātou*, p 211

141. Walker, *Ka Whawhai Tonu Mātou*, p 212

142. Walker, *Ka Whawhai Tonu Mātou*, p 220

143. Walker, *Ka Whawhai Tonu Mātou*, p 221

144. Report to Tai Tokerau District Māori Council by Sir Graham Latimer (First Waitangi Tribunal document bank, vol 20 (doc B26(t)), pp 170–172)

145. Harris, *Hikoī*, p 110; Walker, *Ka Whawhai Tonu Mātou*, pp 229–230

participants from across a wide range of groups in Māoridom, including from the NZMC.¹⁴⁶

As we have seen from the above, the NZMC was instrumental in reforms to a range of items of Government legislation during the 1970s, and played a key role in many of the iconic Māori protest movements of the 1970s. We now consider the NZMC's role in changes to its own legislation between 1974 and 1975, and in 1979.

4.3.2 NZMC's involvement in changes to the 1962 Act, 1974, 1975, 1979

As previously stated, the claimants assert that, prior to the 1980s, Governments consulted with the NZMC before instigating changes to the 1962 Act, and that many changes to the Act were introduced at the NZMC's own request. We now consider whether this was the case for the amendments to the Act introduced during the remainder of the 1970s.

In November 1973, Minister of Māori Affairs Matiu Rata released a White Paper signalling upcoming legislative changes that the Government hoped to introduce.¹⁴⁷ While the document's focus was on the reform of Māori land legislation, it also foreshadowed a number of changes to the Māori Welfare Act, including what amounted to a major restructuring of the NZMC. His proposal was to abolish the executive committees and reduce the number of DMC representatives on the NZMC. In addition, he hoped to add Māori Women's Welfare League representatives to the council, and 'possibly three other persons appointed by the Minister as well as a Māori Member of Parliament on the nominations of their colleagues'.¹⁴⁸ These would be far-reaching changes to the council structure. The Minister noted that his intention to reform the NZMC structure had been 'stated on numerous occasions'.¹⁴⁹ However, he also intended to discuss his proposals further with the NZMC at its next meeting later that month, as well as canvassing the views of 'other Māori welfare groups'.¹⁵⁰ We have few details of this meeting, except that it took place and that the Minister, as promised, signalled to the NZMC his 'intention to change the structure of the council'.¹⁵¹

The 1973 White Paper also contained a series of proposed changes relating to the governance of Māori Wardens; while we summarise these below, we provide a fuller account of these proposed amendments in chapter 5, where we discuss the history of the Māori Wardens.

Some of the changes to the 1962 Act that had been foreshadowed in the 1973 White Paper were duly included in a Māori Purposes Amendment Bill in October

146. Harris, *Hiko*, p 112

147. *Government White Paper on Proposed Amendments to the Māori Affairs Act 1953, the Māori Affairs Amendment Act 1967, and Other Related Acts* (Wellington: Government Printer, 1973), pp 3–5

148. *Government White Paper on Proposed Amendments to the Māori Affairs Act 1953, the Māori Affairs Amendment Act 1967, and Other Related Acts* (Wellington: Government Printer, 1973), p 11

149. *Government White Paper on Proposed Amendments to the Māori Affairs Act 1953, the Māori Affairs Amendment Act 1967, and Other Related Acts* (Wellington: Government Printer, 1973), p 11

150. *Government White Paper on Proposed Amendments to the Māori Affairs Act 1953, the Māori Affairs Amendment Act 1967, and Other Related Acts* (Wellington: Government Printer, 1973), p 11

151. NZPD, 1975, vol 395, p 5623

1974. Clauses 7 to 16 of the Bill contained draft amendments to the Māori Welfare Act 1962, including major changes in the functions of the district councils and the NZMC. The clauses of the Bill which altered the 1962 Act, including those concerning Māori Wardens, are summarised below (see box). In brief, the Minister dropped his proposal to add league representatives, ministerial appointments, and a Māori member of Parliament to the council. His Bill intended to go ahead with the reduction of DMC representation to a single delegate each, but with the proviso that the NZMC could increase representation for DMCS in more populous districts (such as Auckland). Also, the number of DMCS would be increased from nine to 12 to 15. Rather than abolishing all executive committees, the Bill only dissolved committees where the lower-tier Māori committees were directly represented on a DMC. The grassroots level would also be altered, with DMCS empowered to recognise any Māori society they wished as a Māori Association for the purposes of the Act. In addition, instead of being appointed indefinitely, Māori Wardens would be appointed for three-year terms but could also be reappointed.

The Māori Purposes Bill 1974 was read for the first time in Parliament in mid-October of that year. Speaking during the first reading, the member for Egmont, Venn Young, questioned Rata on whether the proposed changes in the Bill had been ‘fully considered by the present council, and did they have the council’s full support?’ He added: ‘we are providing for the establishment of a Māori Council on an entirely different basis, and it is important to know that the proposals have the council’s support.’¹⁵² The Minister responded: ‘The New Zealand Māori Council, and I suppose the district councils, do not entirely agree with me on this point, and I dare say that they will not agree to the changes proposed.’¹⁵³ However – at least at this early stage – the Minister was willing to press on with the proposed changes in spite of NZMC opposition.¹⁵⁴

The Māori Purposes Bill 1974 was considered by the Māori Affairs Select Committee in late October of that year.¹⁵⁵ The select committee – having first consulted with the Minister on the groups most likely to make submissions on the Bill – wrote to representatives of the NZMWA and the NZMC. The committee also forwarded four copies of the Bill to the NZMC. The NZMWA indicated that it intended to appear before the select committee, while the NZMC advised the committee that it had planned a special meeting to discuss the Bill for 25 October, and would be ready to present before the select committee on 30 October. However, on 30 October, the NZMC advised the select committee that it would no longer appear before the committee but would send a letter instead.¹⁵⁶ The Māori Affairs Select

152. NZPD, 1974, vol 395, p 5116

153. NZPD, 1974, vol 395, p 5116

154. NZPD, 1974, vol 395, p 5116

155. Māori Affairs Committee, Agenda, 30 October 1974, in ‘37th Parliament – Māori Affairs Committee – Bills – Public Bills – Māori Purposes’, ABGX 16127, W3706, 13/1974, Archives New Zealand, Wellington

156. ‘Notes on Māori Purposes Bill’, in ‘37th Parliament – Māori Affairs Committee – Bills – Public Bills – Māori Purposes’, ABGX 16127, W3706, 13/1974, Archives New Zealand, Wellington

**SUMMARY OF DRAFT AMENDMENTS TO THE MĀORI WELFARE ACT 1962
CONTAINED IN THE MĀORI PURPOSES BILL 1974**

Clause 7: Substituted the definition of 'Māori' in the Act in line with similar changes to be introduced by the Māori Affairs Amendment Bill then before Parliament.

Clause 8: Altered the name of 'Welfare Officer' and 'Honorary Welfare Officer' to 'Community Officer' and 'Honorary Community Officer' in sections 4 to 6 of the 1962 Act.

Clause 9: Repealed section 7 of the 1962 Act, relating to Māori Wardens, and replaced it with a new section, with the following changes.

- ▶ Every Māori Warden would be appointed for three-year terms instead of indefinitely as under the previous version of the Act, but would be eligible to apply for reappointment.
- ▶ Such reappointments (not previously necessary under the Act) would be carried out by the Secretary for Māori Affairs.
- ▶ Every Māori Warden in office as of 30 June 1975 should leave office on that date, but would be eligible to apply for reappointment.

Clause 10: Proposed to automatically dissolve the Māori executive committees in districts in which all Māori committees had been granted direct representation on the District Māori Council.

Clause 11: Introduced a provision empowering District Māori Councils to recognise any 'Māori society' as having the status of a Māori committee and entitling any Māori society so recognised to full representation on the District Māori Council.

Committee went ahead with its scheduled meeting to hear public submissions on 30 October 1974.¹⁵⁷

The second reading of the Māori Purposes Bill 1974 was scheduled for 6 November 1974.¹⁵⁸ That morning, the Māori Affairs Committee received a telegram outlining the NZMC's objection to the Bill on the grounds that it had not had sufficient time to study the proposals. The telegram further stated that it was the council's position that it alone would determine changes to its legislation.¹⁵⁹ Whether on the advice of the select committee or because of the NZMC's strongly worded opposition, Rata at this point backed down from his earlier determination to push his Bill through in spite of NZMC concerns. Addressing Parliament later that day,

157. Māori Affairs Committee Agenda, 30 October 1974, in '37th Parliament – Māori Affairs Committee – Bills – Public Bills – Māori Purposes', ABGX 16127, w3706, 13/1974, Archives New Zealand, Wellington

158. NZPD, 1975, vol 395, p 5622

159. NZPD, 1975, vol 395, pp 5622–5623

Clause 12: Proposed a significant restructure of the New Zealand Māori Council, aimed at refreshing and streamlining the lower layers of the NZMC structure.

- ▶ Every member of the existing New Zealand Māori Council would cease to hold office on the first day of May 1975.
- ▶ All District Māori Councils would automatically cease to exist on the first day of April 1975.
- ▶ During March 1975, each Māori executive committee (or Māori committee with direct representation on a District Māori Council) would hold a meeting to nominate one delegate to represent it on a reformed District Māori Council.
- ▶ Each newly appointed District Māori Council would meet during April 1975 to appoint its representative on the New Zealand Māori Council.

Clause 13: Proposed an increase in the number of Māori council districts from the nine districts then in existence to 'between 12 and 15 districts', but with the precise number of districts within this range, and their boundaries, to be determined by the NZMC itself.

Clause 14: Reduced the number of delegates District Māori Councils were eligible to appoint to the NZMC from the existing three to one (with provision for the NZMC to grant permission for a district to have two or three District Māori Council representatives in populous urban areas).

Clause 16: Repealed section 36 powers of Māori committees to impose penalties for certain breaches of the 1962 Act.

Source: 'Māori Purposes Bill 1974, Part II: Amendments to the Māori Welfare Act 1962', ABGX-16127-W3706-13/1974, Archives New Zealand, Wellington

Rata announced his intention to omit clauses 10 to 16 from the Bill. This was, he said, 'to enable the Government to consider these proposals further with both the New Zealand Māori Council and the New Zealand Māori Wardens Association', as it was considered that 'the time given to the serious study of the proposals was too limited'.¹⁶⁰ However, while withdrawing the clauses affecting the NZMC from the Bill, Rata stopped short of endorsing the NZMC's position that it alone would determine changes to its Act, stating: 'I am not so sure whether it will determine changes, but all the Government is trying to do is improve the voluntary work the council carries out'.¹⁶¹ The Māori Purposes Bill passed into law on 8 November 1974, with only two of the clauses concerning the NZMC intact (section 7 amended the definition

160. NZPD, 1975, vol 395, p 5622

161. NZPD, 1975, vol 395, p 5623

of ‘Māori’ under the Act, and section 8 renamed Welfare Officers as Community Officers).¹⁶²

While Rata had agreed to temporarily delay his proposed reforms in order to give the NZMC more time to study the proposals, he subsequently reintroduced two of the clauses contained in the 1974 Bill in the Māori Purposes Bill 1975. Clause 14 changed wardens’ terms of appointment to three years (and, with the exception of date changes, was largely unmodified from the provision of the year before). Speaking in Parliament on the proposed change, Rata explained that the Government was concerned at the large number of warranted Māori Wardens that it believed to be no longer operating as wardens.¹⁶³ Clause 15 of the 1975 Bill reintroduced a clause from the year before permitting DMCs to recognise any Māori group as a ‘Māori Society’ and to afford them full membership rights on the DMC.¹⁶⁴ Rata explained the reason for the change as to ‘give recognition to Māori societies on their terms, which I believe will aid considerably the concept of the voluntary and welfare activity carried out by many Māori societies.’¹⁶⁵ The Māori Purposes Act 1975 passed into law in October of that year with these two sections intact.¹⁶⁶ We have no evidence as to whether the NZMC had consented to these particular provisions. We do observe, however, that some of the original provisions in the 1974 Bill to which the NZMC had objected were not reintroduced into this or subsequent Bills.

The final changes to the 1962 Act during the 1970s occurred in 1979, under the Māori Purposes Act of that year. Section 19 of the 1979 Act provided for a change in the name of the Act from the Māori Welfare Act 1962 to the Māori Community Development Act 1962.¹⁶⁷ The change in name was welcomed by members of Parliament as signalling a shift from the paternalistic overtones of ‘welfare’ to the more positive connotations of ‘community development.’¹⁶⁸ While it is not known whether the NZMC had provided any input on the name change, speaking in Parliament following the Bill’s first reading, Rata, now a member of the Opposition, expressed his hope that ‘when the committee hears evidence on the Bill it will hear the views of those directly affected by it. I think particularly of the New Zealand Māori Council and its affiliate bodies.’¹⁶⁹ While we do not have evidence on the NZMC’s views on this amendment at the time, the claimants refer favourably to the change in their statement of claim as ‘giv[ing] expression to the founding concept of community self-government’ embodied by the 1962 Act.¹⁷⁰

Our discussion in this section indicated that while the Minister, Matiu Rata, originally intended to push through changes to the 1962 Act in spite of the opposition

162. Māori Purposes Act 1974, ss 7, 8

163. NZPD, 1975, vol 402, p 5253; Māori Purposes Act 1975, ss 14, 15

164. NZPD, 1975, vol 401, p 4314

165. NZPD, 1975, vol 402, p 5253

166. Māori Purposes Act 1975, ss 14, 15

167. Māori Purposes Act 1979, s 19

168. NZPD, 1979, vol 426, p 3675

169. NZPD, 1979, vol 426, p 3674

170. Cletus Maanu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, ‘Statements on the basis for the Claim’, 27 September 2013 (paper 1.1.1), p 11

of the NZMC, he later adjusted his position following protests from the council. As a result of its objections, several clauses of the 1974 Bill (relating to changing DMC boundaries and the level of DMC representation on the NZMC) were withdrawn and not subsequently reintroduced. However, several important changes which had been included in the 1974 Bill – such as those changing the term of Māori Wardens to three years only, giving the Secretary for Māori Affairs power to reappoint Māori Wardens on the nomination of DMCs, and permitting ‘Māori societies’ to be represented on DMCs – were all subsequently reintroduced in the 1975 Act. We do not have sufficient evidence to determine whether the NZMC had given its prior consent to these changes. The council had declared the principle as it saw it, that the NZMC should determine any changes to the 1962 Act, but the Minister had equivocated on this point, neither accepting nor denying it but withdrawing the provisions to which the council had most objected. The apparently agreed practice of the 1960s was beginning to unravel in the 1970s.

4.3.3 Ngā Tūmanako: 1978 National Conference of Māori Committees

A 1978 national hui of Māori committees provides a convenient point at which to conclude our discussion of the NZMC during the 1960s and 1970s. Having discussed the NZMC’s activism at the national level and its key role in a range of legislative reforms and protest movements during the 1970s, we now examine how the remainder of the council system had fared during the 1960s and 1970s. In 1977, the NZMC agreed to a Māori Women’s Welfare League suggestion to host a national hui of Māori committees.¹⁷¹ The hui took place at Ngāruawāhia Marae over three days from 18 to 20 August 1978, and was attended by 350 delegates from the 367 Māori committees then in existence around the country. A summary of workshop discussions that took place at the conference was subsequently published as *Ngā Tūmanako: National Conference of Māori Committees* in November 1978. The overall sentiment of workshop participants was that the Māori committees were valuable and should be retained. However, Māori committee delegates also acknowledged a number of challenges then facing the council system. These included significant regional variability in the functions and performance of Māori committees, a lack of clarity on the relationship between the NZMC structure and other Māori entities, the challenges of maintaining communication between the various layers of the NZMC hierarchy, and lastly, a lack of resources at all levels of the system. These issues would define the major challenges for the NZMC going into the 1980s.

As seen earlier in this chapter, the NZMC had inherited a system of Māori committees which varied greatly in effectiveness between different regions. A 1963 issue of the NZMC newsletter, entitled ‘What use are our Māori Committees’, highlighted this variation, stating that while the Māori committees in some areas were working effectively, in others they were either ‘defunct’ or ‘dysfunctional’.¹⁷² Similarly,

171. Stokes, *Ngā Tūmanako*, pp 4–5, 13

172. ‘What Use Are Our Māori Committees?’, *NZMC Newsletter*, vol 1, no 2, October 1963 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 24)

reflecting in an article in *Te Ao Hou* in 1964 on the recent round of Māori committee elections, John Booth had written:

In some instances there have been only the few faithful members ready to carry on with the task. In other districts the election meetings have been quite lively and more people than ever are taking an interest in the work of the Māori Committees.¹⁷³

Local and regional variability in the level of interest and effectiveness of the Māori committee system remained a significant feature in the late 1970s.¹⁷⁴ In some areas, *Ngā Tūmanako* indicated, the Māori committee structure had not been well accepted by local people and ‘has never operated very effectively’.¹⁷⁵ This included areas in which the Māori committees were ‘barely operating at all’, and which sent no delegates to the 1978 conference.¹⁷⁶

Another feature highlighted at the conference was a lack of definition of the relationship between the council structure and other Māori entities, such as marae committees and tribal organisations, including trust boards. The conference proceedings described the overlap in jurisdiction between the NZMC system and the trust boards, also statutory bodies, as ‘a hazy area’.¹⁷⁷ On the local level, it acknowledged some ‘potential confusion of roles’ between the marae committees (‘traditional bodies operating within a marae context’) and the Māori committees (provided for by legislation and located within the NZMC’s administration structure as community organisations).¹⁷⁸ In areas where tribal structures were strong, *Ngā Tūmanako* suggested, the ‘Māori Committee structure should be seen as complementary to existing tribal organisations’.¹⁷⁹ On this topic, *Ngā Tūmanako* concluded:

There was a strong feeling in discussions that Māori people should be working out their own future. If this is to be encouraged, then different groups in different areas should be able to work this out in their own way. This means that if in some areas tribal organisations are preferred, then this alternative means of communication should be acceptable . . . It would cause unnecessary conflict to try to force Māori representation into the Māori Committee structure set up under the Māori Welfare Act 1962.¹⁸⁰

Also, while the NZMC was generally seen as highly effective in advocating for Māori interests at the national level, a number of Māori committee delegates expressed concern at the quality of communication between the lower layers of the NZMC structure (the Māori committees and Māori executive committees) and their

173. John Booth, ‘Māori Council Awaits Election Results,’ *Te Ao Hou*, no 47, June 1964 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 224)

174. Stokes, *Ngā Tūmanako*, p 36

175. Stokes, *Ngā Tūmanako*, p 3

176. Stokes, *Ngā Tūmanako*, p 37

177. Stokes, *Ngā Tūmanako*, p 39

178. Stokes, *Ngā Tūmanako*, p 39

179. Stokes, *Ngā Tūmanako*, p 50

180. Stokes, *Ngā Tūmanako*, p 50

national body. Many delegates raised the issue of what they saw as a disconnect between the activities of the NZMC and those of the lower layers of the structure:

There was general concern that Māori people should be able to make better use of this hierarchical structure to take up issues with government, to use existing channels of communication which already have a legislative base. . . . It was also acknowledged that this hierarchical structure was much better organised and operated more effectively in some areas than in others.¹⁸¹

Many felt that the executive committees were creating a 'hurdle' in the line of communication between the Māori committees and the NZMC, and should be abolished (as had already occurred in some areas such as Aotea), although some delegates felt that there was still a need for the executive committees in areas in which the population was more dispersed.¹⁸² While delegates thought that the structure of Māori representation provided for by the 1962 Act could be improved through greater opportunities for 'feedback from the grassroots', they also acknowledged that the lack of resourcing within the NZMC system was a major obstacle in the way of its effective operation: 'It was noted that this could require more finance and there was some comment on the problems of collection of affiliation fees.'¹⁸³

This leads us into what was highlighted by Māori committee attendees at the 1978 conference as one of the major deficits of the council system: chronic under-funding and its subsequent dependence upon its lower-level committees to resource their national body.¹⁸⁴ Here *Ngā Tūmanako* identified 'the limitation set by finance' as one of the most serious constraints hampering the system.¹⁸⁵ While *Ngā Tūmanako* highlighted the potential for the Māori committees to expand their activities and take on additional responsibilities in areas such as the issues faced by urban Māori whānau, education, and the better utilisation of Māori land, it also acknowledged that the committees were staffed by volunteers, working in their spare time 'and often with a limited personal income'.¹⁸⁶ As we will see in the next sections of the chapter, this perennial issue of under-resourcing remained a feature of the NZMC structure in the decades that followed.

Nonetheless, the conference shows that, at the end of the 1970s, the committee system was still working well in many areas and was considered a meaningful form of Māori representation for the matters on which the 1962 Act was focused. The NZMC would enter the 1980s as a major player in Māori and national politics, and having made a valuable contribution to the development of Government policy in a range of key areas impacting upon Māori. However, alongside these achievements the council system also faced a number of major challenges going into the 1980s: a significant level of regional variation in its effectiveness at the lower levels of its

181. Stokes, *Ngā Tūmanako*, p 38

182. Stokes, *Ngā Tūmanako*, p 38

183. Stokes, *Ngā Tūmanako*, p 39

184. Stokes, *Ngā Tūmanako*, p 3

185. Stokes, *Ngā Tūmanako*, p 50

186. Stokes, *Ngā Tūmanako*, p 50

**EXAMPLES OF SPECIAL ACTS OF PARLIAMENT GOVERNING TRIBAL
AUTHORITIES, 1980S–99**

Te Rūnanga o Ngāti Porou Act 1987	<i>(repealed by Ngāti Porou Claims Settlement Act 2012)</i>
Te Rūnanga o Ngāti Awa Act 1988	<i>(repealed by Te Rūnanga o Ngāti Awa Act 2005)</i>
Te Rūnanga o Ngāti Whātua Act 1988	
Hauraki Māori Trust Board Act 1988	
Maniapoto Māori Trust Board Act 1988	
Whanganui River Māori Trust Board Act 1988	
Te Rūnanga o Ngāi Tahu Act 1996	

structure, a lack of finance at all levels of the structure, the difficulties of ensuring effective communication between all the layers of the hierarchy, and the ill-defined relationship of the NZMC structure to other Māori organisations, particularly tribal organisations. This latter issue would be of increasing importance in the following decades, in the wake of the Māori cultural renaissance. From the late 1970s, this would be accompanied by the resurgence of tribal structures and an increasing willingness on the part of Governments to deal directly with iwi representative bodies. These 1980s shifts in the Māori representational landscape are the subject of the next section of this chapter.

4.4 THE 1980S: THE MĀORI CULTURAL RENAISSANCE, TRIBAL REVITALISATION, AND BICULTURAL POLICY

From the late 1970s, New Zealand's social and political landscape was transformed by a Māori cultural renaissance and a desire to restore Māori traditions, institutions, culture, and language. As we will see below, these changes would see a major shift in the Māori representational landscape over the next few decades. This cultural revival was associated with a loss of support among Māori for a 'universal Māori identity' and an increasing emphasis on 'tribal identities and tribally based self-determination'.¹⁸⁷ This was not incompatible, of course, with combining at regional and national levels on matters of common interest. Beginning in the early 1980s, tribes sought to strengthen or renew tribal structures such as rūnanga and formed federations to advocate for pan-tribal interests.¹⁸⁸ From the 1980s onwards, the activities of many tribal authorities were increasingly governed by separate Acts of Parliament. For instance, Te Rūnanga o Ngāti Porou was established under the

¹⁸⁷ Hill, *Māori and the State*, p 213; Mason Durie, *Te Mana, Te Kāwanatanga: The Politics of Māori Self-Determination* (Auckland: Oxford University Press, 1998), p 55

¹⁸⁸ Hill, *Māori and the State*, pp 231–232

leadership of Apirana Mahuika under specific legislation passed in 1987.¹⁸⁹ The passage of the Treaty of Waitangi Amendment Act 1985, which empowered the Waitangi Tribunal to investigate historical grievances resulting from Crown breaches of the Treaty dating back to 1840, also encouraged efforts to formalise tribal structures. For instance, a number of tribes established *rūnanga* to assist with the preparation of their claims before the Tribunal. In 1986, for example, Muriwhenua iwi in the far north established Te *Rūnanga o Muriwhenua* to prepare their historical claims to the Tribunal.¹⁹⁰

In urban areas, the Māori renaissance of the late 1970s and 1980s was associated with the emergence of urban Māori authorities. Urban authorities (and *marae* established by these authorities) provided a focal point of identity for Māori people living in the cities. Increasingly, from the early 1980s, they would also become providers of social services to urban Māori. For instance, Te *Whānau o Waipareira* Trust was established in West Auckland in 1984 to provide health and other support services for Māori who had moved out of their tribal areas.¹⁹¹ Other examples of urban Māori organisations established in this era include South Auckland's Manukau Urban Māori Authority, Hamilton's Te *Rūnanga o Kirikiriroa* Trust, the Wellington-based Te *Rūnanganui o Te Ūpoko o Te Ika*, and Christchurch's Te *Rūnanga o Ngā Maata Waka*. Nationally based Māori organisations which emerged during the 1980s focused their energies on particular areas or sectors. These included Te *Kōhanga Reo* National Trust, Te *Rūnanga o Ngā Kura Kaupapa Māori*, and Ngā *Kaiwhakapūmau i te Reo Māori*. The Federation of Māori Authorities was established in 1987 to represent the commercial interests of Māori land trusts and other resource-based entities. Older organisations, including the council structure and the Māori Women's Welfare League, continued to operate alongside these newer entities, each with roles to play in particular spheres of Māori interest or concern. The Māori Women's Welfare League, for instance, continued to be a significant national force, focusing its energies on areas such as improving Māori health and educational attainment and addressing issues such as domestic violence and mental health. By 1993, the league had a membership of 3,000, with 170 affiliated branches in New Zealand and overseas.¹⁹²

The revived emphasis on tribalism in the 1980s seriously tested the integrationist policies maintained by Governments up to that point. Following the lead of Hunn's influential 1961 report, Governments of the 1960s and 1970s had assumed that the tribal loyalties of Māori would gradually weaken over time, to be supplanted by a more homogeneous Māori identity. When the democratically based NZMC was established as a system for dialogue between the Crown and Māori, the Government had assumed that the relationship between the two would, thenceforth, be conducted at the national level. As Hunn had put it in his speech to the

189. Durie, *Te Mana, Te Kāwanatanga*, p 224

190. Hill, *Māori and the State*, p 213

191. Hill, *Māori and the State*, pp 230–231

192. Anna Rogers and Miria Simpson, eds, *Te Tīmatanga Tātau Tātau: Early Stories from Founding Members of the Māori Women's Welfare League* (Wellington: Bridget Williams Books, 1993), pp xvi–xvii

NZMC's inaugural meeting: 'Tribal loyalties are still strong and enduring – may they always be so because identification with a place or a people is a source of strength – but let those loyalties be a tributary to the main stream of national effort on behalf of the Māori people.'¹⁹³ However, by the early 1980s, integration was being replaced by biculturalism as the guiding principle for Government policy. During this period, Governments would display an increasing willingness to work directly with tribal structures. As in the changes of the 1960s and 1970s, the NZMC would itself play a crucial role in these developments.

4.4.1 Tu Tangata

A shift in Government circles away from integrationist policies was evident from the late 1970s. In 1977, Kara Puketapu was appointed as the Secretary for Māori Affairs, a position he retained until 1983. He quickly set about transforming the department by recruiting more Māori staff, and convening a series of consultative hui in districts around the country. The department presented policies generated from these preliminary discussions with the Māori people at 'Hui Whakataurira', annual conferences at Parliament attended by 100 leaders from districts around the country.¹⁹⁴ Puketapu introduced a series of programmes emphasising Māori community development, grouped together under the 'Tu Tangata' programme. Tu Tangata established local 'kōkiri' groups to determine local needs, decide upon tasks for community action, and administer community participation in the provision of services to Māori.¹⁹⁵ The philosophy of Tu Tangata aimed to promote Māori 'cultural and economic advancement' through 'encouraging self-reliance and self-determination'.¹⁹⁶ As the Department of Māori Affairs explained in 1981:

Tu Tangata is encouraging Māori communities to become more self-sufficient and self-reliant through fuller utilisation of their own resources. Crime prevention, marae development, whānau projects, Māori language promotion, and a kaumātua wānanga are some of the many tu tangata activities being spearheaded by the community . . . It is the department's view that self-determination measures now being exercised by Māori leadership through its wide network of organisations and activities does mean that tremendous progress is being made on many fronts.¹⁹⁷

The change of name of the Māori Welfare Act in 1979 to the Māori Community Development Act symbolised this shift in emphasis away from what was seen as 'welfare-statism' towards 'community empowerment and self-reliance'.¹⁹⁸ Tu Tangata was significant in marking the beginning of a change in the direction of Government policy towards the devolution of funds, service provision, and decision-making

193. As quoted in Harris, 'Dancing with the State' (doc B23), p 162

194. Walker, *Ka Whawhai Tonu Mātou*, p 237

195. Walker, *Ka Whawhai Tonu Mātou*, p 237; Hill, *Māori and the State*, p 193

196. Hill, *Māori and the State*, p 191

197. Department of Māori Affairs, 'Report of the Department of Māori Affairs for the year ended 1981', AJHR, 1981, E-13, pp 3, 5

198. Hill, *Māori and the State*, p 145

to local community organisations – moves widely welcomed by Māori communities as representing ‘practical embodiments of the recognition and exercise of rangatiratanga.’¹⁹⁹ Tu Tangata also marked the beginning of a Government policy of ‘recognising and negotiating with tribal authorities.’²⁰⁰ For instance, one of the major policy platforms of Tu Tangata, the ‘Mātua Whāngai’ programme, aimed ‘to take young Māori out of the care of social welfare institutions and place them back within the care of their own tribal groups.’²⁰¹

4.4.2 The NZMC drafts the Māori Affairs Bill, 1980–83

We now examine the evidence cited by the claimants of the Māori Affairs Bill as an instance in which the Government consulted the NZMC on legislation affecting Māori interests. In support of their claim, the claimants cite a statement by Ben Couch, Minister of Māori Affairs from December 1978 to July 1984, on the introduction of the Māori Purposes Bill 1981: ‘I have given the New Zealand Māori Council the opportunity to draft any major changes to the Māori Affairs Act.’²⁰²

The late 1970s and early 1980s represented a high point in the Government’s relationship with the NZMC. The Department of Māori Affairs’ annual report for 1979 described the Māori Council as ‘very active’ and as contributing ‘substantially to legislative developments in the interest of Māori people on a very wide front’. Furthermore, the department claimed that it ‘consults the council on all proposed legislation affecting the Māori people.’²⁰³ The subsequent year, the department reported that the NZMC had ‘continued to be very active in legislative work, namely with important submissions on aspects of the Māori Affairs Bill, Royal Commission on Māori Courts, the Electoral Act, and Rating Act.’²⁰⁴

In 1978, the Minister of Māori Affairs, Duncan MacIntyre, had introduced a new Māori Affairs Bill to Parliament. The new Bill, over 250 pages in length, sought to ‘rationalise more than a century of accumulated legislation and amendments on Māori land and Māori affairs.’²⁰⁵ The NZMC responded to the Government’s introduction of the 1978 Bill by convening three national seminars. It later resolved to pursue two parallel strategies in relation to the Bill. On the one hand, it would continue to prepare submissions on the present Bill, as with any other legislation. At the same time, it would form a special committee which would redraft the legislation to bring it into line with Māori aspirations.²⁰⁶ Subsequently, Ben Couch – who had succeeded MacIntyre as Minister in December 1979 – agreed to a council request for permission to redraft the 1978 Bill, and that the Government fund it to

199. Hill, *Māori and the State*, p 199

200. Walker, *Ka Whawhai Tonu Mātou*, p 237

201. Walker, *Ka Whawhai Tonu Mātou*, p 237

202. Claimant counsel, closing submissions (paper 3.3.5), pp 13–14

203. Department of Māori Affairs, ‘Report of the Department of Māori Affairs for the year ended 1979’, AJHR, 1979, E-13, p 8

204. Department of Māori Affairs, ‘Report of the Department of Māori Affairs for the year ended 1980’, AJHR, 1980, E-13, p 13

205. Walker, *Ka Whawhai Tonu Mātou*, p 246

206. Walker, *Ka Whawhai Tonu Mātou*, p 246

4.4.2(1) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

do so. Following the completion of its draft Bill, the NZMC would then hand it to the Government to consider.²⁰⁷ Speaking on his decision, Couch stated: 'A Māori Affairs Bill should have Māori input. I want the Bill to come from the people and instead of the council working with us (the department) we will work with them.'²⁰⁸ NZMC chair Graham Latimer heralded Couch's decision as a historic first for Māori:

Usually Māori people have been told what is good for them . . . Now, after years of lodging submissions, Māori people would have the opportunity to write their own legislation and be able to press for more self-determination.²⁰⁹

(1) Discussion Paper on Future Māori Development and Legislation 1980

The NZMC presented its *Discussion Paper on Future Māori Development and Legislation* to the Government in December 1980. Professor Ranginui Walker has written that the discussion paper – sometimes known as the 'brown paper' – 'summarised the agenda that had motivated Māori politics for more than a century.'²¹⁰ The council's *Discussion Paper* presented the council's proposals for a bicultural approach and a 'new social contract' between Māori and the Crown.²¹¹ The first chapter of the paper set out the 'overall philosophy' of 'Whaia te mana motuhake' as follows: 'As the Tangata-Whenua of this country we have a right to special recognition, to control our own affairs, and to determine our own future.'²¹² The paper's position on 'Administration and Control' is quoted at length below.

Traditionally there was only one institution for all political, economic and social endeavour – the tribe. Today the strength of the Māori people lies still in our conception of tribal affiliation. It is as real for those living in rural tribal areas as it is for those in urban situations.

Traditionally leadership was not so much autocratic as shared. Today the Māori leader is an organiser, pace-setter and speaker for the group but is not an independent decision-maker. Of course leaders may speak for themselves on any topic but they can only speak for the people once a position through consultation has been reached by the people.

Accordingly decisions must be made at a local level, and everyone should share in forming the group's judgement. It involves extensive consultation and ideally consensus. It requires an understanding of the traditional modes of whaikorero and debate, and a respect for the roles to be played by different people, old and young, men and women, in helping the group to reach a decision. It is more important that policies be

207. Lindsay Hayes, 'Breakthrough: Māori Affairs Act', *Te Māori*, October–November 1980 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 438)

208. Lindsay Hayes, 'Breakthrough: Māori Affairs Act', *Te Māori*, October–November 1980 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 438)

209. Lindsay Hayes, 'Breakthrough: Māori Affairs Act', *Te Māori*, October–November 1980 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 438)

210. Walker, *Ka Whawhai Tonu Mātou*, p 246

211. NZMC, 'A Discussion Paper on Future Māori Development and Legislation', 1980, p 7

212. NZMC, 'A Discussion Paper on Future Māori Development and Legislation', 1980, p 5

understood, differences reconciled and the group knitted together than that policies be imposed from above, or that decisions be reached quickly on a majority vote.

No reira – Ki ngā whakaeke haumi:

Our political, economic and social development should be channelled through tribal rūnanga funded and staffed to assume a wide responsibility for the management of affairs within their tribal areas, and with urban extension units for the people now living in cities.

Waihotia ma te iwi hai mahi, kia kore ai te mana e ngaro atu:

We should restore to the tribes, the mana that they have lost through the workings of the Māori Affairs Department and the Māori Land Court.

Ko te waka te toia, te haumatia:

The power of decision making and the resources to implement those decisions should be given to the people at a local and tribal level.

Kai haere takitahi tatou. Kotahi te iwi, kotahi te waka:

We should avoid fragmenting Māori efforts by the establishment of numerous different organisations and institutions. We may need to rationalise many existing bodies and focus attention on the one body, the tribal rūnanga.

Ma pango ma whero ka oti te mahi:

We must strive for regular consultation with the people, for consensus decision making on traditional lines, and call upon the whole of the people to implement chosen policies.

Ehara taku toa i te toa takitahi, engari he toa takitini:

For the Māori the rights of the individual must be subordinated to the interests of the group. In any conflict the rights of the group must prevail.²¹³

The *Discussion Paper* went on to propose the establishment of 28 Government-funded rūnanga (including 24 tribal rūnanga and 4 non-tribal urban-based rūnanga).²¹⁴ Under the proposal, wardens and honorary community officers (as provided for in the 1962 Act) would be attached to local rūnanga.²¹⁵ These rūnanga would be represented at a national level through a national body known as ‘the Rūnanganui of the NZ Māori Council’.²¹⁶ On this proposal, the *Discussion Paper* stated: ‘The present New Zealand Māori Council has evolved over the past 18 years steadily gaining mana. The present Council members would be continued in office as the Rōpū Whāiti [executive members] for three years from the passing of the Act to allow for a transition.’²¹⁷ The proposed powers and functions of the rūnanganui were:

- ▶ To promote, encourage, and assist the Rūnanga to reach maximum effectiveness in their local self government and undertakings.
- ▶ To associate with the Department of Māori Affairs in the development and implementation of any or all measures to ensure the advancement of the Māori people.

213. NZMC, ‘A Discussion Paper on Future Māori Development and Legislation’, 1980, pp 8–9

214. NZMC, ‘A Discussion Paper on Future Māori Development and Legislation’, 1980, pp 16–17

215. NZMC, ‘A Discussion Paper on Future Māori Development and Legislation’, 1980, pp 21–22

216. NZMC, ‘A Discussion Paper on Future Māori Development and Legislation’, 1980, p 22

217. NZMC, ‘A Discussion Paper on Future Māori Development and Legislation’, 1980, p 25

4.4.2(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

- ▶ To consider such matters as appear to the Council to be relevant to the advancement of Māori people, to conduct research thereon and to make representations thereon to the Minister or to other person or authority.
- ▶ To consider legislation affecting the Māori people, to advise the Minister thereon, and to propose to the Minister legislation for the benefit of the Māori people.
- ▶ To conduct inquiries and to advise the Minister on any matters referred to it.
- ▶ To consider and, as far as possible, give effect to any measures that will conserve and promote harmonious and friendly relations between members of the Māori race and other members of the community.
- ▶ To represent Māori people on any other matters of national importance to them.
- ▶ To act in concert with the Department in the assessment of rūnanga budgets and the allocation of funds to the rūnanga for administrative expenses, developmental programmes and subsidies.
- ▶ The Rūnanganui will be empowered to write its own constitution, and to amend it from time to time without recourse to Parliament to have the Act changed.
- ▶ Funding for the various rūnanga, and for the NZ Māori Council, would be included in the departmental vote and would require the submission of annual estimates.²¹⁸

The *Discussion Paper* envisaged an ongoing role for the Department of Māori Affairs. As the paper's authors put it: 'For as long as the Māori people exist as a group there should be a Department of Māori Affairs'.²¹⁹ However, the *Discussion Paper* envisaged that, as responsibility for administering Government resources and programmes was progressively transferred to tribal rūnanga, the department's role would shift away from an operational role to one of assisting tribal rūnanga with their provision of services to Māori.²²⁰ The paper concluded with a section setting out the NZMC's detailed proposals in relation to Māori land legislation, based around the principle: 'Puritia te whenua, hei taonga mo te ao hou. The law must provide for the retention of Māori land to the fullest extent possible'.²²¹

(2) Kaupapa 1983

The NZMC's 1980 *Discussion Paper* was rejected by the Minister, who asked the NZMC to return to the drawing board to produce another proposal. According to Ranginui Walker's account of these events, Ben Couch 'rejected the paper as being dominated by the philosophy of Mana Motuhake, and asked the Māori Council for another, one that he could get through the House'.²²² The NZMC supplied the Minister with a second paper, entitled *Kaupapa*, in February 1983.²²³ Like the *Discussion Paper*, *Kaupapa* contained a detailed series of provisions on Māori land reform, and was equally as firm as the earlier paper in its stance on the retention of Māori land:

218. NZMC, 'A Discussion Paper on Future Māori Development and Legislation', 1980, pp 23–24

219. NZMC, 'A Discussion Paper on Future Māori Development and Legislation', 1980, p 27

220. NZMC, 'A Discussion Paper on Future Māori Development and Legislation', 1980, p 27

221. NZMC, 'A Discussion Paper on Future Māori Development and Legislation', 1980, p 10

222. Walker, *Ka Whawhai Tonu Mātou*, p 247

223. NZPD, 1983, vol 455, p 4951

Our objective is to keep Māori land in the undisturbed possession of its owners; and its occupation, use and administration by them or for their benefit. Laws and policies must emphasise and consolidate Māori land ownership and use by the whānau or kin group.²²⁴

Kaupapa was also clear in its assertion of tino rangatiratanga, as enshrined by the Treaty of Waitangi: ‘So now, after almost a century and a half of the paternalism foreshadowed by Hobson, the Māori people define for themselves and for Parliament the rangatiratanga guaranteed them by the Treaty of Waitangi.’²²⁵

Missing from *Kaupapa*, however, were the *Discussion Paper’s* detailed proposals for the establishment of tribal rūnanga and a rūnanganui under the NZMC. Instead, the NZMC proposed reforms to the Department of Māori Affairs to include as ‘a major departmental objective’ the ‘development of the Māori people through their tribal authorities and the allocation of resources to tribal authorities to enable them to perform their functions.’²²⁶ It also suggested that it should be a statutory requirement for the department to consult with the New Zealand Māori Council on ‘the allocation of resources, funds, subsidies, etc, to tribal authorities and others, and . . . on the implementation of policy.’²²⁷ The NZMC concluded its *Kaupapa* document by recommending an extension of the Waitangi Tribunal’s jurisdiction to enable it to consider historical grievances.²²⁸ This occurred two years later, with the passage of the Treaty of Waitangi Amendment Act 1985.

(3) *The Māori Affairs Bill 1983*

In December 1983, the Government tabled a new Māori Affairs Bill in Parliament. The Bill was said to be based on the NZMC *Kaupapa* document. In introducing the draft legislation, Couch stated: ‘the overall objective is to have legislation that is in accord with Māori views and aspirations.’²²⁹ Speaking on the Bill in Parliament, the member for Awarua, WR Austin, described the Government’s decision to allow the NZMC to redraft the Bill as ‘a most peculiar, innovative, and proper step’ and the Council’s contributions as ‘a major input from authoritative Māori sources.’²³⁰ Mr McLean, the member for Tarawera, praised the Bill as representing the ‘collective wisdom of the Māori people.’ He continued:

Seldom in New Zealand’s history has a Bill been prepared by the Māori people through their organisations. It was prepared in a proper Māori manner after discussions with the Māori Council and discussions on marae over the years.²³¹

224. NZMC, *Kaupapa: Te Wāhanga Tuatahi*, February 1983, p 10

225. NZMC, *Kaupapa: Te Wāhanga Tuatahi*, February 1983, p 5

226. NZMC, *Kaupapa: Te Wāhanga Tuatahi*, February 1983, p 31

227. NZMC, *Kaupapa: Te Wāhanga Tuatahi*, February 1983, p 31

228. NZMC, *Kaupapa: Te Wāhanga Tuatahi*, February 1983, p 36

229. NZPD, 1983, vol 455, p 4952

230. NZPD, 1983, vol 455, p 4954

231. NZPD, 1983, vol 455, p 4955

Opposition Labour members were less glowing in their assessment of the Bill. The Māori members criticised the Government's Bill on the ground that it was incomplete (the Minister had announced that it was the Government's intention to release the Bill in serial form) and because, they claimed, the NZMC's *Kaupapa* document was virtually unrecognisable in the Bill. Koro Wētere, the member for Western Māori, who would soon become Minister of Māori Affairs as part of the 1984 Labour Government, stated:

What will the president say now, after having spent about \$90,000 of public funds to produce that document? After all that time the Ministry could see fit to write only three sections of that document into the Bill he is introducing this afternoon.²³²

Dr Gregory, the member for Northern Māori, stated that while the move to allow the Council to redraft the Bill represented a 'promising exercise', the resulting Bill was 'disappointing':

The Government gave the New Zealand Māori Council more than \$90,000 to produce a Bill, but I believe that this is not the Bill the council produced. A carrot is being dangled before our noses.²³³

The second instalment of the Māori Affairs Bill was presented to Parliament in early 1984, and the NZMC was given until August 1984 to respond. Both instalments of the Bill were shelved after the National Government's defeat in the 1984 election.²³⁴ However, the NZMC's *Kaupapa* document would gain new life a decade later. Sir Edward Taihakurei Durie told us that a revised version of the NZMC's Bill on Māori land was eventually passed into law as *Te Ture Whenua Māori Act 1993*.²³⁵

4.4.3 Hui Taumata

In July 1984, Labour came to power in a snap election. The fourth Labour Government would retain and expand upon the National Government's emphasis on community and tribal development. In October 1984, Labour's new Minister of Māori Affairs, Koro Wētere – responding to calls by Māori leaders for a summit on Māori socio-economic disadvantage – convened the first of a series of Hui Taumata or Māori Economic Development conferences. Delegates at the first Hui Taumata were united in their demands for the rights of Māori to 'determine their future in their own way with the appropriate resources'.²³⁶ Towards this goal, the Hui Taumata communicated their wish for 'better targeted support from government

232. NZPD, 1983, vol 455, p 4952

233. NZPD, 1983, vol 455, p 4956

234. Walker, *Ka Whawhai Tonu Mātou*, p 247

235. Transcript 4.1.1(a), p 255; see also Marian Mare and Aloma Palmer, 'Comments on the Review of the Māori Community Development Act 1962' (commissioned research report, Wellington: Te Kaunihera Māori o Aotearoa – The New Zealand Māori Council, 2013) (doc A9), p 38); Durie, *Te Mana, Te Kāwanatanga*, p 136.

236. Hill, *Māori and the State*, p 202

but delivered by Māori organisations'.²³⁷ The Hui Taumata saw the solution to the goal of Māori regaining 'supreme control over their lives, their assets and resources' in tribal revitalisation.²³⁸ The first Hui Taumata's communiqué to Government, *He Kawenata*, came to be seen as "an inspiration" throughout Māoridom and a guide to officials'.²³⁹ It stated:

Since the turn of the century, the Māori has not been an agent or leader of change in New Zealand economic development. Māori resources, land, people and culture now stand at the threshold of a great leap forward. Māori initiatives, policies, management and work should be channelled to meet this challenge which is vital to the future of the Māori and New Zealand. Conference accepts the Minister's challenge to participate in a new Māori Renaissance and a new Development Decade for our people.²⁴⁰

The decade of Māori economic development launched by the Hui Taumata was to be overseen by the Māori Economic Development Commission, launched in December 1984. The commission was of the view that 'iwi could autonomously deliver economic and social benefits for their people without resources having to be state-controlled', with tribal authorities deciding how best to target Crown resources and sub-contracting out to other sub-tribal entities where necessary.²⁴¹ The Hui Taumata – according to scholar Mason Durie – 'reaffirmed a tribal identity in preference to the more bland Māori identity' and the 'decade of iwi development' that followed was accompanied by 'a resurgence of tribal pride'.²⁴²

4.4.4 Pūao-Te-Ata-Tū

Another key document which encapsulated the 1980s shift towards greater recognition of the place of tribal organisations in the Māori representational landscape was *Pūao-Te-Ata-Tū: The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare*. Chaired by respected Tūhoe leader and former adviser to Kara Puketapu, John Rangihau, *Pūao-Te-Ata-Tū* was commissioned by the Minister of Social Welfare to investigate 'from a Māori perspective' the operations of the Department of Social Welfare.²⁴³ Released in September 1988, the report contained a far-reaching critique of the department.²⁴⁴ In gathering Māori perspectives on social welfare, the committee travelled extensively throughout the country. Between August 1985 and April 1986, the group conducted 69

237. Hill, *Māori and the State*, p 202

238. Hill, *Māori and the State*, p 203

239. Hill, *Māori and the State*, p 203

240. Department of Māori Affairs, 'He Kawenata', p 9 (Department of Māori Affairs, *Māori Economic Development Summit Conference: Conference Background Papers* (Wellington: Māori Economic Development Summit Conference, 1984), app 76

241. Hill, *Māori and the State*, pp 203–204

242. Durie, *Te Mana, Te Kāwanatanga*, p 55

243. Māori Perspective Advisory Committee, *Pūao-Te-Ata-Tū: The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare* (Wellington: Department of Social Welfare, 1987), p 7

244. Māori Perspective Advisory Committee, *Pūao-Te-Ata-Tū*, p 7

meetings, attended by 2,954 people, and reviewed a total of 1,424 verbal submissions and 267 written submissions.²⁴⁵ The resulting report went well beyond their brief to investigate the practices of the Department of Social Welfare. Rather, the report's authors claimed to have 'studied from a Māori perspective the history of this country over the last 150 years.'²⁴⁶ Extremely critical of the 'institutional racism' they had encountered within the department and New Zealand society at large, the committee believed that change could be achieved only through a 'comprehensive approach' encompassing the policies and practices of all Government departments.²⁴⁷

In assessing the history of Māori interactions with the Crown over the past 150 years, the advisory committee was particularly harsh in its assessment of the NZMC's record as a representative body for Māori. According to the authors of *Pūao-Te-Ata-Tū*, the NZMC was an institution that 'lacks authority and has little popular support and its Māori Committee's function is effective in only a few areas.' The NZMC, the report's authors concluded, 'is really just another inappropriate structure persisting in the face of Māori experience.'²⁴⁸ Rejecting the NZMC, the report went on to outline a vision for the transfer of Government authority and resources to tribal authorities. The report concluded:

The most remarkable phenomenon of our times is the enormous resurgence of interest in the propagation of tribal structures along traditional lines, and the consequent re-strengthening of kin ties and community responsibility. It has come, unexpectedly, at a time when Māori people have become scattered across the nation. It has come as a call home. It underlies the strongest call that we heard from Māori people as we moved across the country – a call for resources that the tribes might manage and care for in their own way. . . . The resurgence of tribalism has come despite every obstacle. It has come not because of the law but in spite of it. . . . tribalism exists in the hearts and minds of people. It is an integral part of a Māori cultural renaissance.²⁴⁹

Like the earlier *He Kawenata*, *Pūao-Te-Ata-Tū* came to be seen as a template for the development of Government policies for Māori, and later influenced the shaping of the Labour Government's Rūnanga Iwi Act of 1990.²⁵⁰

4.4.5 He Tirohanga Rangapū

The Labour Government's policy of devolving the Department of Māori Affairs' services to Māori organisations was encapsulated in an April 1988 discussion document entitled *He Tirohanga Rangapū/Partnership Perspectives*.²⁵¹ The paper set out proposals for the abolition of the Department of Māori Affairs and its replacement

245. Māori Perspective Advisory Committee, *Pūao-Te-Ata-Tū*, p 92

246. Māori Perspective Advisory Committee, *Pūao-Te-Ata-Tū*, p 7

247. Māori Perspective Advisory Committee, *Pūao-Te-Ata-Tū*, pp 7–8

248. Māori Perspective Advisory Committee, *Pūao-Te-Ata-Tū*, p 70

249. Māori Perspective Advisory Committee, *Pūao-Te-Ata-Tū*, pp 73–74

250. Walker, *Ka Whawhai Tonu Mātou*, p 281; Hill, *Māori and the State*, p 215

251. Hill, *Māori and the State*, p 234

with a new streamlined policy-focused ministry, alongside the ‘establishment of a practical partnership with iwi organisations in the operation and development of policies.’²⁵² Under this arrangement, as many Government programmes as possible would be transferred to iwi authorities, which were seen as the most appropriate vehicle for delivering services to Māori:

Māori signatories to the Treaty of Waitangi represented a specific iwi or hapū. The strength of the traditional iwi structure is reflected in their continuing existence today. They are strong, enduring, sophisticated systems of cooperation and community effort and as such it has been advocated that they provide an appropriate means of delivering government programmes to the Māori people.²⁵³

Those services and responsibilities that could not be devolved to iwi authorities would be transferred to ‘mainstream departments and agencies.’²⁵⁴ As this took place, the Department of Māori Affairs would be progressively phased out as its responsibilities were transferred either to iwi or to mainstream government departments.²⁵⁵ The new Government structure set out in *He Tirohanga Rangapū* made no mention of what role, if any, it envisaged for the NZMC or any national Māori body under these new arrangements.

4.4.6 Te Urupare Rangapū

Following the release of *He Tirohanga Rangapū*, a working group appointed by the Department of Māori Affairs considered a total of 633 written and oral submissions on the discussion document.²⁵⁶ Submissions on *He Tirohanga Rangapū* showed that Māori were almost universally opposed to the proposal to abolish the department and to ‘mainstream’ Māori programmes to other Government departments. The submissions instead gave an ‘unequivocal message’ that Māori considered the department to be ‘the tāhuhu, or backbone, of Māoridom.’²⁵⁷ The consultations also revealed widespread suspicion at the Government’s motives in proposing to abolish the department, with many believing that it was simply a cost-cutting exercise.²⁵⁸ However, the paper’s proposals to allocate state resources to iwi to manage and deliver programmes for Māori were ‘extensively supported’ by respondents – although some expressed concern about the ‘readiness of iwi to assume responsibility for the administration of major programmes and resources’, and many stressed the ‘need for an adequate transitional phrase’ before the management of such services was

252. Office of the Minister of Māori Affairs, *He Tirohanga Rangapū/Partnership Perspectives*, 1988, p 9

253. Office of the Minister of Māori Affairs, *He Tirohanga Rangapū/Partnership Perspectives*, 1988, p 13

254. Office of the Minister of Māori Affairs, *He Tirohanga Rangapū/Partnership Perspectives*, 1988, p 9

255. Office of the Minister of Māori Affairs, *He Tirohanga Rangapū/Partnership Perspectives*, 1988, p 9

256. Department of Māori Affairs, *Synopsis of Submissions on ‘He Tirohanga Rangapū’: Report to Minister of Māori Affairs July 1988*, p 2

257. Department of Māori Affairs, *Synopsis of Submissions on ‘He Tirohanga Rangapū’: Report to Minister of Māori Affairs July 1988*, p 6

258. Department of Māori Affairs, *Synopsis of Submissions on ‘He Tirohanga Rangapū’: Report to Minister of Māori Affairs July 1988*, p 6

fully transferred to iwi.²⁵⁹ The NZMC was among those who sent submissions opposing abolition of the department, on the grounds that there remained a need for a specialised government agency like Māori Affairs to act as a buffer between the Māori and Crown Treaty partners.²⁶⁰

The Government responded to the feedback received from its *He Tirohanga Rangapū* policy document by releasing a post-consultation ‘White Paper’ policy statement, *Te Urupare Rangapū/Partnership response*, in November 1988.²⁶¹ In *Te Urupare Rangapū* the Government set out its proposal to ‘restore and strengthen the operational base of iwi’ with the expectation that, in the near future, they would be able to develop their own structures which would enable them to ‘become independent and self-sustaining’.²⁶² The Government would replace the Department of Māori Affairs with an Iwi Transition Agency, which would be tasked with helping to build the capacity of iwi to manage their own affairs. This agency would be disbanded after five years, by which time the Government envisaged that ‘most – if not all – iwi’ would have structures ‘fully operational and capable of entering into contracts with government agencies to take on any government programme’.²⁶³ *Te Urupare Rangapū* envisaged a ‘future relationship between the iwi and government agencies [that] will encourage iwi to determine their affairs in a way that accepts Māori perspectives and aspirations’ and ‘provide[s] an opportunity for the Māori people to use their traditional institutions and structures for designing and delivering their own programmes and services’.²⁶⁴ Professor Ranginui Walker would later describe *Te Urupare Rangapū* as providing Māori with ‘a charter for the fulfilment of their aspirations, and a document against which the performance of subsequent governments and their bureaucrats could be measured’.²⁶⁵

The Government implemented the first part of *Te Urupare Rangapū*’s recommendations late in 1988 when it phased out the Department of Māori Affairs and replaced it with the Iwi Transition Agency (Te Tira Ahu Iwi or Te TAI), headed by Wira Gardiner. Te TAI would be tasked with managing Government programmes previously administered by the Department of Māori Affairs, while making preparations to transfer them to mainstream Government agencies as soon as feasible.²⁶⁶ Alongside Te TAI, the Government established a new policy-focused ministry: Manatū Māori or Ministry of Māori Affairs.²⁶⁷ Manatū Māori began operations in

259. Department of Māori Affairs, *Synopsis of Submissions on ‘He Tirohanga Rangapū’: Report to Minister of Māori Affairs July 1988*, p 12

260. Hill, *Māori and the State*, pp 234–235

261. Hill, *Māori and the State*, p 236

262. Office of the Minister of Māori Affairs, *Te Urupare Rangapū: Te Rārangi Kaupapa /Partnership Response: Policy Statement* (Wellington: Office of the Minister of Māori Affairs, 1988), p 5

263. Office of the Minister of Māori Affairs, *Te Urupare Rangapū: Partnership Response*, p 5

264. Office of the Minister of Māori Affairs, *Te Urupare Rangapū: Partnership Response*, p 6

265. Walker, *Ka Whawhai Tonu Mātou*, p 286

266. Walker, *Ka Whawhai Tonu Mātou*, p 288

267. Hill, *Māori and the State*, pp 236–237

July 1989.²⁶⁸ The second part of *Te Urupare Rangapū's* recommendations would be contained in the Rūnanga Iwi Act of 1990.

4.4.7 The Rūnanga Iwi Act 1990

In 1989, the Government introduced its Rūnanga Iwi Bill into Parliament. The Bill empowered iwi to form tribal rūnanga as legal entities to receive Government funds to pay for services devolved to iwi by the Crown.²⁶⁹ While the principle of transferring Government power and resources to Māori – as seen above – had received widespread support from Māori, the Rūnanga Iwi Bill did not go without critique by Māori. Some Māori leaders argued that it detracted from tribal autonomy by allowing the Crown to ‘dictate the terms under which iwi organised themselves.’²⁷⁰ Nevertheless, iwi around the country established rūnanga in 1990 to take advantage of this new opportunity to take control of their own community development, with the backing of Government funding.²⁷¹ But the empowerment of iwi authorities under the Rūnanga Iwi Act 1990 was to be short-lived. Labour lost the 1990 election, and the new National Government rapidly repealed the 1990 Act. However, before turning to the key developments of the 1990s, we will first discuss the significant role played by the NZMC in achieving landmark changes for Māori through the courts and the Waitangi Tribunal from the mid-1980s.

4.5 IMPORTANT NZMC ACHIEVEMENTS, 1980S–90S

The decade from the mid-1980s through to the mid-1990s was a period of Māori litigation which would see the Treaty of Waitangi occupy an increasingly prominent place in New Zealand constitutional law. During this period, the NZMC played a leading role in a number of landmark court cases and Waitangi Tribunal inquiries. Its advocacy for Māori in the area of the disposal of Crown assets led to the establishment of the Crown Forestry Rental Trust and Te Māngai Pāho (the funding entity for Māori radio and television). Some of the NZMC's key achievements during this decade are enumerated by Dr Marian Mare and Dr Aloma Parker in their research report for this inquiry, and are discussed in further detail below.²⁷² Titewhai Harawira argued that Māori must remember those achievements and hold fast to the work of their kaumātua and kuia:

we need to get back to tightening our kaupapa up, recognising the strength of that Act and realising that our kaumātua and kuia fought hard, and they fought hard through Parliament, and as a result of that fighting really hard to keep it separate from government, New Zealand Māori Council has been able to take different governments to

268. Ministerial Planning Group, *Ka Awatea: A Report of the Ministerial Planning Group March 1991* (Wellington: Ministry of Māori Affairs, Ministerial Planning Group, 1991), p 72

269. Walker, *Ka Whawhai Tonu Mātou*, p 289

270. Durie, *Te Mana, Te Kāwanatanga*, p 225

271. Walker, *Ka Whawhai Tonu Mātou*, p 289

272. Mare and Palmer, ‘Comments on the Review of the Māori Community Development Act 1962’ (doc A9), pp 39–40

the High Court, to the Privy Council, to Tribunals, to fight for our right to have our language, our fisheries, our radio stations, our Māori television, and we're back there again fighting for our rights to our water. The New Zealand Māori Council is able to do that because of that very Act that separates us out from government control, it allows us to fight whatever government it is for the rights of all Māori.²⁷³

Although there is not space here to discuss all the Crown–Māori contests referred to by Mrs Harawira and other witnesses, we provide a brief account of some so as to convey what was at stake for Māori, for all New Zealanders, and for the Treaty relationship when the Māori Council took the Crown to court. The particular trigger for litigation was usually the Government's new policy of corporatisation, in which many Crown activities and assets were to be corporatised (transferred to and run by State-owned enterprises as a business) or sold altogether to private enterprise.

4.5.1 The transfer of Crown lands to State-owned enterprises

In 1986, the State-Owned Enterprises (SOE) Act was enacted. The legislation provided for Crown-owned lands (comprising 52 per cent of the land surface of New Zealand) to be transferred to the 14 newly created State-owned enterprises (SOEs). While still a Bill, the Waitangi Tribunal reported to the Minister of Māori Affairs on 8 December 1986 on a series of claims of the Muriwhenua tribes (from the far north of New Zealand).²⁷⁴ The report expressed the fear among the Māori claimants that the transfer of Crown-owned lands to the SOEs would make them unavailable for return to Treaty claimants under future settlements with the Crown.²⁷⁵ As a result the Bill was amended to include section 9 (requiring that nothing in the Act shall permit the Crown to act in a manner inconsistent with the principles of the Treaty of Waitangi).²⁷⁶

The NZMC and its chairman, Sir Graham Latimer, then used those sections to apply for judicial review of the Minister's decision to transfer these assets to the SOEs. In March 1987, the matter was heard in the High Court. That court issued an interim declaration delaying the transfer of the assets and it made an order removing the case to the Court of Appeal.²⁷⁷ The order for the removal of the case was made because of the significant matters raised, which would require for the first time that the principles of the Treaty of Waitangi be considered by the superior courts.²⁷⁸

The Court of Appeal delivered its decision in favour of the NZMC in June 1987. The unanimous decision of the judges in the *Lands* case was an important victory for the NZMC and a landmark judgment in Treaty jurisprudence.²⁷⁹ The decision

273. Transcript 4.1.1(a), pp 146–147

274. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wellington: Department of Justice, Waitangi Tribunal, 1988), pp 5–6

275. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 641

276. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 642

277. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 648–650

278. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 642

279. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA)

underscored the importance of the principles of the Treaty, including the partnership principle, the Crown's duty of 'active protection' of Māori interests, and the obligations upon both Treaty partners to act 'with the utmost good faith'.²⁸⁰ Following negotiations between the Crown and the NZMC, legislation was enacted in 1988 to give the Waitangi Tribunal binding powers to recommend the return to Māori of Crown land transferred to SOEs.²⁸¹

4.5.2 Fisheries

In 1983, the Government introduced a Fisheries Bill, which would have amended section 77(2) of the Fisheries Act 1908. That provision stated: 'Nothing in this Part of this Act shall affect any existing Māori fishing rights.' The new clause 83(2) would have been: 'Nothing in this Act shall affect any other Māori fishing rights given under any other enactment.' The NZMC made submissions on the 1983 Fisheries Bill before its enactment. It unsuccessfully submitted that there should be some provision made to formally recognise the Treaty of Waitangi.²⁸² It did successfully obtain several important gains for Māori.²⁸³ In reporting back during the second reading the Minister of Fisheries advised Parliament of those gains in detail, and he particularly noted the regulation making power available for Māori:

The New Zealand Māori Council and a group of Māori law students from Victoria University presented submissions on the Bill which were eloquent in their arguments that Māori fishing rights should be provided for under the Act. Accordingly, the select committee has made several changes to the Bill. To my mind these effectively grant most, if not all, the changes recommended by those making submissions on behalf of the Māori people. It would be fair to say that the one request not included is that the Treaty of Waitangi should be specifically mentioned or ratified in the Fisheries Bill. The Government believes it would be most appropriate for the treaty to be considered in the context of the revised Māori Affairs legislation that my colleague the Minister of Māori Affairs proposes to introduce.

Several provisions that will be of assistance to Māori people and Māori fisheries have, however, been included in the Bill . . . This regulation-making power will now allow for regulations to be made to provide for Māori fishing rights in certain areas or certain times. I believe it is up to organisations such as the New Zealand Māori Council to make representations to the Government for such regulations.²⁸⁴

We do not know what happened to that suggestion but what this demonstrates is the influence of the NZMC in terms of law reform. Thus section 88(2) was included in the Fisheries Act 1983. Essentially, the provision provided that: 'Nothing in this Act shall affect any Māori fishing rights.' As Sir Robin Cooke noted following his retirement as a member of the Privy Council, section 88(2) was, like section 9 of the

280. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 663–664, 693

281. Treaty of Waitangi (State-Owned Enterprises) Act 1988

282. NZPD 1983, vol 451, p1372; NZPD 1983, vol 452, pp 2258–2259

283. NZPD 1983, vol 452, pp 2258–2259

284. NZPD 1983, vol 452, pp 2258–2259

SOE Act 1986, 'short and simple. It could even be called cryptic'.²⁸⁵ However, in his view it was 'of comparable importance'.²⁸⁶ The section would become the lynchpin in the defence raised by Tom Te Weehi to possessing under-sized paua. He claimed that he had a customary right to fish and that defence was accepted.²⁸⁷ Section 88(2) would also influence the development of the commercial fishing sector.

That occurred due to the introduction of the Fisheries Amendment Act 1986, which constituted the Quota Management System (QMS). The Tribunal was still in hearings in the far north in late 1986. It sent a memorandum to the Director-General, Ministry of Agriculture and Fisheries, dated 10 December 1986, advising that it had concluded that no quota should be allocated until the Tribunal had reported to the Ministers on the fisheries claims of the Muriwhenua tribes before it.²⁸⁸ That request was rejected by the Director-General on the instruction of his Minister and notified to the Tribunal by letter dated 23 December 1986.²⁸⁹ The Tribunal subsequently issued a memorandum providing a preliminary opinion on the claims, as conveyed to the Minister of Fisheries, dated 30 September 1987.²⁹⁰ The Tribunal indicated that it was likely to find the Muriwhenua fishing claims to be well-founded.²⁹¹

The delivery of the Tribunal's preliminary opinion on 30 September 1987 coincided with the issue on the same day of proceedings for judicial review in the High Court by the NZMC and the Muriwhenua tribes. Given its continuing involvement in fisheries management following the enactment of the Fisheries Act 1983, the NZMC clearly had an interest as well as a statutory mandate to pursue the litigation. That is because the NZMC could nominate representatives onto the Fisheries Authority established under section 13 of the Fisheries Act 1983. That body no longer exists, but it was in place from 1983 to 1990.²⁹²

The application for review sought a declaration that the quota management regime so far as it affected Muriwhenua was unlawful because it breached their fishing rights. Hearing the case that evening Justice Greig granted the application. In doing so, Justice Greig found that it was arguable that the actions of the Minister of Fisheries in implementing the QMS would affect the fishing rights of the Muriwhenua people, as guaranteed by section 88(2) of the Fisheries Act 1983. He observed that there was no allowance made for such rights. And, in order to maintain and to preserve their position until litigation was at an end, he issued an interim declaration stopping any further attempts to implement the QMS.²⁹³ Justice Greig limited his finding to Muriwhenua. Further consequential proceedings were subsequently commenced by the Ngāi Tahu Māori Trust Board and others,

285. Robin Cooke, 'The Challenge of Waitangi Jurisprudence', *Waikato Law Review*, vol 2, no 1 (1994), p 9

286. Robin Cooke, 'The Challenge of Waitangi Jurisprudence', *Waikato Law Review*, vol 2, no 1 (1994), p 9

287. *Tom Te Weehi v Regional Fisheries Officer* [1986] 1 NZLR 680, (1986) 6 NZAR 114

288. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 292

289. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 301

290. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, pp 295–296

291. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 297

292. *New Zealand Māori Council v Attorney-General* High Court Wellington CP 553/87, 30 September 1987

293. *New Zealand Māori Council v Attorney-General* High Court Wellington CP 553/87, 30 September 1987.

See also the reproduced version in Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, pp 303–307.

representing between them most of the tribes of the other coastal lands of New Zealand.²⁹⁴

In *Ngāi Tahu Māori Trust Board v Attorney General* (1987), Justice Greig was satisfied ‘that there is a strong case that before 1840 Māori had a highly developed and controlled fishery over the whole coast of New Zealand.’²⁹⁵ He ordered a further interim declaration restraining the Minister.²⁹⁶

The next step was the establishment in November 1987 of a joint working group between the Crown and the NZMC, consisting of four members from each side, to report by 30 June 1988.²⁹⁷ The parties could not reach agreement and each side produced a separate report.²⁹⁸ In that year also the Waitangi Tribunal released its *Report on the Muriwhenua Fishing Claim*.²⁹⁹

Without agreement from the NZMC, the Crown moved on 22 September 1988 to introduce a Māori Fisheries Bill in Parliament.³⁰⁰ This action set off another set of proceedings ‘by virtually all the tribes with claims to fishing rights.’³⁰¹ Amendments were made to the Bill following submissions before the select committee, its report back, and the establishment of a working party (which recommended further changes).³⁰²

The Māori Fisheries Act 1989 established the Māori Fisheries Commission and saw the transfer of 10 per cent of all quota allocated under the QMS to Māori, to be provided in instalments to 31 October 1992. The issue remaining was whether this settlement was adequate to satisfy Māori fishing rights. Although the final Bill was significantly amended, it was still not reflective of all matters at issue between the negotiators for the parties. Thus, it was considered to be an interim arrangement by them, particularly the Ngāi Tahu representative, Sir Tipene O’Regan.³⁰³ He advised the Ngāi Tahu Tribunal that negotiations were continuing until an agreed settlement was reached.³⁰⁴ The NZMC was also a party to the negotiations.³⁰⁵

Meanwhile, the fishing litigation continued and on preliminary issues came before the Court of Appeal in 1990.³⁰⁶ That court made it clear that the High Court should hear the cases on the meaning of section 88(2) and the full extent of Māori fishing rights.³⁰⁷ The litigation was only discontinued once the parties reached agreement (Deed of Settlement dated 23 September 1992) and the Treaty of Waitangi

294. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 646–647

295. *Ngāi Tahu Māori Trust Board vs Attorney General* (1987), High Court CP 559/87, 610/87, 614/87

296. *Ngāi Tahu Māori Trust Board vs Attorney General* (1987), High Court CP 559/87, 610/87, 614/87

297. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 647

298. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 647

299. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*

300. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 648–649

301. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 648

302. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 648–649

303. Waitangi Tribunal, *The Ngāi Tahu Sea Fisheries Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 234

304. Waitangi Tribunal, *Ngāi Tahu Sea Fisheries Report*, p 234

305. Mare and Palmer, ‘Comments on the Review of the Māori Community Development Act 1962’ (doc A9), p 40

306. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641

307. *Te Rūnanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 642

(Fisheries Claims) Settlement Act 1992 was enacted. The legislation represents the largest pan-tribal commercial settlement of Treaty of Waitangi claims, and it would lead to Māori control of over a third of New Zealand's commercial fisheries.³⁰⁸ The NZMC was a party to the negotiation of this settlement.

4.5.3 Crown Forests

Following the 1987 *Lands* case,³⁰⁹ the Court of Appeal granted leave by way of a minute dated 9 December 1987 for further orders purely as a precaution, in case anything unforeseen should arise.³¹⁰ That became relevant to the reforms concerning Crown forests.

In January 1988, the Government publicly announced its intention to sell the State's commercial forestry assets.³¹¹ The Government then established a Forestry Group to report on how this could be done. That report was received in October 1988 and it contained recommendations concerning how to proceed with the sale.³¹²

On the invitation of the Minister of State-Owned Enterprises, a national hui was held in January 1989.³¹³ He also sent out a letter advising participants of the Government's intention to sell the Crown's forestry assets but not ownership of the land underlying the forests, and he indicated that he wanted to consult with them.³¹⁴ The NZMC 'believed the Government had already decided how the sale of forestry assets would take place' based upon the recommendations in the October 1988 report.³¹⁵ The concerns included that the people at the January 1989 hui 'were confronted with a *fait accompli*'.³¹⁶

On 3 February 1989, based on the *Lands* case minute of December 1987, the NZMC applied to the Court of Appeal for leave to seek 'a declaration that the Government's proposal to dispose of forestry assets was inconsistent with the judgment delivered by the Court of Appeal' in the *Lands* case, on the transfer of Crown lands to SOEs.³¹⁷ The Court of Appeal granted leave to the NZMC to have the matter return for hearing.³¹⁸

It also made some observations to help the resolution of the dispute, and these included that partnership and the good faith each party to the Treaty owed to the other 'must extend to consultation on truly major issues'.³¹⁹ It would also be 'inconsistent with the principles of the Treaty to reach a decision as to whether there

308. Edward Ellison, 'Ngā haumi a iwi – Māori investment – Fisheries and Treaty settlements', Te Ara – the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/nga-haumi-a-iwi-Māori-investment/page-3>, last modified 22 September 2012

309. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 642

310. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 142

311. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 150

312. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 149

313. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 150

314. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 150

315. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 143

316. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 152

317. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 143

318. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 152–153

319. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 152

should be a general sale without consultation.³²⁰ It noted that a proposal that has already been decided and that cannot be corrected:

would not represent the spirit of the partnership which is at the heart of the principles of the Treaty of Waitangi referred to in s 9 of the State-Owned Enterprises Act.

The Court thinks it best to say no more about the present dispute at this stage, hoping that it will be resolved in the spirit of partnership and in accordance with the principles of the Treaty.³²¹

Prior to the matter proceeding to hearing, the NZMC and the Government reached an agreement on the disposal of forest assets which led to the establishment of the Crown Forestry Rental Trust to receive the rentals in the meantime, and a process for determining whether the land (under the trees) should be the property of Māori or the Crown. The Tribunal was given binding powers to recommend the return of forest lands.³²² According to Mare and Palmer: ‘Without the timely intervention of the NZMC the lands in dispute are likely to have been sold off and the income from the forests would likely have gone entirely into the Government’s consolidated accounts.’³²³

4.5.4 Radio frequencies and broadcasting assets

In 1988, prior to the Broadcasting Corporation of New Zealand being dissolved, it operated Radio New Zealand and Television New Zealand.³²⁴ Its assets were temporarily vested in the Crown, and a newly created SOE carried out broadcasting operations.³²⁵ The NZMC and Ngā Kai Whakapumau i te Reo (the Wellington Māori Language Board) became concerned as to the possible implications for the state of te reo Māori.³²⁶ They filed proceedings in the High Court in December 1988 ‘to prevent the Crown transferring the assets of the former Broadcasting Corporation to the new state enterprise.’³²⁷ The High Court refused to grant the relief sought and the matter was appealed to the Court of Appeal, which dismissed the appeal.³²⁸ The NZMC and Ngā Kai Whakapumau i te Reo appealed to the Privy Council.³²⁹

The Privy Council did not allow the appeal, but found that section 9 of the State-Owned Enterprises Act 1986 obliged the Crown to act in a manner that was consistent with the principles of the Treaty of Waitangi, and accepted that there was

320. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 152

321. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 152–153

322. Crown Forest Assets Act 1989

323. Mare and Palmer, ‘Comments on the Review of the Māori Community Development Act 1962’ (doc A9), p 39

324. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 515

325. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 515

326. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 513–514

327. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 515

328. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 515

329. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 514

an obligation on the Crown to ensure that the Māori language, as ‘a taonga’ in a vulnerable state, was afforded reasonable protection.³³⁰

During the reforms, the Government also enacted the Radiocommunications Act 1989. That Act provided a radically different way of using the radio spectrum by turning frequencies into something akin to real property and offering those up for tender.³³¹ During different phases of the restructuring of the broadcasting sector, the Government consulted the NZMC and other Māori.³³²

Ngā Kai Whakapumau i te Reo filed a claim with the Waitangi Tribunal concerning the allocation of radio frequencies and requested an urgent hearing.³³³ The chairperson issued a memorandum on 22 August 1990 asking the Crown to postpone sale until after the claims were heard.³³⁴ The Minister of Communications, Jonathan Hunt, responded on 12 September 1990 by rejecting that suggestion.³³⁵

The Minister’s letter led to the NZMC and the claimants commencing proceedings for judicial review of his decision in the High Court the very next day.³³⁶ The High Court granted the application and issued a declaration prohibiting the sale, but the matter was appealed to the Court of Appeal by the Crown.³³⁷ At the hearing before the Court of Appeal, ‘the Crown accepted that it was bound to have regard to the Waitangi Tribunal’s general recommendations about broadcasting and Māori language’ made in its *Report on the Te Reo Māori Claim* (1986).³³⁸ Two of the members of the court stressed that for the Minister to proceed with the tender without awaiting the report of the Waitangi Tribunal would be a failure to take into account a relevant consideration.³³⁹ Cooke P suggested that no reasonable Minister, if he accepted that the Crown is obliged to have regard to the Waitangi Tribunal recommendations on Māori broadcasting, could do anything other than allow it a reasonable time to carry out its inquiry and provide a report.³⁴⁰

The Tribunal subsequently released its report on the allocation of radio frequencies in 1990, finding that the claims were well-founded and that the allowance of insufficient time for consultation was inconsistent with the principles of the Treaty of Waitangi.³⁴¹

4.5.5 Electoral Reform Bill and Māori Electoral Option Report, 1993

Not all litigation came about as a result of the Crown divesting itself of potential settlement assets. In 1986, a Royal Commission on the Electoral System had

330. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 517, 525

331. Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wellington: Brooker and Friend Ltd, 1990), p 19

332. Waitangi Tribunal, *Report on Claims Concerning the Allocation of Radio Frequencies*, p 10

333. Waitangi Tribunal, *Report on Claims Concerning the Allocation of Radio Frequencies*, pp 8–9

334. Waitangi Tribunal, *Report on Claims Concerning the Allocation of Radio Frequencies*, pp 11–12

335. Waitangi Tribunal, *Report on Claims Concerning the Allocation of Radio Frequencies*, p 12

336. Waitangi Tribunal, *Report on Claims Concerning the Allocation of Radio Frequencies*, p 12

337. *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR 129 (CA), 129–130

338. *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR 129 (CA), 130

339. *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR 129 (CA), 139

340. *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR 129 (CA), 139

341. Waitangi Tribunal, *Report on Claims Concerning the Allocation of Radio Frequencies*, ch 9

recommended that, if the mixed-member proportional (MMP) electoral system was introduced, the separate Māori seats should be abolished on the grounds that the MMP system would provide for sufficient Māori representation in Parliament. In 1992, a large majority of New Zealanders voted in favour of introducing MMP. Following this, the Government introduced the Electoral Bill 1993 changing New Zealand's electoral system to MMP. In line with the Royal Commission's recommendations, the Bill contained no provision for separate Māori seats.

The proposed abolition of the Māori seats was widely opposed by Māori.³⁴² Ranginui Walker writes that Sir Graham Latimer led a deputation of senior Māori leaders to meet with the Prime Minister, who agreed to keep the seats.³⁴³ The Tribunal in 1994 noted this 'change of heart' and the provision for the seats – as constituency seats – was inserted at the committee stage of the 1993 Electoral Bill.³⁴⁴ This led to an increase in the number of Māori seats from four to five once the Electoral Act 1993 was enacted under a complex formula described in full by the Court of Appeal.³⁴⁵ On 17 December 1993, the chief electoral officer declared that New Zealand electors had, in the 1993 electoral referendum, voted in favour of MMP.³⁴⁶ Thus the provisions made for the Māori seats were brought into force.

Sections 77(3) and 269(2) of the Electoral Act 1993 required the Minister of Justice to 'publish in the *New Zealand Gazette* a notice specifying a two-month period during which every qualified Māori elector would be entitled to exercise the option of being registered as an elector in a Māori electoral district, or as an elector in a general electoral district.'³⁴⁷ This process was called 'conducting the Māori Option.'³⁴⁸ This two-month period would begin on 15 February 1994 and end on 14 April 1994.³⁴⁹ In January 1994, Hare Wakakaraka Puke filed a claim with the Waitangi Tribunal which was supported by the National Māori Congress led by Sir Archie Tairaroa, the NZMC led by Sir Graham Latimer, and the Māori Women's Welfare League led by Ms Areta Koopu. The essence of the claim was that the Māori electoral option was not well publicised and that the funding provided by the Crown to inform Māori of the changes to Māori electoral provisions was inadequate and, further, that such resources should be directed through Māori organisations. Following an urgent hearing into the claim, the Waitangi Tribunal recommended that Government funding be increased 'as a matter of urgency' and that the Crown consult with the National Māori Congress, the NZMC, and the Māori Women's Welfare League to 'facilitate a comprehensive kanohi ki te kanohi campaign in conjunction with an

342. Waitangi Tribunal, *Māori Electoral Option Report* (Wellington: Brooker's Ltd, 1994), p 9

343. Walker, *Ka Whawhai Tonu Mātou*, p 340; Mason Durie, *Ngā Tai Matatū: Tides of Māori Endurance* (Oxford University Press, South Melbourne, 2005), p 216

344. Waitangi Tribunal, *Māori Electoral Option Report*, p 9

345. *Tairaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 413–414

346. *Tairaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 411

347. *Tairaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 411

348. *Tairaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 411

349. Waitangi Tribunal, *Māori Electoral Option Report*, p 1

extensive and effectively targeted mass media programme' to better inform Māori voters of their entitlements.³⁵⁰

These recommendations were not accepted by the Government.³⁵¹ The National Māori Congress filed proceedings in the High Court for judicial review. That application was dismissed.³⁵² The Congress appealed, challenging the lawfulness of the Government's conduct of the electoral option.³⁵³ President Cooke noted that the 'gravamen of the complaint is that the Government did not do enough to publicise to Māori electors the existence and importance of the option and to enable them to make an informed choice' as to which roll they wished to be an elector on.³⁵⁴ The Court of Appeal dismissed the appeal, finding that reasonable steps had been taken to publicise and explain the option.³⁵⁵

4.5.6 The NZMC's achievements

By the mid-1990s, the NZMC could point to its own key role in many of the major constitutional developments of the previous decade. The actions of the NZMC had been instrumental in the system of memorials on Crown lands transferred to SOEs, the reservation of Crown forestry rental dividends for Māori, in the passage of the Fisheries Settlements, and in the establishment of Te Māngai Pāho. The NZMC's intervention, with broad Māori support, had secured recognition of the Treaty and its principles, and forced Governments to take future Treaty settlements into account in decision-making over the disposal of a multiplicity of Crown assets.³⁵⁶ As a result, Māori interests received protection that they might otherwise not have done during a crucial period that redefined the roles of the Crown Treaty partner and its ability to remedy just grievances.

The NZMC's achievements during this period were all the more remarkable given that its annual grant from Government had remained virtually static since the 1970s. Looking back in 2007, the council's deputy chair, Jim Nicholls, said that his organisation had been 'wairua rich but cash poor' at the time of the *Lands* case.³⁵⁷ As we have seen earlier in this chapter, the NZMC's financial position had improved somewhat with the introduction of a Government grant of \$6,000 per annum in 1970. However, this amount had only been adjusted for inflation once in the decade and a half from 1970 to 1985, and between 1977 and 1985, the annual Government

350. Waitangi Tribunal, *Māori Electoral Option Report*, p 38; see also 'Mare and Palmer, 'Comments on the Review of the Māori Community Development Act 1962' (doc A9), p 39.

351. *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 411

352. *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 413

353. *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 413

354. *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 413

355. *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA), 418

356. Cletus Maanu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, 'Statements on the basis for the claim' (paper 1.1.1), p 11

357. Jim Nicholls, 'A Comment from the New Zealand Māori Council', in Jacinta Ruru, ed, *In Good Faith: Symposium Proceedings Marking the 20th Anniversary of the Lands Case* (Wellington: The New Zealand Law Foundation, 2008), p 38

grant to meet the NZMC's administrative expenses was set at \$10,000.³⁵⁸ As Titewhai Harawira recalled at our hearing, funding for the NZMC's court actions and Waitangi Tribunal claims during this period was drawn heavily from the personal funds of its own leaders: 'when we were fighting for our radio station and for the fisheries and for our language, Sir Graham Latimer three times put his farm up for mortgage to allow us to be able to do that fight, because we didn't have the money'.³⁵⁹ Having considered the NZMC's central role in the landmark developments of the mid-1980s and early 1990s, we now turn to the key events that shaped the Māori representational landscape during the 1990s.

4.6 THE 1990S: TREATY SETTLEMENTS AND THE SEARCH FOR A NATIONAL MĀORI BODY

The beginning of the 1990s would see a further major shift in Government policy direction with the repeal of the Rūnanga Iwi Act by the new National Government. Another key policy development during the 1990s was the beginning of the historical Treaty claims settlements process resulting in a number of major settlements including the first major tribal settlement: the Waikato Raupatu Claims Settlement Act 1995. The negotiation of Treaty settlements and the transfer of Government resources to iwi as part of settlement packages increased demand for tribal entities with legal authority to represent iwi constituents and to manage and distribute tribal assets. This continued a trend towards formalised tribal structures which had begun in the 1980s. The 1990s was also characterised by constitutional debates within Māoridom as to what the most appropriate national structure should be to represent Māori in the new millennium. One of the outcomes of these discussions was the National Māori Congress, formed in 1990 as a body in which iwi could organise on a national level. As the claimants have acknowledged, the rise of the Congress in the early 1990s, combined with the shift in attention to the Treaty settlements process, led to a corresponding decline in the leadership of the NZMC. A final and significant event in this decade for the purposes of the present inquiry was the Government's decision in 1998 to launch a comprehensive review of the Māori Community Development Act 1962.

4.6.1 Ka Awatea

Soon after being appointed Minister of Māori Affairs in the new National Government, Winston Peters moved to repeal the Rūnanga Iwi Act 1990, believing the extent of devolution under the Act to be flawed in both theory and practice.³⁶⁰ The National Government's new policy direction was set out in *Ka Awatea*,

358. Department of Māori Affairs, 'Report of the Department of Māori Affairs for the Year Ended 31 March 1977', AJHR, 1977, E-13, p 7; Department of Māori Affairs, 'Report of the Department of Māori Affairs for the Year Ended 31 March 1978', AJHR, 1978, E-13, p 5; Department of Māori Affairs, 'Report of the Department of Māori Affairs for the Year Ended 31 March 1985', AJHR, 1985, E-13, p 18

359. Transcript, 4.1.1(a), p 148

360. Hill, *Māori and the State*, p 248

the report of a ministerial planning group appointed by Peters early in 1991.³⁶¹ *Ka Awatea* was stark in its description of the gaps it identified between Māori and Pākehā ‘in almost every area measured’, describing the present position of Māori in New Zealand society as that of ‘a people in crisis’.³⁶² However, it praised the existence of ‘positive community initiatives’ already under way.³⁶³ Such community programmes, it was believed, could be harnessed as part of an overall strategy to redirect government resources from ‘negative funding’ to ‘positive funding’.³⁶⁴

One of the most significant recommendations of *Ka Awatea* was the abolition of the Iwi Transition Agency and Manatū Māori, and their replacement with a new Ministry of Māori Development, Te Puni Kōkiri (TPK). This new government agency was to have a strong regional presence and work in cooperation with iwi, urban Māori authorities, and other organisations to identify local needs and develop targeted programmes to address those needs.³⁶⁵ It would also work in cooperation with mainstream government departments to achieve four principal policy objectives:

- ▶ ‘To enable Māori to achieve standards of excellence comparable to the best international standards’.
- ▶ ‘To ensure Māori are able to participate fully in decision making’.
- ▶ ‘To ensure Māori language and culture is preserved and enhanced’.
- ▶ ‘To deal speedily and fairly with outstanding grievances’.³⁶⁶

While the Labour Government’s planned transfer of state functions to iwi would not take place under the National Government, the new Government had no intention of establishing a ministry with the same heavy operational responsibilities as the former Department of Māori Affairs. Instead, the new ministry was to be policy-focused. All remaining programmes formerly administered by the department were to be either transferred to mainstream government departments or contracted out to private providers including iwi and other Māori organisations.³⁶⁷ Peters’ time as Minister of Māori Affairs was short-lived and he was dismissed from Cabinet in October 1991. However, the restructuring plans advanced in *Ka Awatea* proceeded. The new Ministry of Māori Development, Te Puni Kōkiri, was established in January 1992.³⁶⁸ While Peters’ successors, Sir Douglas Kidd and John Luxton, did not attempt to implement the other policies contained in *Ka Awatea*, the document would re-surface as a ‘blueprint for Māori policy’ following the appointment of Tau Hēnare as Minister of Māori Affairs in December 1996.³⁶⁹

361. Ministerial Planning Group, *Ka Awatea*

362. Ministerial Planning Group, *Ka Awatea*, p 2

363. Ministerial Planning Group, *Ka Awatea*, p 2

364. Ministerial Planning Group, *Ka Awatea*, p 63

365. Ministerial Planning Group, *Ka Awatea*, pp 68–69

366. Ministerial Planning Group, *Ka Awatea*, pp 64–65

367. Hill, *Māori and the State*, p 248

368. Walker, *Ka Whawhai Tonu Mātou*, p 290

369. Durie, *Te Mana, Te Kāwanatanga*, p 9

4.6.2 Historical Treaty claims settlement process

Another notable development during the term of the fourth National Government of 1990 to 1999 was the conclusion of the first large historical Treaty settlements, with the 1992 commercial Sealord fisheries settlement, the Waikato Tainui raupatu settlement (1995), and the Ngāi Tahu settlement (1998). The fisheries settlement was arranged on a pan-tribal basis, and it required the establishment of a national body – the Treaty of Waitangi Fisheries Commission – to work with Māori to decide how the settlement assets would be distributed among iwi (and urban Māori).

For other historical claims, the Treaty settlements process necessitated the creation of new tribal structures to assist hapū and iwi to make claims to the Waitangi Tribunal, to engage in direct negotiations with the Crown, and to manage land and other assets transferred to Māori as part of settling their claims. In entering into negotiations to settle Treaty claims, the Government expected tribes to ‘demonstrate that they had an appropriate infrastructure to manage settlement packages and that they could count on a mandate before signing any settlement’.³⁷⁰ As part of its post-settlement governance development, Tainui established Waikato-Tainui Te Kauhanganui Incorporated (Te Kauhanganui) as a democratically elected structure to represent the Waikato-Tainui marae.³⁷¹ Similarly, Ngāi Tahu formed Te Rūnanga o Ngāi Tahu, which was established by legislation because it replaced one statutory body (the Ngāi Tahu Māori Trust Board) with another.³⁷² The new rūnanga was sought by the people to represent them in their dealings with the Crown and local government.³⁷³

4.6.3 Māori search for a national body, 1990s

The 1990s were a period of intense debate within Māoridom over the most appropriate constitutional form to represent Māori interests at the national level. These discussions revealed that – in spite of the increased willingness of Governments of this era to engage directly with tribal authorities – Māori had not abandoned support for the notion of some form of national body or bodies to advocate for pan-Māori or pan-tribal interests on the national scale, particularly in relations with Government. While the NZMC retained its statutory authority to advocate for the interests of all Māori, the decline in its leadership during the 1990s meant that many Māori believed that the NZMC no longer had the capacity to fulfil this role.

One of the issues informing the Māori constitutional debates of the 1990s was concerns, particularly among urban Māori groups, about how the Government resources being made available through historical Treaty settlements were being dispersed. A proportion of the Māori population remained disconnected from tribal networks. The 1991 census was the first New Zealand census to collect data on Māori tribal affiliations. It showed that up to 29 per cent of those who identified as

370. Durie, *Te Mana, Te Kāwanatanga*, p 225

371. For an account of these developments, see Carmen Kirkwood, *Te Arikiniui and the Millennium of Waikato* (Ngāruawāhia: Turongo House, 2001), pp 143–144.

372. Te Rūnanga o Ngāi Tahu Act 1996

373. Durie, *Te Mana, Te Kāwanatanga*, pp 225–226

Māori did not identify with a particular tribe.³⁷⁴ In 1996, two urban-based Māori authorities – West Auckland’s Te Whānau o Waipareira Trust and the Manukau Urban Māori Authority – emerged as champions for urban Māori disconnected from their iwi when discussions were held in Māori circles regarding how to allocate the 1992 Sealord deal settlement assets. As Māori could not agree among themselves, these urban authorities filed proceedings in the High Court to seek an answer to the question of whether the Treaty of Waitangi Fisheries Commission was required to allocate the fisheries settlement assets solely to iwi and/or groups of iwi.³⁷⁵ The matter went to the Court of Appeal, but was appealed to the Privy Council where it was remitted back to the trial judge in the High Court for a further hearing on questions formulated by the council.³⁷⁶ There followed a series of appeals until the matter was back before the Privy Council in 2002.³⁷⁷ The Judicial Committee of the Privy Council held that the benefits of the settlement must be allocated to iwi, meaning traditional tribes, for the ultimate benefit of all Māori, and thus the Treaty of Waitangi Fisheries Commission must be satisfied that this would be the result of any scheme for allocation recommended to the relevant Minister.³⁷⁸

Although they ultimately lost, Te Whānau o Waipareira Trust was emboldened during this period to take a claim to the Waitangi Tribunal, where they argued that the Trust should have a status equivalent to iwi in terms of the delivery of funding for social service programmes. The Waitangi Tribunal subsequently upheld Te Whānau o Waipareira’s claim.³⁷⁹ Then, and, despite the loss in the Privy Council in 2001, in 2003, urban Māori groups came together to form a National Urban Māori Authority (NUMA) to advocate on behalf of Māori as a whole and to lobby for a greater share of Treaty settlement resources.³⁸⁰

The growing authority of iwi-based organisations during the 1980s and 1990s also increased the need for a body or bodies that could facilitate coordination between different iwi or represent collective iwi interests in their negotiations with the Crown. Existing Māori institutions such as the Kingitanga and Rātana lent their support to the National Māori Congress to perform such a role. The Congress was founded at Tūrangawaewae in July 1990 after three prominent Māori leaders – Sir Hepi Te Heuheu, Te Arikinui Dame Te Ātairangikaahu, and Mrs Te Reo Hura – called for the establishment of a new national Māori body. Membership of the Congress was confined to tribes, so excluded the NZMC and other non-tribal Māori organisations. Another key distinction between the pan-tribal Congress and

374. Durie, *Te Mana, Te Kāwanatanga*, pp 55–57

375. *Treaty Tribes Coalition, Te Rūnanga o Ngāti Porou and Tainui Māori Trust Board v Urban Māori Authorities and Others* [1997] 1 NZLR 513

376. *Treaty Tribes Coalition, Te Rūnanga o Ngāti Porou and Tainui Māori Trust Board v Urban Māori Authorities and Others* [1997] 1 NZLR 513, 513–514

377. *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17

378. *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2002] 2 NZLR 17, 17–20

379. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: Legislation Direct, 1998)

380. Hill, *Māori and the State*, p 270; Malcolm Mulholland and Veronica Tawhai, ed, *Weeping Waters: The Treaty of Waitangi and Constitutional Change* (Wellington: Huia Publishers, 2010), p 201

the pan-Māori NZMC was that the Congress was to operate free of Government funding.

During the 1990s, the rise of the Congress, as well as the redirection of Māori energies towards the Treaty settlements process, led to a corresponding decline in the fortunes of the NZMC. This was acknowledged by the claimants:

The NZMC's leadership declined in the late 1990s with the shift of support to the National Māori Congress and later, the shift of interest from national policy to iwi development through the Treaty settlement process. Established in 1990, the congress provided direct iwi representation and produced a broader portfolio for economic and social reform than the NZMC could muster. Council and congress shared common views on cultural survival and community autonomy and collaborated on some projects.³⁸¹

While the NZMC continued to have statutory responsibility for communicating on behalf of Māori, according to Richard Hill, 'the new congress quickly came to present a united front to the Crown on a number of key issues, and soon all major tribes were participating in its deliberations to a greater or lesser degree.'³⁸² When, in 1991, the Crown sought to obtain Māori views on the disposal of surplus railway lands, it selected the Māori Congress as the appropriate body to negotiate on behalf of collective Māori interests.³⁸³ However, by the mid-1990s the Congress was experiencing its own difficulties. The Congress struggled to maintain pan-tribal unity when iwi interests were to some extent in competition. Its last meeting was held in 1996.³⁸⁴ As the claimants also note:

both Council and Congress succumbed to the shift of focus from national interests to local rivalries over the division of fisheries assets and the management of Treaty claim settlements. By the new millennium the Congress had ceased to operate, and the NZMC was mainly engaged on managing Wardens and considering its own reform.³⁸⁵

Further events of the 1990s – such as the National Government's 1994 attempt to impose a billion-dollar 'fiscal cap' on Treaty settlements – continued to underscore for many Māori the need for some form of national organisation. After the fiscal cap announcement, Sir Hepi Te Heuheu called a national hui at Hīrangi marae in Tūrangi in January 1995, attended by a thousand representatives of tribal groupings and Māori organisations from around the country. The Hīrangi hui comprehensively rejected the Government's fiscal envelope proposals and instead launched a national discussion – led by the Māori Congress – on the most appropriate

381. Cletus Maanu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, 'Statements on the basis for the claim' (paper 1.1.1), p 14

382. Hill, *Māori and the State*, p 245

383. Durie, *Te Mana, Te Kāwanatanga*, p 189

384. Walker, *Ka Whawhai Tonu Mātou*, p 294

385. Cletus Maanu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, 'Statements on the basis for the claim' (paper 1.1.1), p 14

4.6.4 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

constitutional relationships to best embody Māori rangatiratanga at the end of the twentieth century.³⁸⁶ These debates of the 1990s demonstrated that widespread support for iwi self-determination did not necessarily negate support for a national body or bodies to represent collective tribal or Māori interests. Writing in 1998, Māori academic Mason Durie advocated a ‘dual focussed approach’ to recognition of Māori tino rangatiratanga which could incorporate both tribal organisation and other forms of Māori organisation.³⁸⁷ The question, as Durie put it in 1998, was:

not so much whether the iwi system is the only form of tino rangatiratanga, but how tribal independence and autonomy relate to decision-making within the collective Māori world. At times, tribal authority and rights are more significant than the rights of Māori people generally. But for other purposes Māori authority makes more sense and is more significant when it moves beyond the disparate domains of tribes to embrace all Māori.³⁸⁸

It was in the context of these debates within Māoridom that – in 1998 – the Government launched a comprehensive review of the 1962 Māori Community Development Act. We conclude our survey of the NZMC’s twentieth-century history with a discussion of that review. As we will see in chapter 6, this review played a significant role in informing the Crown’s approach when it next contemplated a major review of the Act in 2009.

4.6.4 The 1996 amendments to the 1962 Act

Before discussing the outcome of the Government’s 1998–99 review of the 1962 Act, it is necessary to describe a significant amendment to the 1962 Act passed in 1996. In 1995, the Government initiated an amendment of the 1962 Act to remove the section 5 provisions allowing for the appointment of honorary Community Officers. The amendment was introduced in 1996 by Associate Minister for Māori Affairs John Luxton. He explained in Parliament that continuation of the Honorary Community Officers’ service was ensured by the transfer of funding for it to the Social Welfare Department back in 1993. But no such officers had been appointed since 1989, and Social Welfare had advised that ‘it does not require legislation for appointing and warranting honorary community officers as its funding criteria are based on another set of guidelines’. What this seems to have meant was the formal discontinuance of Honorary Community Officers.³⁸⁹ The Bill was sent to the Māori Affairs Select Committee, which tabled its report in Parliament in June 1996. Neither Parliament nor the select committee responsible for reviewing the Bill raised the prospect of consulting with the NZMC. It is not clear from the evidence tabled before this inquiry whether the NZMC made a submission to the select

386. Hill, *Māori and the State*, pp 262–264

387. Durie, *Te Mana, Te Kāwanatanga*, p 227

388. Durie, *Te Mana, Te Kāwanatanga*, p 228

389. NZPD 1995, vol 546, p 6385

committee. The Māori Community Development Amendment Act 1996, repealing section 5 of the 1962 statute, was enacted in June of that year.³⁹⁰

4.6.5 Reviewing the Māori Community Development Act, 1999

In January 1998, Tau Hēnare, the Minister of Māori Affairs, instructed his ministry to undertake a review of the 1962 Act. During May and June of that year, TPK officials undertook a series of 15 ‘information’ hui on the proposed review to ‘update the Act in the context of what Māori communities determine to be their development needs in the 21st century.’³⁹¹ The review was to cover ‘issues relating to a national representative body for Māori, through reform of the New Zealand Māori Council.’³⁹² Attendees at the information hui included representatives of the DMCS, the NZMC, and Māori Wardens, as well as members of rūnanga, trust boards, and Government agencies.³⁹³ Some hui participants felt that the present NZMC was undemocratic and that the lower levels of the NZMC structure required ‘revitalising’. However, they also emphasised the NZMC’s ‘huge contribution to Māoridom in the last decade’ and pointed out that ‘the New Zealand Māori Council is the only national Māori organisation remaining for Māoridom’ and that ‘Māoridom cannot afford to lose the Council, even in its current form, as it would never gain through government anything like it . . . again.’³⁹⁴

Next, TPK officials prepared a set of the guiding principles which they suggested could underpin a future review of the Act. These were released in August 1998, and read as follows:

- ▶ ‘to recognise Māori communities as the focal point of Māori development’;
- ▶ ‘to assist and support Māori communities achieve their full potential’;
- ▶ ‘to facilitate, promote and support the development of Māori communities in accordance with their own needs and priorities’; and
- ▶ ‘to provide a framework to enable Māori communities to have representative regional and national bodies.’³⁹⁵

Between August 1998 and February 1999, TPK continued with its consultation programme, holding a further round of 18 consultation hui in October.³⁹⁶ It also convened four regional focus groups and conducted a series of interviews with individuals with ‘extensive experience’ of the 1962 Act’s operations in Māori

390. Māori Community Development Amendment Act 1996, s 2

391. Ian Peters, ‘Review of Māori Community Development Act 1962: Representative Body/“Voice”’, 1999 (Crown counsel, TPK document collection (doc C15), p 163)

392. Ian Peters, ‘Review of Māori Community Development Act 1962: Representative Body/“Voice”’, 1999 (Crown counsel, TPK document collection (doc C15), p 163)

393. Ian Peters, ‘Review of Māori Community Development Act 1962: Representative Body/“Voice”’, 1999 (Crown counsel, TPK document collection (doc C15), p 163)

394. Ian Peters, ‘Review of Māori Community Development Act 1962: Representative Body/“Voice”’, 1999 (Crown counsel, TPK document collection (doc C15), p 164)

395. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962* (Wellington: Ministry of Māori Affairs, 1999), p 7 (Crown counsel, TPK document collection (doc C15), p 235)

396. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 7 (Crown counsel, TPK document collection (doc C15), p 235); Ian Peters, ‘Review of Māori Community Development Act 1962: Representative Body/“Voice”’, 1999 (Crown counsel, TPK document collection (doc C15), p 167)

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communities. These interviews included NZMC members Sir Graham Latimer and Maanu Paul, but the views expressed by NZMC representatives during these interviews were not recorded.³⁹⁷

In April 1999, TPK released a discussion paper *He Pūrongo Whiriwhiringa i te Ture Whakapakari Hapori Māori 1962 / Discussion Paper on the Review of the Māori Community Development Act*. In summarising the views of respondents as to the Māori council, officials stated: ‘A strong view arising from the consultations is that the Council has ceased to be relevant to many Māori who consider that it operates on its own with little or no link back to the people it represents.’³⁹⁸ While Māori had a ‘good knowledge of the Council system’, TPK noted that ‘in most areas it operates poorly or not at all’:

The most consistent theme arising from the consultation process was that the Council at national or regional level, was not representative and as such did not have the authority to speak on behalf of Māori. A great many participants in the consultation hui expressed the concern that there has been a marked loss of confidence in the New Zealand Māori Council. They also considered that it has run its course and that a new vehicle was needed to fill this role for the early part of the next century.³⁹⁹

However, the report’s authors noted that – despite these criticisms of the NZMC – there remained widespread support for the notion of a national body to represent Māori, with hui attendees believing that ‘a national Māori body is critical to Māori development’.⁴⁰⁰

The TPK reviewers went on to present three possible options for the future of the NZMC structure which they saw as emerging from the consultation process:

(1) Option 1: retain the NZMC unmodified (the status quo)

Under the first option ‘retain the organisation as it is’, TPK’s paper noted:

The New Zealand Māori Council has left its mark and legacy on the New Zealand landscape in regard to the relationship between Crown and Māori under the Treaty of Waitangi. It has been a major contributor to the changing political and social environment. However, with the greatest respect for past and present members of the New Zealand Māori Council as well as the District Māori Councils, Māori Executive Committees and Māori Committees, the structure has not functioned properly for

397. Te Puni Kōkiri, ‘Review of the Māori Community Development Act 1962: A Background Paper for Consultation Hui’, October 1999 (Crown counsel, TPK document collection (doc C15), p 4); Ian Peters, ‘Review of Māori Community Development Act 1962: Representative Body/“Voice”’, 1999 (Crown counsel, TPK document collection (doc C15), pp166–167)

398. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 16 (Crown counsel, TPK document collection (doc C15), p 244)

399. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 16 (Crown counsel, TPK document collection (doc C15), p 244)

400. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 16 (Crown counsel, TPK document collection (doc C15), p 244)

some time and their ability to operate within the present changing environment is now limited.⁴⁰¹

TPK officials, therefore, did not favour this option, believing that the structure set down by the 1962 Act had prevented the NZMC from adapting to 'the changing environment'. This changing environment included the growth of iwi organisations which had, in the view of the *Discussion Paper's* authors, 'resulted in these organisations performing the functions formerly undertaken by the New Zealand Māori Council structure', and the fact that 'in terms of the Treaty relationship with the Crown, Iwi tend to deal directly with the Crown rather than go through the New Zealand Māori Council structure'.⁴⁰²

(2) Option 2: Abolish the NZMC

The second option presented by the *Discussion Paper* was to abolish the NZMC and repeal the relevant sections of the 1962 Act. On this option, TPK noted that feedback from consultation hui confirmed that 'a large number of participants considered that the New Zealand Māori Council was becoming less and less relevant to them'. However, the paper's authors also advised against this option, as feedback from consultation hui had shown widespread Māori support for the view that 'a national organisation was still required and had an important role in terms of influencing and advocating at a ministerial or Chief Executive level'.⁴⁰³

(3) Option 3: Modify or replace the NZMC

The third option – that preferred by the authors of the *Discussion Paper* – was to modify or replace the existing NZMC structure with a new body 'better suited to support Māori development'.⁴⁰⁴ In relation to this proposal, TPK found that the 'consultation process revealed a clear desire for a national organisation which is directly connected to Māori communities and which can progress those issues on behalf of Māori communities which require national attention'.⁴⁰⁵ They continued:

The consultations indicated a general reluctance to completely repeal the existing structure as there are aspects of the current legislation which are applicable to a reshaped New Zealand Māori Council structure and which can be used as a solid foundation for amendment. The preferred option arising out of the consultation process is for the New Zealand Māori Council to be modified and changed. It is recognised, however, that substantive changes to the legislation will be required to ensure

401. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p17 (Crown counsel, TPK document collection (doc c15), p 245)

402. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p17 (Crown counsel, TPK document collection (doc c15), p 245)

403. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p17 (Crown counsel, TPK document collection (doc c15), p 245)

404. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p17 (Crown counsel, TPK document collection (doc c15), p 245)

405. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p17 (Crown counsel, TPK document collection (doc c15), p 245)

**RECOMMENDATIONS OF 1999 DISCUSSION PAPER ON THE REVIEW OF THE
MĀORI COMMUNITY DEVELOPMENT ACT 1962**

In their 1999 *Discussion Paper on the Review of the Māori Community Development Act 1962*, TPK officials recommended the ‘substantial’ modification of the NZMC and its replacement with a new national body, which they suggested could be named Te Rūnanga Pūmanawa Tāngata. The new body would be responsible for representing Māori views ‘on those issues which require a national focus as well as issues which Māori communities consider need to be dealt with at a national level’. These issues ‘may be related to Māori communities as well as generic issues which impact on Māori in general’, although ‘Iwi-specific matters’ would be avoided. It would ‘not be responsible to any Minister of the Crown and shall act independently’, although the Crown would retain a residual monitoring role to ensure that the new body was adequately representing the interests of Māori communities, as well as obliging it to supply annual financial reports to the government. The new body would be left to draw up its own constitution ‘to govern the relationship between itself and Māori communities’ and would be able to amend its constitution at any time with the agreement of 75 percent of its representatives. The new body was to consist of three tiers – with ‘Māori communities’ appointing representatives to regional bodies which would in turn, nominate delegates to the national body. Aside from the reduction from a four-tier to a three-tier governance structure, the greatest difference between the new proposed body and the existing NZMC system was the identity of the ‘Māori communities’ at the lowest tier of the structure. Rather than Māori Committees specifically appointed for the purpose of representation under the 1962 structure, the lowest level of the proposed structure would be made up from existing marae-based committees or their urban equivalents. The report also recommended ‘an increase in resourcing’ to support the operations of the new body.

Source: Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, pp 24, 27–29, 31 (Crown counsel, TPK document collection (doc C15), pp 252, 255–257, 259)

that the national structure is modified so that it is flexible and can support the development needs of communities for the next 20–30 years. . . . It is noted that the legislation should not attempt to prescribe how or what the development should be, those decisions are best left to the communities themselves. It is further noted that it is not intended to usurp or undermine the roles and responsibilities of Iwi and pan-Māori organisations in their relationship with their own members, with government and

others. Rather, it is considered to complement and assist them, where required, with their own identified development needs.⁴⁰⁶

Another strong theme to emerge from the consultation hui of 1998 had been the view that Māori bodies with statutory authority needed to be funded sufficiently to carry out their powers. The *Discussion Paper* acknowledged on this point that:

The future of any amendment to the Act was also considered at a number of hui, to be dependent on whether it was to be appropriately funded. The Ministry was advised that without such funding, the Act would not be in a position to operate effectively and would be in no better position than the structures . . . under the existing Act. It would be, according to one participant ‘like a bird without feathers and unable to fly.’⁴⁰⁷

In assessing the past record of the NZMC in representing Māori, the report’s TPK authors acknowledged that ‘the lack of substantive funding to allow the structure to perform at all levels’ had contributed to the NZMC’s present decline.⁴⁰⁸

The *Discussion Paper* concluded by calling for written submissions on the proposals contained in the document by 21 May 1999, and signalled the Government’s intention to introduce draft legislation to reform the 1962 Act by September 1999.⁴⁰⁹ TPK subsequently conducted 36 consultation hui and called for written submissions on its proposed reforms, of which a total of 79 were received.⁴¹⁰

The NZMC made no formal submission on the 1999 discussion paper. However, TPK’s notes from consultation hui held in Ruatoria, Wairoa, and Gisborne in May 1999 suggest that the NZMC had instead opted for a more direct means of expressing its concerns to the Government over the review of its legislation. TPK’s preliminary notes from those hui observed that:

The New Zealand Māori Council have apparently met with the Prime Minister and have expressed their dissatisfaction with any amendments to the Act that would remove the Council as a statutory body. The representative present at the Gisborne hui stated that they would work with the Prime Minister as they wish to ‘go out and talk to all Marae’ about the review but have no resources for this.⁴¹¹

406. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p18 (Crown counsel, TPK document collection (doc C15), p 246)

407. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 21 (Crown counsel, TPK document collection (doc C15), p 249)

408. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 17 (Crown counsel, TPK document collection (doc C15), p 245)

409. Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 32 (Crown counsel, TPK document collection (doc C15), p 260)

410. Ian Peters, ‘Review of Māori Community Development Act 1962: Representative Body/“Voice”’, 1999 (Crown counsel, TPK document collection (doc C15), p 167)

411. [Unknown as redacted], Law Reform Branch, Te Puni Kōkiri, to [unknown as redacted], Acting Regional Director, Gisborne Regional Development Branch, Te Puni Kōkiri, 20 May 1999 (Crown counsel, TPK document collection (doc C15), p 328)

More detailed notes on the Wairoa and Gisborne hui record that, at the meeting, NZMC representative Lou Tangaere asked for a minute to be recorded noting:

The New Zealand Māori Council rejects unanimously any amendments to the Act that would result in the dismantling of the NZMC as a statutory body in name or form but it would accept the extension of its powers but not the tampering of the legislation.⁴¹²

Despite the NZMC's objections, on August 1999, Cabinet approved a series of major amendments to the Māori Community Development Act 1962. These included:

- ▶ the repeal of the sections of the Act relating to Māori executive committees;
- ▶ the redefinition of Māori committees as 'marae and hūnuku communities' (with 'hūnuku communities' defined as 'local Māori communities of common interest, other than marae communities, who may or may not be joined by whakapapa and/or live within their own iwi rohe, but otherwise function in a manner similar to marae communities');
- ▶ the replacement of the District Māori Councils with new regional bodies; and
- ▶ the continuation of the New Zealand Māori Council, appointed by the regional bodies, and with the power to develop its own constitution.⁴¹³

However, these changes were not implemented following the election of a new Labour Government in December 1999. As we will see in chapter 6, a further decade would pass before the Government would revisit its review of the 1962 Act, but the 1990s review and the ideas developed by TPK at that time continued to be influential within Government.

4.7 THE MĀORI REPRESENTATIONAL LANDSCAPE OF 2000–14

4.7.1 Treaty settlements and post-settlement governance entities

In the decade between the conclusion of the 1999 review of the 1962 Act, and the Crown's decision to launch a select committee inquiry into the Act in 2009, a number of ongoing developments continued to reshape the Māori representational landscape. We survey some of these developments below by way of providing immediate context to our analysis, in chapter 6, of the Crown's most recent review of the 1962 Act.

As in the previous decade, one of the most significant features of the representational landscape of the 2000s has been the Treaty of Waitangi claims settlement process, currently ongoing. Between 1995 and mid-2014, 46 Settlement Acts were

412. Te Puni Kōkiri, notes from hui held in Wairoa 11 May 1999 and Gisborne 12 May 1999 (Crown counsel, TPK document collection (doc C15), p330)

413. Minute of Cabinet decision, 9 August 1999; see also Cabinet paper, 27 July 1999, and minute of Cabinet decision, 28 July 1999 (Crown counsel, TPK document collection (doc C15), pp 388–423, 430–434)

passed, with many more settlements in progress. As of mid-2014, the Crown was in various stages of the negotiation process with a further 35 claimant groups.⁴¹⁴

The Treaty settlements process has significant implications for Māori claimant groups in terms of their own representational structures and in terms of the ongoing Treaty relationship between Māori and the Crown.

On the matter of representation, Treaty settlement negotiations and the passage of settlement legislation have added further impetus to the existing trend towards formalised tribal governance entities. Before each claimant group is able to proceed to settlement, it is a Crown requirement that it must put in place a suitable governance entity to represent its members post-settlement, to manage settlement assets, and to decide how such assets are to be used for the benefit of the wider claimant group.⁴¹⁵ The Crown's principles for suitable post-settlement governance entities are set out in its guide to the Treaty settlements process, *Ka Tika ā Muri, Ka Tika ā Mua; Healing the Past, Building a Future*. According to Crown guidelines, post-settlement entities must have a structure that:

- ▶ adequately represents all members of the claimant group
- ▶ has transparent decision-making and dispute resolution procedures
- ▶ is fully accountable to the whole claimant group
- ▶ ensures the beneficiaries of the settlement and the beneficiaries of the governance entity are identical when the settlement assets are transferred from the Crown to the claimant group, and
- ▶ has been ratified by the claimant community.⁴¹⁶

It is up to the claimant group to decide upon the governance entity that will best serve their needs, as long as it adheres to the above principles specified by the Crown.⁴¹⁷ However, the Crown's guidelines note that 'it is unlikely that an existing tribal governance entity will meet the needs and purposes of claimant groups following a settlement' as they may not be legal entities or may 'lack transparency' or have problems of representation.⁴¹⁸ As a result, some iwi have established private trusts to manage settlement assets and represent their tribal beneficiaries in their relationship with the Crown and local authorities. In other cases, the post-settlement governance structures have been provided for in specific legislation,⁴¹⁹ such as Te Rūnanga o Ngāti Awa Act 2005 and Te Urewera Act 2014. Whatever form that claimant groups choose for their post-settlement governance entity, it is clear that

414. Office of Treaty Settlements, 'Claims Progress', <http://www.ots.govt.nz/>, last modified 18 June 2014

415. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua : He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna / Healing the Past, Building a Future : A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 2nd ed (Wellington: Office of Treaty Settlements, 2002), p 72; see also Robert Joseph, 'Unsettling Treaty Settlements: Contemporary Māori Identity and Representation Challenges', in Nicola Wheen and Janine Hayward, ed, *Treaty of Waitangi Settlements* (Wellington: Bridget Williams Books, 2012), ch 11.

416. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua / Healing the Past, Building a Future*, p 72

417. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua / Healing the Past, Building a Future*, p 71

418. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua / Healing the Past, Building a Future*, p 72

419. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua / Healing the Past, Building a Future*, pp 72–73

the Treaty settlements process has contributed to a trend towards tribal structures which must demonstrate their adherence to western and corporate models of good governance and accountability.⁴²⁰

Of course, as we have seen in this chapter and the last, the adoption and adaptation of committee/council/trust structures to the needs of Māori leadership and tribal structures has been ongoing since the nineteenth century. Even at the national level, while uniquely Māori in its kaupapa and makeup, for example, the term ‘National Māori Congress’ was clearly inspired by post-colonial struggles overseas and the appropriation of western structures as part of those struggles.⁴²¹

In addition, Treaty settlements contain several different aspects of redress: a Crown apology, and financial, cultural, and relationship redress.⁴²² The aim of the apology is to ‘remove the sense of grievance and lay a foundation upon which a new relationship can emerge.’⁴²³ Financial redress, usually made up of a mix of cash and land assets, is aimed at recognising ‘the economic loss caused by breaches of the Treaty’, although it does not seek to quantify the precise value of that loss.⁴²⁴ One of the most significant features of settlements in terms of the ongoing relationship of Māori with the Crown is sometimes in the ‘cultural redress’ aspects of settlements. Cultural redress may provide for the ongoing input of Māori into the management of specific sites or natural resources. Another common element of redress packages is to provide for the ongoing relationship between the Māori claimant group and the Crown, as well as local authorities or bodies.⁴²⁵

Some recent settlements have included ‘relationship agreements’ with Government agencies or other bodies as part of their cultural redress. Such agreements specify how the Treaty relationship is to be conducted between the Māori claimant groups and the Crown and its representatives in the future.⁴²⁶ For instance, a Deed of Settlement signed by the Crown and Te Aupōuri in January 2012 includes a ‘Social Development and Wellbeing Accord’, involving 11 Government agencies: the Ministry of Social Development, TPK, the Ministry of Education, the Department of Labour, the Department of Building and Housing, New Zealand Police, the Ministry of Economic Development, the Ministry of Justice, the Department of Internal Affairs, the Department of Corrections, and Statistics New Zealand. The accord provides for ‘how the iwi and the Crown will work together to improve the social development and wellbeing of the Te Hiku whānau, hapū, iwi and the wider community’, and involves ‘multi-level engagement’ between Te Hiku iwi and the Crown, including an annual Te Hiku Iwi–Crown Taumata Rangatira hui between Ministers and Te Hiku iwi representatives, and regular Crown–Te Hiku

420. Joseph, ‘Unsettling Treaty Settlements’, p 155

421. We are referring here to the Indian National Congress (later the Congress Party), South Africa’s African National Congress, and the United States’ National Congress of American Indians.

422. Dean Cowie, ‘The Treaty Settlement Process’, in Nicola Wheen and Janine Hayward, ed, *Treaty of Waitangi Settlements* (Wellington: Bridget Williams Books, 2012), p 60

423. Cowie, ‘The Treaty Settlement Process’, p 60

424. Cowie, ‘The Treaty Settlement Process’, p 60

425. Cowie, ‘The Treaty Settlement Process’, p 61

426. Cowie, ‘The Treaty Settlement Process’, p 61

iwi engagement through a twice-yearly forum (Te Kahui Tiaki Whānau).⁴²⁷ In cases such as that of Te Aupōuri, settlement agreements have thus specifically provided for how the Treaty relationship between the Crown and that iwi should be conducted in the future.

A further aspect of the recent trend towards formalised and centralised tribal governance entities can be seen in the Māori Fisheries Act 2004. The purposes of the 2004 Act include ‘to provide for the development of the collective and individual interests of iwi in fisheries, fishing, and fisheries-related activities in a manner that is ultimately for the benefit of all Māori.’⁴²⁸ The 2004 Act outlines the process for the allocation of the 1992 Sealord Fisheries Settlement assets and it creates certain management arrangements for the management of the remainder of those settlement assets.⁴²⁹

Those management arrangements include Te Kāwai Taumata, Aotearoa Fisheries Limited, Te Pūtea Whakatupu Trust and Te Pūtea Whakatupu Trust Limited, and Te Wai Māori Trust and Te Wai Māori Trust Limited.⁴³⁰ The main entity is Te Ohu Kaimoana (established by trust deed)⁴³¹ for the purpose of advancing the interests of iwi individually and collectively in fisheries, fishing, and fisheries-related activities.⁴³² Te Ohu Kaimoana is administered by one trustee and that trustee is Te Ohu Kai Moana Trustee Limited, a company formed under the Companies Act 1993.⁴³³ Te Ohu Kaimoana must administer the settlement assets in accordance with the purposes of the Act and it has a number of statutory duties listed in section 34, most of which are iwi focused. Its functions are listed in section 35 and again there is a focus on iwi recognised as mandated iwi organisations. The 2004 Act’s criteria for continuing to be recognised as a mandated iwi organisation under the Act, requires that they have constitutional documents that address voting for directors, trustees or other officeholders as the case may require, that cover representation issues, accountability and governance.⁴³⁴ Finally, some of the settlements involving environmental features are resulting in some measure of self-government and co-management law making authority as in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, through the development of the vision and strategy ‘Te Ture Whaimana o Te Awa o Waikato’ for the Waikato River.

4.7.2 The 2000s: the search for a national Māori body

As a result of the growing number of iwi who have settled their claims with the Crown, large and well-resourced post-settlement tribal entities are now an

427. Office of Treaty Settlements, ‘Te Aupōuri – Settlement Summary’, <http://www.ots.govt.nz/>, accessed 22 October 2014

428. Māori Fisheries Act 2004, s 3

429. Māori Fisheries Act 2004, s 3

430. Māori Fisheries Act 2004, pt 2

431. Māori Fisheries Act 2004, s 31

432. Māori Fisheries Act 2004, s 32

433. Māori Fisheries Act 2004, s 33

434. Māori Fisheries Act 2004, sch 7

**THE CONTRIBUTION OF MĀORI LAND TO
THE REPRESENTATIONAL LANDSCAPE**

In 1999, the value of Māori communally owned assets was estimated to be worth \$5 billion. By 2010, the value of the Māori economy had grown to \$36.9 billion. The Federation of Māori Authorities, established in 1987 to advocate for Māori authorities, is now a significant national body representing the commercial interests of over 150 individual Māori authorities and other Māori organisations. Membership is open to all 'Māori Authorities', as constituted under Te Ture Whenua Māori Act 1993, and 'all other Māori organisations such as iwi, rūnanga, settlement entities and Māori businesses'. The Federation, which focuses its energies on Māori industry and Māori economic development, is currently governed by an executive committee appointed from 11 rohe around the country. The federation describes its role as to advocate for the interests of its members, including by making representations and submissions to Ministers, Government officials, and select committees on matters of concern to its membership. It also organises hui-ā-rohe (regional meetings), convenes industry groups, organises industry-led trade missions, and holds an annual economic summit.

Sources: Mai Chen, 'Post-settlement Implications for Māori-Crown Relations', in Nicola Wheen and Janine Hayward, ed, *Treaty of Waitangi Settlements* (Wellington: Bridget Williams Books, 2012), p 186; 'About Us', Federation of Māori Authorities, <http://www.federation.maori.nz/about-us/>; 'Join Us', Federation of Māori Authorities, <http://www.federation.maori.nz/join-with-us/>, accessed 21 October 2014; 'Our Structure', Federation of Māori Authorities, <http://www.federation.maori.nz/about-us/structure/>, accessed 5 November 2014; 'About Us', Federation of Māori Authorities, <http://www.federation.maori.nz/about-us/>, accessed 17 October 2014.

increasingly significant feature of the Māori representational landscape. The Iwi Chairs Forum was convened at a hui at Takahanga Marae in Kaikōura in 2005. This forum is made up of the chairs of iwi governance entities who hold regular meetings to discuss matters of national interest to iwi and Māori more broadly.⁴³⁵ Most of the iwi represented have completed Treaty settlements with the Crown and are mandated iwi organisations recognised by Te Ohu Kaimoana under the Māori Fisheries Act 2004.⁴³⁶ The Iwi Chairs Forum says that it represents two-thirds of all Māori.⁴³⁷ According to the forum's website, members of the forum are currently engaged with 'iwi, hapū and Government' on a range of areas of national interest to Māori, including fresh water, climate change, conservation, Whānau

435. Maria Bargh, 'The Post-settlement World (So Far): Impacts for Māori', in Nicola Wheen and Janine Hayward, ed, *Treaty of Waitangi Settlements* (Wellington: Bridget Williams Books, 2012), p174; 'Iwi Chairs Forum', Iwi Chairs Forum, <http://www.iwichairs.maori.nz/>, accessed 5 November 2014

436. Bargh, 'The Post-settlement World (So Far)', p174

437. Bargh, 'The Post-settlement World (So Far)', p174

URBAN MĀORI AUTHORITIES

The National Urban Māori Authority (NUMA) was founded in 2003 and represents seven affiliated urban Māori authorities in five urban centres across New Zealand. Urban authorities affiliated with NUMA include the Ōtangarei Trust (Whāngārei), Te Whānau o Waipareira Trust and the Manukau Urban Māori Authority (Auckland), Te Rūnanga o Kirikiriroa and Te Kōhao Health Trust (Hamilton), Te Roopū Āwhina Ki Porirua Trust (Porirua), and Te Rūnanga o Ngā Maata Waka (Christchurch). According to its website, NUMA affiliates are responsible for the delivery of approximately 300 whānau- and community-based services across the areas of education, health, housing, justice, and social services. NUMA is responsible for providing leadership and overall policy direction for its affiliate authorities, and seeks an annual mandate from its affiliate bodies to ‘act and advance whānau issues on their behalf’. NUMA has working partnerships with a range of Government and non-governmental bodies, including Work and Income New Zealand, the Ministry of Education, the Ministry of Health, TPK, the Ministry of Social Development, the Ministry of Justice, local government authorities, schools, tertiary institutions, district health boards, Māori health providers, and churches, as well as iwi, hapū, and marae. It is also represented on a range of national boards, including the Māori Nursing Council, Māori Broadcasting, Māori Women’s Welfare League, and the National Parole Board.

Sources: ‘National Urban Māori Authority’, National Urban Māori Authority, <http://www.numa.org.nz/home.html>, accessed 29 October 2014; ‘Affiliates’, National Urban Māori Authority, http://www.numa.org.nz/whanau_connections.html, accessed 5 November 2014; ‘Our Service Delivery Model’, National Urban Māori Authority, http://www.numa.org.nz/service_delivery.html, accessed 29 October 2014; ‘Strategic’, National Urban Māori Authority, http://www.numa.org.nz/business_enterprises.html, accessed 29 October 2014.

Ora, mātauranga Māori, housing, oil and minerals, and foreign charter vessels. It also has a constitutional working group.⁴³⁸

The areas of overlapping interest between statutory Māori organisations like the NZMC and new bodies like the Iwi Chairs Forum was most recently apparent in the Waitangi Tribunal’s inquiry into the Stage 1 National Freshwater and Geothermal Resources Claim (the ‘Water inquiry’). The Water claim was filed with the Waitangi Tribunal by Sir Graham Latimer on 7 February 2012, concerning ongoing Crown breaches of Māori water rights.⁴³⁹ In many ways, the NZMC took the leadership in

438. Iwi Chairs Forum, ‘Kaupapa’, <http://www.iwichairs.maori.nz/Kaupapa/>, accessed 16 October 2014

439. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Legislation Direct, 2012), p 5

this important claim just as it had in the cases surveyed earlier in our chapter, during the 1980s and 1990s. Sir Graham filed the claim on behalf of the NZMC and ‘all Māori’, as well as a range of iwi and hapū co-claimants who had not yet completed Treaty settlements.⁴⁴⁰

Their application for an urgent hearing was opposed by a number of iwi, including Ngāi Tahu and Waikato-Tainui, led by the Freshwater Iwi Leaders Group, a small section of the Iwi Chairs Forum. The Freshwater Iwi Leaders group was formed in 2007 to ‘advance the interests of all iwi in relation to fresh water through direct engagement with the Crown’, and at the time of the hearings into the Water inquiry, was made up of the leaders of Ngāti Tūwharetoa, Waikato-Tainui, Ngāi Tahu, Te Arawa, and Whanganui.⁴⁴¹ This Freshwater Iwi Leaders Group opposed the granting of urgency on the basis that the Crown was already engaging directly with their group on water issues.⁴⁴² At the judicial conference on the decision for urgency, Sir Edward Taihakurei Durie acknowledged on behalf of the NZMC that the council cannot claim to represent all Māori but that it seeks a benefit for all Māori.⁴⁴³ The Freshwater Iwi Leaders Group continued to assert their opposition to ‘any claim that purports to be brought on behalf of all Māori’.⁴⁴⁴ At the same time, there were a large number of Māori groups who supported the Water claim as interested parties. They told the Freshwater and Geothermal Resources Tribunal that ‘many Māori, especially those without Treaty settlement assets, still need organisations and leaders like the Council to carry matters forward that they cannot carry themselves’.⁴⁴⁵ But, as the Freshwater Iwi Leaders Group’s statements suggest, how the NZMC as the body with statutory authority to make representations for all Māori can work alongside the increasingly powerful post-settlement tribal entities remains uncertain.

At our hearing on this claim concerning the Māori Community Development Act 1962, the iwi leaders did not appear or make submissions. Sir Edward put the view to us that modern Māori society is complex and requires multiple forms of representation due to the many spheres of interest in which Māori communities operate. His own roles as ‘one of the four chosen Māngai for Ngāti Raukawa ki te Tonga’, and as an elected Māori committee, DMC, and NZMC member, demonstrate this point. The multiple organisations that are required need not be in competition, although they sometimes find that they are. Sir Edward told us:

First, I do not see the New Zealand Māori Council and Iwi Leaders as in competition but as complementary. I recognise that rangatiratanga today is diverse and is spread over several organisations. However, the most significant change in the landscape in my view has been the impact of urbanisation into the third and fourth

440. Waitangi Tribunal, *Report on the National Freshwater and Geothermal Resources Claim*, pp 5–6

441. Waitangi Tribunal, *Report on the National Freshwater and Geothermal Resources Claim*, p 7; <http://www.iwichairs.maori.nz/Kaupapa/Fresh-Water/>, accessed 22 October 2014

442. Waitangi Tribunal, *Report on the National Freshwater and Geothermal Resources Claim*, pp 7–8

443. Waitangi Tribunal, *Report on the National Freshwater and Geothermal Resources Claim*, p 8

444. Waitangi Tribunal, *Report on the National Freshwater and Geothermal Resources Claim*, p 8

445. Waitangi Tribunal, *Report on the National Freshwater and Geothermal Resources Claim*, p 214

generations, creating new city communities and bringing focus to law and order in those communities. To my mind the New Zealand Māori Council is still the most significant organisation to develop pan-Māori policy in that area and to provide for the Wardens, as the New Zealand Māori Council covers both traditional and modern communities.⁴⁴⁶

Also, Titewhai Harawira explained to the Tribunal that there is an enormous value in having Māori self-government institutions which have statutory recognition and backing: they are much harder to sweep away, and they ensure a degree of stability and continuity with the past.⁴⁴⁷

These issues lie at the heart of what the Māori people will need to determine for themselves in the twenty-first century. It is not for us to answer the questions for Māori, but they form the essential context to our evaluation of the present claim.

4.8 CONCLUSIONS

In the previous chapter, we found that the agreements negotiated between Māori and the Crown from 1959 to 1963 amounted to a self-government compact for the particular matters or spheres of Māori interest covered in the 1962 Act. In this chapter, we surveyed how the system set up under the 1962 Act has fared over the subsequent 50 years. During the five decades covered in this chapter, the NZMC has led its DMCs and committees through an era of momentous social and political change for Māori. Since the NZMC was established in 1962, Māori communities, as well as New Zealand society more broadly, have been transformed in the wake of the Māori urban migration, the modern Māori protest movement, the Māori cultural renaissance, tribal revitalisation, and the Treaty settlements process. The NZMC has played an important role in many of these developments, advocating for wider Māori interests and acting as a fulcrum for reform in a range of areas.

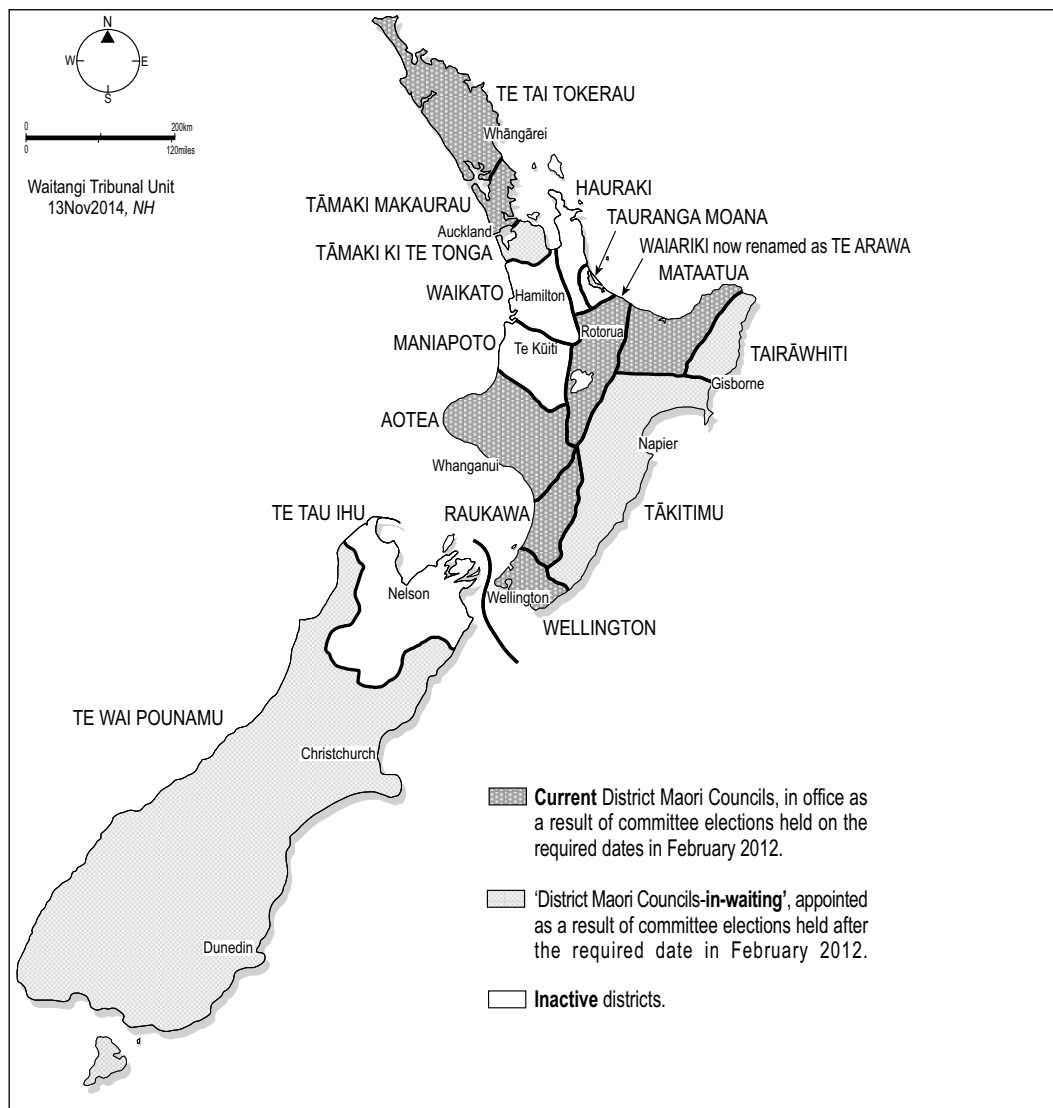
The NZMC system has itself adapted in line with the changing needs of its Māori communities. Māori urbanisation during the 1960s and 1970s would see the establishment of new urban Māori committees in cities such as Auckland and Wellington. These, along with a plethora of other voluntary Māori organisations, formed crucial support mechanisms and a focus for identity and community for newly urbanised Māori adjusting to life in the cities. The NZMC also responded to the urban movements of the Māori people by establishing new Māori council districts. The NZMC established the Wellington DMC in the early 1970s to cater for the needs of Māori in that city. By 1989, after the creation of DMCs in Tauranga Moana and Raukawa, there were 11 districts in existence.⁴⁴⁸ Today, there are 16 Māori council districts (see map 2).

The five decades since the 1962 Act was introduced have also seen a range of amendments to the Act itself. On the subject of these amendments, the claimants

446. Sir Edward Taihakurei Durie, brief of evidence, 7 March 2014 (doc B24), p7

447. Transcript 4.1.1(a), p145

448. A Marsh, letter, 4 July 1989 (Second Waitangi Tribunal document bank, vol 7 (doc C18(g)), p 54)



Map 2: The 16 Māori council districts today

Sources: Map of District Maori Council boundaries for the North Island, 31 March 2014 (doc c13);
map of District Maori Council boundaries for the South Island, 31 March 2014 (doc c14)

have argued that – prior to the 1980s – changes to the 1962 Act were introduced with the agreement of the NZMC, and often at the NZMC’s instigation. This was largely true of the amendments to the Act passed between 1963 and 1971. The claimants’ statements hold less true, however, for the amendments introduced between 1974 and 1975. As we have seen, the Minister of Māori Affairs, Matiu Rata, signalled his willingness to introduce what amounted to major reforms to the NZMC structure and the Māori Wardens in spite of his knowledge that the NZMC opposed the changes. On the other hand, the NZMC in 1974 asserted the principle that it should develop changes to its own Act and structures. While the Government did not explicitly accept this position, many of Matiu Rata’s proposed changes were dropped

as a result of the council's opposition, although some went ahead in 1975. We are unable to determine whether or not these particular changes in 1975 were made with the agreement of the NZMC.

In the period from the 1960s to the early 1990s, the NZMC played a leading role in a range of law reform issues and in a series of proceedings which would transform New Zealand society, law, and politics. Along with these notable achievements, the NZMC system also faced a number of challenges. One of these has been the significant level of variability in the effectiveness of its committees at the local level. As we have seen, while in some areas the Māori committees appear always to have operated effectively, in other areas they have been less active or have ceased to exist. Another challenge faced by the NZMC was the difficulty of maintaining effective communications between the levels of its structure. The complexity of the structure established under the 1962 Act is reflected in the fact that few if any Māori executive committees exist today.

Perhaps the most significant barrier to the NZMC system's effective operation has been its struggles to finance itself. The evidence presented in this chapter affirms what claimant counsel describes as the 'long-standing problem' of the Crown's failure to adequately fund the NZMC to carry out its statutory functions under the 1962 Act.⁴⁴⁹ This has had serious flow-on effects for the entire council system in terms of the ability of its national body to effectively represent the views and interests of the Māori committees, and in the dependence of the NZMC upon funds raised from the lower tiers of its structure. In 1970, the Government acknowledged the then-severe financial straits being experienced by the NZMC by amending the 1962 legislation to allow the payment of an annual grant, \$6,000 at that time. Between 1977 and 1985, the amount of this annual grant remained fixed at \$10,000.⁴⁵⁰ During this period, the NZMC repeatedly raised the issue of its funding with Governments. For instance, in 1976, NZMC president Graham Latimer highlighted the fact that the 'Council cannot function effectively unless its funding is on a stable, adequate basis, to enable forward planning and budgeting . . . The time is more than overdue when the funding of the Council by Government should be on a regular and sufficient basis.'⁴⁵¹ And, in a 1980 piece in *Te Māori* magazine, Latimer wrote:

I believe it is essential to ask the Government to act, as a matter of urgency, on the Council's repeated requests for the financial resources to carry out its statutory functions. The Council was set up with responsibility for enhancing the status and

449. Claimant counsel, closing submissions (paper 3.3.5), p 37

450. 'Report of the Department of Māori Affairs and the Māori Land Board and the Māori Trust Office for the Year ended 31 March 1977', AJHR, 1977, E-13, p 7; 'Report of the Department of Māori Affairs and the Māori Land Board and the Māori Trust Office for the Year ended 31 March 1978', AJHR, 1978, E-13, p 5; 'Report of the Department of Māori Affairs and the Board of Māori Affairs and Māori Trust Office for the Year ended 31 March 1984', AJHR, 1985, E-13, p 18

451. Sir Graham Latimer, NZMC President's Report, June 1976 (quoted in Francis and Sarich, 'Aspects of Te Rohe Pōtae Political Engagement' (doc B22), p 175)

welfare of Māoridom but has never been given the means by which this could be done effectively.⁴⁵²

By 1990, the NZMC's annual grant was \$120,000, and by 1998, it had been increased to \$220,000.⁴⁵³ Today, the NZMC receives an annual grant of \$196,000 to cover its administration expenses. Thus the NZMC's Government funding is now less – in both nominal and real terms – than it was in the late 1990s.

It is undeniable that the Māori representational landscape has shifted significantly from what it was when the NZMC was established in 1962. The Māori protest movements of the 1970s and the Māori cultural renaissance and tribal revitalisation from the early 1980s led to major changes in Government policy towards Māori and Māori land. The economic policies of the 1980s Labour Government, teamed with the greater willingness of Governments to deal directly with tribal authorities, led to an increased emphasis on tribal and community devolution of Government programmes and resources. The growth of economic power among post-settlement iwi organisations and Māori land entities has added to these developments in the past few decades. However, as the developments of the 1990s and early 2000s have shown, the growing strength of tribal authorities from the 1980s has not led to a decline in Māori support for a body or bodies to represent pan-Māori or pan-tribal interests on the national scale. Sometimes, such bodies have had a specific geographical or subject area (a niche), such as the National Urban Māori Authority or the Kōhanga Reo Trust. But the search for a body that can more generally represent Māori to the Crown at the national level has never been abandoned. In 2013, as we shall see in chapter 6, TPK's consultation on the 1962 Act revealed a Māori determination that a national body – the NZMC – is still needed. Nonetheless, the representational landscape at the time of that consultation in 2013 had changed dramatically in the decades since 1962. We return to the implications of this changed representational landscape for our present inquiry in chapter 6 and in our recommendations in chapter 10. For the moment, we turn to another essential piece of historical context for the present inquiry: the history of the Māori Wardens from the nineteenth century to the end of the twentieth century.

452. 'Waitangi Day: The Dangers of Protest – Māori Council President Graham Latimer Sounds a Warning' *Te Māori*, February/March 1980, p 25 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 445)

453. Ministerial Planning Group, *Ka Awatea*, p 78; Te Puni Kōkiri, *Discussion Paper on the Review of the Māori Community Development Act 1962*, p 21 (Crown counsel, TPK document collection (doc C15), p 249)

CHAPTER 5

**AROHA KI TE TANGATA /
SERVICE TO THE PEOPLE**

The History of the Māori Wardens

5.1 INTRODUCTION

Having traced the history of the New Zealand Māori Council (NZMC) against the background of New Zealand's twentieth-century social and political history, we now turn to the history of the Māori Wardens and their organisations. As we have noted earlier, the Wai 2417 claim is a contemporary claim and we are prevented by our legislation from making findings of Treaty breach for any Crown actions or omissions prior to 1992. However, as in the previous chapter, we believe that the history of the Māori Wardens and their associations in this period adds an essential historical dimension to our findings and recommendations in later chapters, for reasons we set out below:

- ▶ Like the Māori systems of local self-government described in chapter 3, the Māori Wardens or wātene Māori are themselves a historical institution, stretching back to the nineteenth century. This long tradition of the wātene movement informs who the Māori Wardens are today.
- ▶ While statutory control for Māori Wardens has remained with the bodies set up under the NZMC system since 1962, in many areas local and district wardens' associations have assumed significant responsibilities for the Māori Wardens. Many Māori Wardens associated with district wardens' associations, or with the New Zealand Māori Wardens Association, attended our hearings. These wardens' organisations have histories which, in some cases, stretch back to the 1960s or earlier.
- ▶ The Crown's current review of the arrangements for Māori Wardens under the 1962 Act is just one episode in a series of government reviews of the Māori Wardens that stretch back to the 1980s. The current efforts to review the 1962 Act must be understood in the context of these previous government reviews.

Our analysis is structured as follows. In section 5.2.1, we trace the nineteenth-century origins of the Māori Wardens. In section 5.2.2, we set out the statutory frameworks under which Māori Wardens have operated since the Second World

War, beginning with the Māori Social and Economic Advancement Act 1945 and then the Māori Welfare Act 1962. The remainder of the chapter is divided into two chronological sections.

In section 5.3, we chart the history of the Māori Wardens during the 1960s and 1970s, when the mass migration of the Māori population into the towns and cities brought new challenges for wardens who were required to adapt their traditional roles and functions to new and challenging environments. In parallel with the changes associated with urbanisation, we also trace the history of the local and district Māori Wardens' Associations and the rise (and decline) of the first New Zealand Māori Wardens Association (NZMWA) established in 1966 to provide support to Māori Wardens under the umbrella of the NZMC.

Section 5.4 is devoted to the history of the Māori Wardens from the late 1970s until the end of the twentieth century. These decades, as we have seen from chapter 4, were the era of the Māori cultural renaissance, tribal revitalization and the emergence of biculturalism as a guiding principle of government policy. This period would also see the re-emergence of the NZMWA, as well as the first moves by government to review the legislation under which Māori Wardens are governed. In section 5.5, we discuss the aspects of the Government's 1999 review of the 1962 Act related to Māori Wardens.

We complete our chapter with a consideration of the valuable and diverse roles that Māori Wardens perform in their communities today, highlighting the evidence provided to us by Māori Wardens at hearings and in the course of our Inquiry.

5.2 ESSENTIAL BACKGROUND

5.2.1 Nineteenth- and early-twentieth century origins of Māori Wardens

Māori Wardens today trace their historical antecedents back to the Kingitanga Movement of the 1860s. In the rūnanga of the Kingitanga of the mid-nineteenth century, wātene were given responsibility for policing law and order and controlling liquor consumption in their communities. By the late nineteenth century, the rūnanga system was in operation in areas stretching from Whanganui to Waikato.¹ At a similar time, followers of the Ringatū faith introduced the concept of pirihi-mana, or marae policemen. Pirihi-mana were given the authority by their communities to enforce religious observance, levy fines for anti-social behaviour and police liquor consumption. Similar functions were later performed by the katipa of the Rātana faith.² Another historical precursor to the modern Māori warden lay in the Komiti Marae established under the Māori Councils Act of 1900. As we have seen in chapter 3, the Māori Councils Act provided for a measure of local self-government for Māori. Under the Act, Māori settlements were empowered to elect a marae committee (Komiti Marae) – the individual members of whom were

1. Augie Fleras, 'From Village Rūnanga to the New Zealand Māori Wardens' Association: A Historical Development of Māori Wardens' (Wellington: Department of Anthropology and Māori, Victoria University, 1980) (doc c1), pp 14–15

2. Fleras, 'From Village Rūnanga' (doc c1), pp 16–17

awarded statutory power to control the liquor trade, regulate traffic and impose sanitation measures.³ Komiti Marae appointed ‘native constables’, or ‘komiti marae constables’, as they were also known, to assist with community control and the enforcement of Māori Council bylaws.⁴ Although not specifically authorised by the Māori Councils Act 1900, the marae committees’ ‘constables’ were the direct precursor of the 1945 Act’s ‘Māori Wardens’, and formed part of what Māori leaders hoped to achieve in the 1945 legislation.⁵ As it was put in *Te Māori* in 1970: ‘Māori people have always liked to take responsibility for controlling their own communities and it was for this purpose that Wardens were first appointed.’⁶

5.2.2 The statutory frameworks for Māori Wardens

(1) Māori Wardens under the Māori Social and Economic Advancement Act 1945

Wardens first received statutory powers under the Māori Social and Economic Advancement Act 1945, and were under the control of the Tribal Executive Committees in whose districts they operated.⁷ The 1945 Act gave the Minister of Māori Affairs the power to appoint Māori Wardens ‘for the whole or any part of a tribal district’. The mandated powers of Māori Wardens were focused almost exclusively upon the problems of alcohol abuse and delinquency. This reflected government priorities but also community concerns. As historian Aroha Harris has shown, the Department of Māori Affairs of the 1950s and 1960s believed levels of delinquency and alcohol abuse in Māori communities to be of ‘very serious proportions’ and ‘symptoms of a deeper social disorder’.⁸ Under the 1945 Act, Māori Wardens received the powers to request that any licensed premise refrain from selling alcohol ‘to any Māori who in the opinion of the Warden is in a state of intoxication, or is violent, quarrelsome, or disorderly, or is likely to become so’, or to order any Māori considered by the warden to be ‘intoxicated or partly intoxicated, or is violent, quarrelsome, or disorderly’ to leave the premises.⁹ A 1951 amendment to the 1945 Act extended the powers of Māori Wardens to search and seize any liquor found on a marae, and to fine any Māori person found in possession of liquor at gatherings on the marae for which a prior alcohol permit had not been issued.¹⁰ By 1960, the 455 wardens then operating around the country, according to a Department of Māori Affairs annual report, did ‘useful work in controlling the consumption of

3. Fleras, ‘From Village Rūnanga’ (doc c1), pp 15–16

4. Cletus Manu Paul, Sir Edward Taihakurei Durie, Desma Kemp Ratima, and Anthony Toro Bidois, ‘Statements on the basis for the claim’, 27 September 2013 (paper 1.1.1), p 18; Richard Hill, *Introducing Policing into the Rangatiratanga Discourse: An Historical Overview of the Role of Māori Police Personnel* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2003), p 9

5. Raeburn Lange, *In an Advisory Capacity: Māori Councils, 1919–1945* (Wellington: Treaty of Waitangi Research Unit, Victoria University, 2005), p 26

6. ‘Ngā Take a te Kaunihera’ *Te Māori*, vol 1, no 4 (June–July 1970) (first Waitangi Tribunal document bank, vol 1 (B26(a)), p 323)

7. Fleras, ‘From Village Rūnanga’ (doc c1), p 20

8. Aroha Harris, ‘Dancing With the State: Māori Creative Energy and Policies of Integration, 1945–1967’ (PhD thesis, University of Auckland, 2007) (doc B23), p 78

9. Māori Social and Economic Advancement Act 1945, ss 39, 40(1)

10. Fleras, ‘From Village Rūnanga’ (doc c1), pp 23–24

5.2.2(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

liquor in hotels during ordinary hours and particularly over weekends' as well as 'work[ing] towards the prevention of rowdiness and disturbances in public places'.¹¹

But the Government's preoccupation with alcohol consumption reflected only part of how Māori Wardens operated in and served their communities. The role of wardens at that time was described for us by Wilma (Billie) Mills, an Aotea warden from a long line of wardens:

As a young girl, I was raised understanding the importance of looking after our communities in the way you would like to be looked after yourself. . . . I heard stories about what my koro did as a Warden, and in his time, they were the Māori police. They worked with Māori, for Māori and in accordance with Māori codes of conduct. Back in those days, Wardens were focused on making sure people were accountable back to their communities. If for example, someone stole the milk off your porch, the Wardens would call a meeting and they would have to stand up in front of everybody and be accountable for what they had done. There is nothing worse than having to face your own people. The community would then decide what would happen in response, which might be doing gardening for a week. It was this alternative justice system that worked very well in our communities.¹²

This Māori institution, community volunteer wardens, was considered of importance to preserve in 1962 when the Crown and Māori leaders together revamped the 1945 Act and produced the Māori Welfare Act, which we discuss next.

(2) Māori Wardens under the Māori Welfare Act 1962

As we have seen in chapter 3, under the 1945 Act Māori Wardens had come under the control of Tribal Executives. Under the original draft of the Māori Welfare bill shown to the NZMC and District Māori Councils (DMCs) in June and July 1962, the control of Māori Wardens was to be vested in Māori Committees. However, by the time the Bill was introduced to Parliament, the clause placing the wardens under the control of Māori Committees had been deleted. Following the NZMC's objections, Māori Committee control of the wardens was subsequently reinstated under the Māori Welfare Amendment Act 1963. We will return to the 1969 amendment which transferred the powers of control and supervision over Māori Wardens to DMCs later in this chapter. The provisions in the 1962 Act relating to the powers of Māori Wardens essentially reproduced those contained in the 1945 Act, with one exception. To keep up with changes in transport technology, Māori Wardens gained powers, under section 35 of the 1962 Act, to retain the car keys of any Māori person judged incapable 'of having and exercising proper control of [a] motor vehicle'.¹³

11. Report of the Department of Māori Affairs, AJHR, 1960, G-9, p 22 (doc B26(a), p 5)

12. Wilma Tumanako Mills, brief of evidence (doc B3), paras 7-9

13. Māori Community Development Act 1962, ss 35, 36(1)

5.3 MĀORI WARDENS IN THE CONTEXT OF URBANISATION AND SOCIAL CHANGE: THE 1960S AND 1970S

During the 1960s and 1970s, the role of Māori Wardens on rural marae and in traditional communities probably remained little changed from what it had been in the 1940s and 1950s. While rural wardens received formal powers from an Act of Parliament and operated under warrants signed by the Minister of Māori Affairs, their true authority emanated from the recognition of their own people. Quite apart from the powers conferred by the Act, Māori Committees (later District Māori Councils) were responsible for assigning wardens' duties. The statements of historian Ranginui Walker in relation to the duties of rural wardens under the 1945 Act also apply to those under the 1962 Act: 'they were operating in the context of their hapū or iwi, they were known to the people. They were invariably known by the young as "Uncle" or "Aunty" and their word was law'.¹⁴ One Department of Māori Affairs annual report from this period noted of rural Māori Wardens that 'their authority commands the respect of the Māori people'.¹⁵

As with the Māori Committees discussed in chapter 4, the environments in which Māori Wardens operated changed dramatically with the mass migration of the Māori people to urban areas following the Second World War. A 1970 *Te Māori* article described the role of the city wardens as far removed from that of the 'village or marae policemen' of earlier times:

Since the war the Māori people have moved into the cities in a new migration involving many thousands. The Wardens have moved with them but city streets and city pubs are very different from the home maraes and the relatively minor problems found there.¹⁶

Like the Māori Committees and Māori Welfare or Community Officers, Māori Wardens played a crucial role in helping newcomers adjust to city life and in creating a sense of kinship in unfamiliar surroundings. A Southland warden in 1971 described the wardens as providing the sense of 'close family love and bondship' which migrants lost when they 'leave home and venture into the outside world'.¹⁷ The important role performed by Māori Wardens in helping Māori migrants make the transition to city life was acknowledged by Deputy Secretary of Māori Affairs Neville Baker when he described the wardens as providing the 'sharing and caring' atmosphere which transformed the 'urban street level' into the 'rural "papakāinga" or pā'.¹⁸

14. Ranginui Walker, *Ka Whawhai Tonu Mātou: Struggle Without End* (Auckland: Penguin, 2008 [1990]), p 204

15. Fleras, 'From Village Rūnanga' (doc c1), p 33

16. 'Ngā Take a te Kaunihera' *Te Māori*, vol 1, no 4 (June–July 1970) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 323)

17. 'Personality Parade', *Mataura Ensign*, 14 October 1971 (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), pp 59–60)

18. Neville Baker, 'Māori Wardens Issues for Debate Presentation to the Māori Wardens' Association Annual Conference, Hastings, 12 November 1988' (second Waitangi Tribunal document bank, vol 5 (doc c18(e)), pp 11–12)

Wardens faced many challenges as they moved into the unfamiliar and multi-tribal world of the cities. In the towns and cities, Māori Wardens worked amongst Pākehā people who often had little conception of the history or role of Māori Wardens. The rural warden was known by and instantly recognisable to his or her own people, but – as a 1979 *Te Māori* article put it – the Māori Wardens of the cities came from ‘all points of the compass’: ‘Māori to Māoris they are strangers.’¹⁹ By the late 1960s, calls were already being made for the 1962 legislation to be updated to better fit the roles of Māori Wardens operating in urban areas. A 1968 *Te Kaunihera Māori* article on the activities of urban wardens observed that wardens in the cities were ‘being called in to help with matters that are far beyond the limited range of functions assigned to them in the Māori Welfare Act. Reports show that they are dealing with all sorts of social problems.’²⁰ Wardens’ delegates at a March 1973 conference of the NZMC drew a distinction between the duties of rural wardens, ‘where certain features of the 1962 Act are applicable and where the involvement is more with his own people’, and the urban contexts in which increasing numbers of Māori now lived, where ‘the Act does not appear to encompass sufficiently, all activities that Māori wardens are now finding themselves involved in.’²¹

The urban environments in which Māori Wardens increasingly operated created demand among wardens for new forms of identification such as uniforms and badges. In 1965, following ‘considerable discussion’ the NZMC voted in favour of recommending that all wardens wear uniforms while on duty.²² In 1970, a NZMC sub-committee on Māori Wardens described the instant recognition afforded by wardens’ uniforms as ‘essential for public relations and basic to effective communication’ in urban situations, and ‘more imperative now than in previous times . . . because of the social change and social mobility of our people . . . a uniform as a means of identification is indispensable in the urban situation.’²³

However, the growing practice of urban Māori Wardens donning uniforms fuelled concerns on the part of the authorities that wardens were over-stretching their powers and becoming an auxiliary police force. Such anxieties were exacerbated by the fact that it was a common practice for Māori Wardens, unable to afford to purchase a uniform of their own, to wear discarded police uniforms.²⁴ Māori Wardens also became the subject of public controversy during the late 1960s and early 1970s following media reports that some urban wardens were wielding batons, maintaining private records systems on ‘offenders’, using patrol cars and two-way radios, and taking suspects back to their headquarters for questioning. A

19. ‘Wardens’ Report: What Makes a Good Warden?’ *Te Māori*, vol 1, no 4 (June–July 1970) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 325)

20. ‘Wardens Tackling Social Problems’, *Te Kaunihera Māori: New Zealand Māori Council Journal*, Winter 1968 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 307)

21. NZMWA to NZMC, 7 March 1973 (second Waitangi Tribunal document bank, vol 2 (doc C18(b)), p 29)

22. NZMC, minutes, 26–27 October 1970 (NZMC, minute book, 1962–1970 (doc C3), p 160)

23. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 18 October 1970 (second Waitangi Tribunal document bank, vol 3 (doc C18(c)), pp 89–90)

24. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 18 October 1970 (second Waitangi Tribunal document bank, vol 3 (doc C18(c)), pp 89–90)

1971 *Te Māori* article stated that wardens had been ‘too much in the news over the last month or two’ and went on to attribute the present issues surrounding wardens to the lack of clarity on ‘the role of the warden in the modern urban situation.’²⁵ Speaking to a ‘Meet the People’ meeting of the NZMC in Auckland in 1970, the Minister of Māori Affairs, Duncan McIntyre, stated that the 1962 Act had intended wardens to be ‘a body of voluntary social workers’, not a ‘second uniformed police group.’²⁶

As seen in chapter 3, the issue that some Māori Wardens were perceived to be operating out of the control of their Māori Committees had been raised within the NZMC as far back as 1965.²⁷ The issue had been discussed at a series of NZMC meetings in the mid to late 1960s but, after the DMCS failed to reach agreement, the NZMC eventually referred the matter to the Secretary for Māori Affairs. The amendment to the 1962 Act transferring Māori Wardens from the control of Māori Committees to DMCS was included in the Māori Purposes Act 1969. The move to amend the Act was greeted positively by the Tai Tokerau DMC which recorded in its minutes:

The introduction of the new legislation is welcomed, for in the past it was a question of where to turn . . . but with the District Council becoming the parent body a greater liaison and understanding will develop.²⁸

In order to accommodate the views of those DMCS who had opposed the change, the 1969 amendment left open the possibility for DMCS to delegate their new powers of control and supervision over Māori Wardens back to Māori Committees or Executive Committees. This option was taken up by some DMCS, such as Te Tai Tokerau, which delegated its powers of control over Māori Wardens back to Māori Committees at a 1973 meeting.²⁹ Other DMCS took advantage of the 1969 amendment to assert greater control over Māori Wardens in their area. For instance, the Auckland DMC moved swiftly to exercise its new powers over Māori Wardens, by collecting data on the numbers of Māori Wardens operating in the city and establishing a wardens’ sub-committee to investigate what it termed ‘the whole Warden complex.’³⁰

25. ‘Wardens Reviewed’, *Te Māori*, vol 2, no 1, December–January 1971 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 348)

26. ‘The Challenge and Co-operation (and Māori Wardens)’, *Te Māori*, vol 1, no 6, (October–November 1970) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 341)

27. NZMC, minutes, 3 August 1965 (NZMC, minute book, 1962–1970 (doc C3), p 156)

28. Te Tai Tokerau District Māori Council, Annual Report for 1970 (first Waitangi Tribunal document bank, vol 19 (doc B26(s)), p 103)

29. Te Tai Tokerau District Māori Council, minutes, 3 November 1973 (Te Tai Tokerau District Māori Council minute book, 1965–1973 (first Waitangi Tribunal document bank, vol 19 (doc B26(s)), p 145)

30. ER McLeod, ‘Auckland District Council – Terms of Reference in Regards to Wardens’ (second Waitangi Tribunal document bank, vol 3 (doc C18(c)), p 103)

5.3.1 The New Zealand Māori Wardens Association is formed, 1966–67

The first moves to form local and district associations of Māori Wardens occurred at the same time that Māori leaders were trying to establish DMCS and the NZMC. Māori Wardens of Tūwharetoa–Taumarunui formed their own association at a meeting in Tūrangi in 1957.³¹ Waiariki Wardens established a district association in February 1959.³² In March 1959, wardens of the Tūwharetoa–Taumarunui Association combined with those of Waitōtara–ki–Paranihinihi and Wanganui–Kurahaupō to form an Aotea District Māori Wardens Association.³³ Among the new association's stated aims were 'to help the Māori people as a whole to live completely integrated lives as members of the New Zealand community' and to equip wardens to 'inspire and lead their fellow Māori to play a full part in the community in all aspects of normal behaviour and living'.³⁴ The new association's charismatic chair, George Whakarau, would later become the first President of a national Māori Wardens association.³⁵ Also in attendance at the 1959 meeting was Major Vercoe, a key figure in the establishment of DMCS and the NZMC. In lending his support to the new association, Vercoe described it 'as an important body in the social set-up of the people'. He further noted that the wardens 'would work hand in hand with the district council' but 'should be given a free hand to control their own organisation'.³⁶ A 1959 newspaper article on the 'teething stages' of the Aotea Wardens Association noted that, since the group's formation:

the wardens individually have developed importance in tribal committee affairs, influencing the development of tribal committee work to the ultimate benefit of people as a whole. Their work has been carried out in co-operation with the respective tribal executives to whom they remain responsible, exercising such powers and authorities conferred upon all wardens by the Māori Social and Economic Advancement Act, 1945.³⁷

The first moves to establish a national association for Māori Wardens also occurred at the same time as the movement to establish DMCS and a Dominion Māori Council, as described in chapter 3. At meetings in 1956 at Tokaanu and Taupō, Waiariki wardens had discussed 'the formation of a Dominion-wide association

31. 'Move Follows Years of Work', newspaper clipping, c 1959 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 139)

32. 'Move Follows Years of Work', newspaper clipping, c 1959 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 139)

33. 'Move Follows Years of Work', newspaper clipping, c 1959 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 139)

34. 'Move Follows Years of Work', newspaper clipping, c 1959 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 139)

35. Fleras, 'From Village Rūnanga' (doc c1), pp 30–31

36. 'Wardens Set up by People', *King Country News*, 25 June 1959 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 138)

37. 'Move Follows Years of Work', newspaper clipping, c 1959 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 139)

which would establish branches in Māori tribal districts.³⁸ The notion of a national association gained support among Waiariki wardens but the first definite steps towards setting up such an association did not take place until a decade later, at a 1966 meeting of the NZMC at Waitara. As recounted in chapter 3, the NZMC had given its support in principle to the establishment of a wardens' association in the hope that such a body might offer a solution to the difficulties of controlling urban wardens. While local wardens' groups were already operating in some areas, the NZMC believed that 'local associations should be formed in all remaining districts and that a national body could make these local groups more effective.'³⁹ In attendance at the meeting was John Rangihau, then Department of Māori Affairs District Welfare Officer for Rotorua. Rangihau spoke to the meeting of the success of the Waiariki Māori Wardens Association which, he stated, had helped local wardens to 'improve their techniques, standardise their methods and exercise discipline over Association members when this has been necessary'.⁴⁰ At the same Waitara meeting, NZMC members gave approval for the Council to investigate the possibility of 'forming Wardens' Associations in other districts as well as a National Association under the auspices of the New Zealand Māori Council'.⁴¹

Following the Waitara meeting, the NZMC formed a wardens' sub-committee to investigate the proposal to form a national wardens' association. In May 1966, the sub-committee circulated a draft constitution to DMCS for their consideration.⁴² Among the goals of the new association in its draft constitution were: '[t]o help the Māori people promote their social and economic welfare by and through self-determination and self-government as practiced by Māori Associations' and 'to assist Māori Wardens to exercise the powers and authorities conferred on them by the Māori Welfare Act'.⁴³ As Gloria Hughes explains in her written brief of evidence, around this time three prominent leaders, Peter Awatere, Haratua Rogers and George Whakarau 'travelled the motu talking to Māori Wardens' about their views on the formation of a national association.⁴⁴

Te Kaunihera Māori reported in February 1967 upon one of these hui of Māori Wardens held at Ōtiria marae, Moerewa in November 1966. Haratua Rogers attended the hui as the chair of the NZMC's wardens' sub-committee. At the hui, some Te Tai Tokerau wardens expressed concern that a wardens' association would simply duplicate the work of the existing Māori Committees and Executives, and further weaken Māori Committees that were, in some cases, already struggling:

38. 'Move Follows Years of Work', newspaper clipping, c 1959 (second Waitangi Tribunal document bank, vol 3 (doc C18(c)), p 139)

39. 'A National Association for Māori Wardens', *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 5, September 1967 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 301)

40. *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 3, no 10, June 1966 (first Waitangi Tribunal document bank, vol 7 (doc B26(g)), p 71)

41. *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 3, no 10, June 1966 (first Waitangi Tribunal document bank, vol 7 (doc B26(g)), p 71)

42. NZMC, minutes, 12 May 1966 (NZMC, minute book, 1962–1970 (doc C3), pp 188–189)

43. *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 3, no 10, June 1966 (first Waitangi Tribunal document bank, vol 7 (doc B26(g)), p 71)

44. Tangihaere Gloria Hughes, brief of evidence (doc B31), p 2

As one speaker pointed out, some of the Māori Committees are not functioning and others are only limping along with very few that are really active. By the formation of this Association it would possibly mean the splitting of forces and might cause confusion in the minds of the people of the community and a greater weakening still of Māori committees.⁴⁵

The article noted that the same view was shared by ‘many of the Māori Committee members who were present.’⁴⁶ However, other wardens in attendance spoke in support of the proposal, which they believed would lead to ‘a higher standard of work achieved through training and supervision.’⁴⁷ Others stated that ‘their Committees were dead and that they were working on their own and for this reason welcomed the idea of such an Association.’⁴⁸ The Ōtiria meeting eventually voted in favour of the formation of a national Māori Wardens’ Association.⁴⁹ A meeting of the NZMC at Ōmāhu in April 1967 also ‘revealed a strong feeling in favour of the formation of a National Wardens Association’ and it was resolved that representatives of district wardens’ associations be invited to attend the NZMC’s next meeting in July 1967 to make plans for establishing a national body for wardens.⁵⁰

The NZMC’s proposal to form a national organisation for wardens was opposed by Minister of Māori Affairs Ralph Hanan and his department. At the NZMC’s July 1967 meeting, a letter was read from Hanan ‘in which he outlined his objections to the formation of the National Māori Wardens Association.’⁵¹ According to scholar Augie Fleras, Hanan’s refusal to ‘recognise or finance the Association’ stemmed from his position that the Government was ‘not financially prepared to prop up another Dominion-wide organization whose aims were similar to Māori Associations and the [Māori Women’s Welfare] League.’⁵² Another reason for Hanan and the department’s opposition was their view that Māori Wardens constituted a form of ‘racial discrimination’ and a secondary police force expressly targeting the Māori people.⁵³

New Zealand governments of the 1960s and early 1970s were acutely aware of their country’s race relations record and the potential dangers to social harmony that might arise from any form of racial ‘separatism’ or segregation.⁵⁴ The Hunn report had proposed the removal of all legal distinctions between Māori and Pākehā as a way of quickening Māori ‘integration’ into modern Pākehā society. Accordingly,

45. ‘Māori Wardens’ Association. Taitokerau Meeting’ *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 3, February 1967 (first Waitangi Tribunal document bank, vol 1 (B26a)), p 293)

46. ‘Māori Wardens’ Association. Taitokerau Meeting’ *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 3, February 1967 (first Waitangi Tribunal document bank, vol 1 (B26a)), p 293)

47. ‘Māori Wardens’ Association. Taitokerau Meeting’ *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 3, February 1967 (first Waitangi Tribunal document bank, vol 1 (B26a)), p 293)

48. ‘Māori Wardens’ Association. Taitokerau Meeting’ *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 3, February 1967 (first Waitangi Tribunal document bank, vol 1 (B26a)), p 293)

49. ‘Māori Wardens’ Association. Taitokerau Meeting’ *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 3, February 1967 (first Waitangi Tribunal document bank, vol 1 (B26a)), p 293)

50. NZMC, minutes, 7–9 April 1967 (NZMC, minute book, 1962–1970 (doc c3), pp 248–249)

51. NZMC, minutes, 21–23 July 1967 (NZMC, minute book, 1962–1970 (doc c3), pp 252–254)

52. Fleras, ‘From Village Rūnanga’ (doc c1), p 30

53. Fleras, ‘From Village Rūnanga’ (doc c1), pp 34–40

54. Harris, ‘Dancing with the State’ (doc B23), pp 44–45

governments of this era maintained a firm stance against any institutions or practices it regarded as discriminatory. In our view, this underlines our conclusion in chapter 3 that the arrangements in the 1962 Act could only have been arrived at by negotiation with Māori leaders, otherwise the Government's inclination might have swept away Māori Wardens and other unique Māori institutions. The Government's stance on wardens was spelt out by Secretary for Māori Affairs Jock McEwen in 1966. Acknowledging that while it was 'true that Māori Wardens in many parts of New Zealand are performing a most useful function in controlling the behaviour in hotels', he observed that 'generally speaking, present policy is to differentiate less and less between Māori and European so far as the law is concerned'.⁵⁵

However, despite the opposition of the Minister and the Department of Māori Affairs, the NZMC decided to press ahead with its plans to establish a national wardens' association and, at the same July 1967 meeting, passed a resolution in favour of calling the new association's first meeting.⁵⁶ On the event of the association's formation, *Te Kaunihera Māori* reported:

Wardens are believed still to have an important part to play. To the New Zealand Māori Council, they deserve more adequate support and guidance; hence the interest the Council has taken in giving them an organisation of their own.⁵⁷

The New Zealand Māori Wardens' Association (NZMWA) held its inaugural meeting at Rotorua early in December 1967, and was registered as an incorporated body in December 1969.⁵⁸ The structure of the new national association made it clear that it was intended to be far from autonomous from NZMC control. Shared personnel were to cement the links between the two organisations: it was agreed that the two organisations would share a secretary so as to provide 'the essential link between Council and Association'.⁵⁹ During the early years of the NZMWA's existence, the NZMC and NZMWA would also share the same leaders. At the NZMWA's first meeting, NZMC President Sir Turi Carroll was appointed patron and ex-officio member of the association. From 1971, following the death of the association's first President, George Whakarau, Graham Latimer became President of the NZMWA, a role which – from 1973 – he held concurrently with the presidency of the NZMC.⁶⁰ The NZMC also provided for regular opportunities for liaison with the new association by permitting NZMWA representatives to participate in NZMC meetings. In 1968, the

55. Cited in Harris, 'Dancing with the State' (doc B23), p 149

56. NZMC, minutes, 21–23 July 1967 (NZMC, minute book, 1962–1970 (doc C3), p 254). Hanan subsequently refused an NZMC request for a government subsidy on funds expended by the NZMC's Wardens' sub-committee. See NZMC sub-committee on Wardens, minutes of a meeting, Rotorua, 9 October 1966 (NZMC, minute book, 1962–1970 (doc C3), p 238)

57. 'A National Association for Māori Wardens', *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 5 September 1967 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 301)

58. NZMC, minutes, 19 December 1967 (NZMC, minute book, 1962–1970 (doc C3), p 266); Fleras, 'From Village Rūnanga' (doc C1), p 30

59. 'A National Association for Māori Wardens', *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 5, September 1967 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 301)

60. Fleras, 'From Village Rūnanga' (doc C1), p 30

NEW ZEALAND MĀORI WARDENS ASSOCIATION PRESIDENTS, 1967–

Sir Turi Carroll (1967–c69)	Robert Hina (1991–94)
George Whakarau (1969–71)	Peter Walden (1994–97)
Graham Latimer (1971–c76)	Mere Edwards (1997–2003)
Patsy Rei (c1976–78)	Peter Walden (2003–07)
Peter Walden (1979–85)	Gloria Hughes (2007–)
Jim Te Huna (1985–91)	

For more information, see the brief of evidence of Tangihaere Gloria Hughes (doc B31) and Augie Fleras, 'From Village Rūnanga to the New Zealand Māori Wardens' Association: A Historical Development of Māori Wardens' (Wellington: Department of Anthropology and Māori, Victoria University of Wellington, 1980) (doc c1).

NZMC extended an invitation for a NZMWA delegate to attend its meetings as an 'official observer' (although without voting rights) and NZMWA representatives also joined the NZMC's Māori Wardens sub-committee around this time.⁶¹

5.3.2 Māori Wardens as discrimination: the wardens and the United Nations Convention on the Elimination of Racial Discrimination

The year 1968 was the twentieth anniversary of the Universal Declaration of Human Rights, and Hanan, in his capacity as the Minister of Justice as well as of Māori Affairs, had 'vowed to eradicate any form of racial discrimination from New Zealand'.⁶² The view that Māori Wardens were an auxiliary police force that discriminated against Māori people was of particular concern to the New Zealand government of that time, due to its moves to ratify the United Nations International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). The Convention, released in 1971, required all signatories to 'take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination wherever it exists'.⁶³

In May 1971, the Department of Foreign Affairs produced a report on New Zealand's ratification of ICERD. The report recommended that 'certain sections in the Māori Welfare Act 1962 are incompatible with the obligations imposed by the Convention and will need modification before New Zealand ratifies it'.⁶⁴ The report singled out for particular attention the sections of the Act relating to Māori

61. NZMC, minutes, 26–27 January 1968 (NZMC, minute book, 1962–1970 (doc c3), p 275)

62. Fleras, 'From Village Rūnanga' (doc c1), p 36

63. Fleras, 'From Village Rūnanga' (doc c1), p 37

64. Secretary of Foreign Affairs to Secretary for Māori and Island Affairs, 25 May 1971 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 79)

Wardens and the powers of Māori Committees to impose penalties. As a 1971 *Te Māori* article explained, the wardens had lately come under criticism in 'United Nations circles', where 'New Zealand has been accused of maintaining a secondary police force of Māori Wardens just to control the Māori people, thus discriminating against them.'⁶⁵

Despite growing pressure within government for the abolition of Māori Wardens, the NZMC continued to voice support for the wardens' retention. Instead of seeing the institution of the wardens as discriminatory, the NZMC stated:

The Māori Council prefers to look at it positively as the acceptance by Māoris of a form of self-discipline based on pride in being Māori and on the ties of aroha that bind Māori to Māori . . .⁶⁶

At an April 1970 meeting of the NZMC's wardens' sub-committee, attended by George Whakarau, Graham Latimer and Peter and Sonia Walden, the NZMC and NZMWA came out in favour of the continuance of the warden system as an expression of '[o]ur cultural right to form voluntary associations to help our people to help themselves.'⁶⁷ The sub-committee noted, however, that due to 'the drastic social changes and social mobility afflicting our people', the time was ripe for a 're-evaluation and reassessment' of the legislation governing urban wardens.⁶⁸ The sub-committee re-stated this view in an October 1970 meeting, reporting:

This committee does not see the existence of a Warden system as discriminatory. It is rather seen as a positive, individual and group dynamic harnessed to help, lead, support and guide our people during a difficult period of transition and adjustment, individually, socially, emotionally and culturally. It is universally recognised that every minority has a cultural right to form voluntary associations to promote the well-being of its members and this, ideally, is the philosophy basic to the Māori Wardens' movement . . .⁶⁹

However much support there was in government circles for abolishing the Māori Wardens, Department of Māori and Island Affairs officials recognised that the Māori Wardens retained considerable support among their own people. Briefing the Minister, Duncan McIntyre, on the subject of the wardens and the ICERD in June 1971, McEwen wrote:

65. 'Wardens Revisited', *Te Māori*, vol 2, no 1 (December–January 1971) (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 348)

66. Fleras, 'From Village Rūnanga' (doc c1), p 37

67. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 5 April 1970 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 85)

68. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 5 April 1970 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 86)

69. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 18 October 1970 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 89)

In the latest discussions with the Minister of Foreign Affairs I have pointed out that there is a very strongly entrenched wish to hang on to the Māori warden set up and that its abolition would be hotly opposed. In practice the New Zealand Māori Council and many other people regard the system as a special privilege for Māoris, to protect them against an evil (strong drink) to which the Māoris are susceptible, rather than as discrimination against them.⁷⁰

For this reason, McEwen advised the Minister that ‘the warden system must stay’, although he suggested that government might consider removing ‘one or two other bits and pieces’ of the 1962 Act ‘which, while the Māori people might prefer to keep them, would be of no vital loss’. These included the provisions in section 30 of the Act for the ‘Prevention of riotous behaviour’, the section 35 provision allowing wardens to remove car keys, and the powers of Māori Committees to impose penalties under section 36 of the Act. McEwen concluded: ‘If we hang on to the general Māori warden set-up, we ought to be prepared to give these up, whatever the attitude of the New Zealand Māori Council who (generally speaking) oppose any change.’⁷¹ We have no evidence on what action – if any – the Minister took on this advice to repeal these sections of the Act. All three sections remain in the Act today.

While the New Zealand Government, in the end, took no action on amending the 1962 Act, the official ambivalence towards Māori Wardens evident during Hanan and McInyres’ times as Ministers of Māori Affairs continued under their successor, Matiu Rata, who had come to the helm of Māori Affairs late in 1972. The following year, Rata attracted the ire of wardens’ groups after the media reported him as stating that he wished to ‘phase out’ Māori Wardens. In May 1973, wardens in Masterton were said to be ‘up in arms’ over news reports that ‘the Minister of Māori Affairs . . . wants to “bury the wardens”’, with some contemplating handing in their warrants in protest.⁷² While the Minister later issued a public statement refuting claims that he wished to abolish the wardens, he also emphasised his view that a change in the focus of the wardens’ role was required.⁷³ Speaking to a meeting of the NZMWA at Waiwhetū marae in Lower Hutt in 1973, Rata stated that ‘[t]he function of Māori Wardens is not that of policemen but is an extension of the welfare system.’⁷⁴

5.3.3 The rise and fall of the first NZMWA, 1967–76

Meanwhile, the NZMWA had its own issues to deal with. While it remained under the umbrella of the NZMC, by the early 1970s signs of discord between the NZMC and

70. JM McEwen to the Minister of Māori Affairs, 10 June 1971 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 77)

71. JM McEwen to the Minister of Māori Affairs, 10 June 1971 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)) pp 77–78)

72. ‘Māori Wardens Indignant at Reported Statement of Mr Rata’, *Evening Post*, 23 May 1973 (Second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 68)

73. ‘Māori Wardens Indignant at Reported Statement of Mr Rata’, *Evening Post*, 23 May 1973 (Second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 69)

74. ‘Rata Calls for Change in “Policeman” Role’, newspaper clipping, undated (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), p 26)

NZMWA were becoming evident. In 1970, the NZMC's own wardens' sub-committee described the degree of liaison between the two bodies as 'sadly lacking; uncoordinated and need[ing] unifying'.⁷⁵ The Māori Wardens, the sub-committee found, were 'on a "limb", not part enough of the New Zealand Māori Council'.⁷⁶ It reported that, while the President of the NZMWA presented an annual report to the NZMC, 'the lack of questions and response to his reports indicate[d] disinterest from the New Zealand Māori Council'.⁷⁷ Further, while the NZMWA's draft constitution had been circulated among DMCS in 1967, the NZMC had never formally ratified it.⁷⁸

By the early 1970s, growing dissatisfaction among wardens led to increasing calls within the NZMWA for autonomy from the NZMC. Such calls were greeted with alarm by the NZMC, which pointed out that Māori Wardens were inseparable from the council structure under the 1962 Act. At an April 1971 meeting of the NZMC, members stated the NZMC's position as follows:

the Council accepted the right of the wardens to form their own association [but] . . . the existence of the Warden's Association cannot change the requirement of the Māori Welfare Act stating that wardens are under the control of District Māori Councils.⁷⁹

The governments of the early to mid-1970s also did not favour the notion of a wardens' association independent from the NZMC. Addressing a NZMWA hui in May 1973, Rata reminded wardens that while they had a national association, 'it must be clearly understood that all wardens are under the control of their respective District Councils, and therefore of the NZ Māori Council', and that all recommendations for the Minister should come through the Māori Council.⁸⁰ The same year, Controller of Māori Welfare Bill Herewini had noted that '[d]uring the last few years the wardens have formed their own association and have made regular demands for the right to control their own affairs'. This move he regarded as 'manifestly wrong in principle'.⁸¹ In 1973, deputy secretary of Māori Affairs IW Apperly voiced opposition to calls by the NZMWA for the NZMC to recognise its constitution on the grounds that it repeated objectives 'which are properly the concern of the New Zealand Māori Council'.⁸² He continued:

75. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 18 October 1970 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 90)

76. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 18 October 1970 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 90)

77. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 18 October 1970 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 90)

78. NZMC sub-committee on Wardens, minutes of a meeting, Wellington, 18 October 1970 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 91)

79. Agenda paper for Wardens' conference jointly convened by the NZMC and the Wardens' Association, 11 April 1973 (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), p 27)

80. Mr Rata, address to the Māori Wardens' Annual Conference at Waiwhetū marae, 13 May 1973 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 66)

81. W Herewini to Professor JR McCreary, 16 March 1973 (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), p 45)

82. Briefing paper by IW Apperly on Māori Wardens Conference, 11 May 1973 (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), p 42)

Government recognises two organisations established at the New Zealand wide level, the New Zealand Māori Council and the Māori Women's Welfare League. It has not regarded the Wardens' Association in the same way and I am not prepared to support a move to bring in yet another Māori Organisation to play a similar role particularly as the members come under the control of District Councils.⁸³

In May 1973, the NZMC and the NZMWA convened a joint conference on Māori Wardens at Waiwhetū Marae, Lower Hutt to 'determine the future role of the Wardens and modifications of the present Act to suit the new role.'⁸⁴ The agenda paper for the conference stated:

Over the last twelve to eighteen months, the NZ Māori Council has become concerned with the role of the Māori Warden, the effectiveness of Māori Wardens, the breakdown in communications with wardens and Māori committees and the challenges and problems amongst the wardens themselves.⁸⁵

The wardens conference was reported to be 'the best attended ever with all Māori districts represented for the first time.'⁸⁶ At the conference, the wardens presented the Minister with 'a list of submissions for amendments to the Māori Welfare Act to make it more applicable to the new role of wardens emphasising community development', including 'new rules of conduct and dress', 'a comprehensive training scheme' and 'improved provision for insurance against injury'.⁸⁷ Joint NZMWA and NZMC President Graham Latimer informed the hui that

wardens were not seeking more autonomy from the Māori Council, but they did want the Act to provide better guidelines and greater flexibility to enable wardens to carry out their work, particularly in urban areas . . .⁸⁸

However, this gesture to resolve the differences between the NZMC and NZMWA did little to quell rising dissatisfaction among Māori Wardens. By the mid-1970s, morale among Māori Wardens was at an all-time low. A number of factors had contributed to this state of affairs. The luke-warm government attitude towards Māori Wardens in this period has already been mentioned. In addition, the NZMWA had lost its 'major driving force and spokesman' following the death of George Whakarau in 1971, with a departmental briefing paper of the time observing that

83. Briefing paper by I W Apperley on Māori Wardens Conference, 11 May 1973 (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), p 42)

84. Agenda paper for Wardens' conference jointly convened by the NZMC and the Wardens' Association, 11 April 1973 (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), p 27)

85. Agenda paper for Wardens' Conference jointly convened by the NZMC and the Wardens' Association, 11 April 1973 (second Waitangi Tribunal document bank, vol 2 (doc c18(b)), p 27)

86. 'Māori Wardens' Role Discussed', *Te Māori*, vol 5, no 2, 1973 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 380)

87. 'Māori Wardens' Role Discussed', *Te Māori*, vol 5, no 2, 1973 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 380)

88. 'Māori Wardens' Role Discussed', *Te Māori*, vol 5, no 2, 1973 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 380)

‘the Wardens appear to be drifting since the loss of their leader the late George Whakarau.’⁸⁹ Another factor appears to have been a lack of support for Māori Wardens at the Māori Committee and DMC levels. A report by NZMC acting secretary J Eruera on the proceedings of the NZMWA’s 1975 annual conference, hosted by the Waikato–Maniapoto DMC at Tauranga, revealed widespread dissatisfaction among wardens at a ‘complete lack of communication from District Councils, to Māori, Warden and Marae Committees’. Such complaints, he noted, were not ‘isolated’, but ‘generally spread over the areas that were represented’ (although he also noted that the conference was not fully representative of all Māori Wardens or DMCS).⁹⁰ The conference minutes record complaints by Māori Wardens that the time lapse between Māori committee meetings was too great for effective administration of wardens and that ‘90% of committees’ met only every three years at election time.⁹¹ By the time of the 1975 conference, the NZMWA and the Māori Wardens appear to have reached a crisis point. Speaking at the conference, Graham Latimer described the warden’s movement as “floundering”, with no sense of purpose, and with disharmony and poor morale widespread among wardens.⁹² The NZMWA’s next annual conference, at Porirua in 1976, would be its last until 1979 and marked the beginning of a three-year hiatus in the association’s activities. Soon after this 1976 conference, it was struck off the Register of Incorporated Societies for failing to deliver the required financial documents.⁹³

As noted in chapter 4, in 1975 the Government introduced an amendment to the Māori Welfare Act 1962 altering the term of wardens’ appointments to a three-year renewable term, and cancelling all current warrants as of 30 June 1976. The move originated from the department’s view that large numbers of warranted wardens were no longer actively engaged in their duties.⁹⁴ As anticipated, the cancellation of wardens’ warrants resulted in a dramatic fall in warden numbers. From July 1976 until the re-emergence of a newly constituted NZMWA in 1979, warden numbers would not rise above 400.⁹⁵ While many local and district wardens’ associations continued on after their national association’s demise, by the late 1970s the malaise at the national level appears to have drifted downwards to the districts. By September 1978, only Waikato–Maniapoto, Te Tai Tokerau, Wellington, and Auckland were reported to have functioning wardens’ associations.⁹⁶

89. Fleras, ‘From Village Rūnanga’ (doc c1), p 41; Briefing to Mr Apperley on contents of Folio 100–113 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 74)

90. JH Eruera to president New Zealand Māori Council, 25 June 1975 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), pp 55–56)

91. NZMC conference with Māori Wardens, minutes, Tauranga, 20–22 June 1975 (second Waitangi Tribunal document bank, vol 3, c18(c)), p 59)

92. ‘Role of Māori Warden Needs “Definition”’, *Daily News*, 16 August 1975 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 39)

93. Fleras, ‘From Village Rūnanga’ (doc c1), 41

94. Address given by Mr Rata at the Māori Wardens’ Annual Conference at Waiwhetū marae, 13 May 1973 (second Waitangi Tribunal document bank, vol 3 (doc c18(c)), p 66)

95. NZMWA, Proposal for Rūnanga Status (second Waitangi Tribunal document bank, vol 8 (doc c18(h)), p 119)

96. Fleras, ‘From Village Rūnanga’ (doc c1), pp 41–42

5.4 WARDENS IN THE ERA OF THE CULTURAL RENAISSANCE AND IWI REVITALISATION, 1979–99

By the late 1970s and early 1980s, Māori Wardens were coming back into favour, among Māori leaders and government alike. The Māori cultural renaissance brought renewed interest in Māori Wardens as a Māori solution to Māori problems and an expression of Māori autonomy. Speaking in 1980, Peter Walden, the President of a newly reinvigorated NZMWA, stated that the ‘lean period’ for wardens had come to an end and that now, ‘in the context of a Māori culture renaissance’, Māori people saw a new significance for wardens.⁹⁷ In 1979, Dr Ranginui Walker was chair of the NZMC’s wardens sub-committee and convenor of the national Māori Wardens’ conference of that year. According to a report in *Te Māori*, Dr Walker saw the ‘institution of Māori wardens as the modern outcome of the Māoris’ desire, since the Treaty of Waitangi signing in 1840, for their own forms of social control’. According to Dr Walker, the warden system should not be seen as ‘a form of apartheid but rather the natural outcome for some measure of self-determination within the context of Māoris’ own social institutions’.⁹⁸

In its annual report for 1979, the Department of Māori Affairs reported an ‘upsurge’ in the numbers of warranted Māori Wardens, a change it believed to be indicative of ‘the determination by Māori people to give leadership in their own affairs’.⁹⁹

By the late 1970s, governments were also showing an increased interest in Māori Wardens. As community volunteers, the wardens fitted into the new community development-based ethos of government programmes such as Tū Tāngata, discussed in chapter 4. As we will see below, governments also viewed the Māori Wardens as a cost-effective solution to an issue that was gaining considerable publicity by the late 1970s: that of Māori youth gangs. An outcome of this increased interest would be the reformation of the NZMWA at a 1979 meeting at Ngāruawāhia, with the encouragement of the Minister of Māori Affairs, Ben Couch.

5.4.1 The New Zealand Māori Wardens Association is reformed, 1979

In November 1979, following a three year hiatus in the NZMWA’s activities, a meeting of Māori Wardens at Ngāruawāhia voted in favour of the national association’s re-establishment. The meeting had been convened by the NZMC, and was attended by the Minister. Shortly afterwards, Ben Couch announced that his government would make a one-off grant of \$50,000 to assist the newly reformed NZMWA to re-establish itself. In announcing the grant he stated: ‘I have authorized this one grant of \$50,000 in line with our Tū Tāngata policy of encouraging self-reliance and self-determination of helping Māoris take responsibility for their own future.’¹⁰⁰ Couch

97. ‘Gang Role Defined by Wardens’, *New Zealand Herald*, 11 November 1980 (second Waitangi Tribunal document bank, vol 1 (doc c18(a)), p 28)

98. ‘New Burst of Life for Māori Wardens’, *Te Māori*, December 1979–January 1980 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 419)

99. Department of Māori Affairs, ‘Report of the Department of Māori Affairs for the year ended 31 March 1979’, AJHR, 1979, E-13, p 8

100. Fleras, ‘From Village Rūnanga’ (doc c1), p 43

also believed that the Māori Wardens presented a potential solution to the issue of Māori gangs. His announcement came only months after the worst incidence of gang violence in New Zealand to that date, when members of the Stormtroopers gang violently clashed with police in the Northland settlement of Moerewa. Couch – who would later hold the joint portfolios of Māori Affairs and Police – believed that wardens could form the ‘front line’ of prevention in confrontations between gangs and the police.¹⁰¹ A Department of Māori Affairs memorandum from 1979 stated that wardens were

prepared to take the responsibility for work relating to gangs, particularly in the streets, hotels and other areas where Māori gangs congregate. This decision by the wardens has been received [accepted] by this department because it enables a community approach to develop and hopefully deal with some of the situations before they become serious enough for Police involvement.¹⁰²

Treasury, in endorsing the \$50,000 grant, described the wardens as ‘an important part of [the department’s] initiatives in its youth and welfare field’ and additionally stated that

the formation of the Association will enable the wardens to become a much more effective influence with the Māori people and, at a relatively low cost, make a significant contribution to dealing with gang and other youth problems. . . . Treasury accepts this argument and believes that this should prove to be a very cost effective contribution.¹⁰³

The first two weeks of the new NZMWA’s existence were characterised by a flurry of activity on the part of its newly appointed executive. In that fortnight, members of the NZMWA executive met with Auckland DMC chair and convenor for wardens under the NZMC, Dr Ranginui Walker,¹⁰⁴ and the NZMC’s vice-president and secretary who assured them of ‘the full support and endorsement of the NZMC’ for their organisation.¹⁰⁵ The new executive also attended meetings of the DMCs at Aotea and Wellington, with both councils pledging to support the reformed association. However, at a meeting of the full NZMC in December 1979, attended by members of the NZMWA executive, NZMC members withheld their endorsement for the new

101. ‘Gang Role Defined by Wardens’, *New Zealand Herald*, 11 November 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 30)

102. NM Baker to Secretary of the Treasury, 13 December 1979 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 141)

103. Secretary to Treasury to the Minister of Finance, 21 December 1979 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 96)

104. NZMWA, Report on Activities for the period 11th November 1979–1 January 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 112)

105. NZMWA, Report on Activities for the period 11th November 1979–1 January 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 112)

organisation, asserting the rights of each DMC to ‘put their position to us when we visited them in their own areas.’¹⁰⁶

During the following year, the NZMWA’s new executive embarked upon an ambitious branch-building tour to encourage the formation of new wardens’ association branches and restore life to existing ones. In October 1980, the Māori Wardens’ Association also commenced publication of its own quarterly newsletter, *Māori Warden News*, to promote its work to members. Their efforts, as well as the promise of government funding and support for Māori Wardens, appear to have paid off in increased warden numbers. By November 1985, 14 district branches of the association were in existence, with a reported 40 sub-branches around the country.¹⁰⁷ According to figures supplied to us by Gloria Hughes, Māori Warden numbers grew from 321 in 1979 to more than 1400 by 1985.

5.4.2 The Labour Government reviews the Māori Wardens, 1980s

In 1985, the government launched the first of what would be a series of successive attempts over the next three decades to review the place of Māori Wardens under the 1962 Act. Three issues would prove critical in influencing the government’s decision to review the Act: warranting, funding, and growing calls within the NZMWA for autonomy from the NZMC. We review each of these in turn below, before going on to describe the review itself.

(1) Warranting

The rapid rise in Māori Warden numbers during the 1980s, combined with the impact of the 1975 amendment restricting wardens’ appointments to three-year terms, significantly increased the administrative burden involved in processing warrants for both the DMCs and the Department of Māori Affairs. By the early 1980s, Māori Wardens were expressing growing frustration at excessive delays in processing their appointments and reappointments. In response, the DMCs and Department of Māori Affairs blamed each other: the Government pointed to the failure of DMCs to notify it in advance of warrants expiring, while acknowledging that staffing changes within its own Department had contributed to the delays.¹⁰⁸ DMCs placed the blame squarely on the department. The Tai Tokerau DMC, for example, complained at a November 1982 meeting at the length of time that it took wardens’ warrants to be processed by the department: ‘Of the 19 applications processed only four had been approved.’¹⁰⁹

In 1981, the NZMC discussed the issue of Māori Wardens’ warrants, and resolved to forward several remits to DMCs for their consideration. These included the

106. NZMWA, Report on Activities for the period 11th November 1979–1 January 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p114)

107. Gloria Hughes, brief of evidence (doc B31), p3. See also NZMWA, Proposal for Rūnanga Status (second Waitangi Tribunal document bank, vol 8 (doc C18(h)), pp 118–128)

108. T G Whittaker, paper for Tamati Reedy on Māori Wardens 1983 (second Waitangi Tribunal document bank, vol 4 (doc C18(d)), pp 75–76)

109. Te Tai Tokerau District Māori Council, minutes, 6 November 1982 (Te Tai Tokerau District Māori Council minute book, 1974–1987 (first Waitangi Tribunal document bank, vol 20 (doc B26(t)), p199)

suggestion that the Minister of Māori Affairs circulate a list of warranted wardens to each DMC at three-year intervals, with 'a letter advising District Councils that unless Māori Affairs is advised to the contrary all wardens currently holding warrants will be reappointed'.¹¹⁰ We do not have any information on how the DMCs responded to the NZMC's remit.

In 1983, in an attempt to resolve the issues surrounding wardens' warrants, a Department of Māori Affairs paper proposed that the responsibility for processing wardens' re-appointments be transferred from the department to DMCs, and that the 'NZMC [take] over the administration of wardens'. Such a move, the paper stated, would seem 'entirely in keeping with the kaupapa of community independence'.¹¹¹ In August 1983, the department completed a review of its own handling of wardens' warrants. The review concluded that delays in wardens receiving their warrants could be attributed to DMCs 'not advising Head office promptly on matters such as re-appointments and retirements', 'the then supply of badges and warrants being exhausted', and 'the lack of continuity [within the department] due to staff changes'.¹¹² The NZMC officially took responsibility for administering wardens' appointments from October 1983. By mid-1984, the NZMC had already made considerable progress in improving the systems for warranting by preparing a master list of all Māori Wardens, ensuring all wardens' appointments and reappointments were up to date, and making an adequate supply of badges and warrants available.¹¹³ However, by February 1985, responsibility for administering warrants appears to have been returned to the department. We have no evidence on how or why this occurred, but we note that the statute still required the Minister to make the formal appointments of Māori Wardens.

Meanwhile, during 1985, dissatisfaction among wardens at delays at receiving their warrants continued to build. The Waikato–Maniapoto Wardens' Association wrote to the new Minister of Māori Affairs, Koro Wētere, to complain that 10 of its wardens had been waiting 'for 18 months or more' for their reappointments to be returned from the department of Māori Affairs.¹¹⁴ In February 1985, the Auckland DMC wrote to the Minister to express its 'grave concern' at the 'extreme delay in the appointment of Māori wardens' – a problem it attributed to 'the shifting of responsibility for warden appointments back and forth between the Department of Māori Affairs and the Māori Council'.¹¹⁵ The acute delays being experienced by Auckland wardens in receiving their warrants were confirmed in a letter to the Minister from the Turehou (Auckland) District Māori Wardens' Association, which

110. NZMC, minutes, Auckland, c 1981 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 42)

111. T G Whittaker, paper for Tamati Reedy on Māori Wardens 1983 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 76)

112. NM Baker to Minister of Māori Affairs, undated (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 37)

113. NM Baker to Minister of Māori Affairs, undated (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 37)

114. Letter from Waikato–Maniapoto Wardens' Association to Minister of Māori Affairs, in *Māori Warden News*, vol 6, no 1 1985 (second Waitangi Tribunal document bank, vol 15 (doc c18(o)), p 32)

115. Ranginui Walker to Koro Wētere, 18 February 1985 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 67)

warned of ‘mounting disquiet’ among Auckland wardens at delays which had, in some cases, left wardens working without warrants.¹¹⁶ At one point in the 1980s, the NZMWA claimed, close to half of all Māori Wardens’ warrants had lapsed due to the inadequacies of the appointment and reappointment system.¹¹⁷ This ongoing issue of delays with warranting was one among several factors creating momentum for a review of the legislative arrangements for Māori Wardens in the mid-1980s. Another issue was funding for Māori Wardens, which we discuss next.

(2) *Funding Māori Wardens*

Part of the early impetus within government for reviewing the arrangements for Māori Wardens under the 1962 Act arose as a consequence of the Government’s efforts to provide financial support for Māori Wardens. As we have seen, Couch had announced his intention to pay a \$50,000 grant to the second NZMWA soon after its inaugural 1979 meeting. His announcement of the grant without seeking prior Cabinet approval earned him a stern letter from Treasury officials, who also expressed concern that the grant was being made to a body with no statutory authority over Māori Wardens.¹¹⁸ In return for its consent to pay out the grant, Treasury stipulated that the department must meet two conditions: first, that the NZMWA be formally registered as an incorporated society, and second, that the written agreement of the NZMC be obtained for the amendment of the 1962 Act to transfer its section 7 responsibilities to the NZMWA (those relating to the power to nominate, control and supervise Māori Wardens).¹¹⁹ The association registered as an incorporated society in March 1980.¹²⁰ During February 1980, the department began the necessary preparations towards amending the 1962 Act.¹²¹ Its plans were halted, however, in March 1980, when the NZMC rejected its proposal to transfer authority for wardens to the NZMWA.¹²² In response, the Minister of Māori Affairs subsequently asked Cabinet to agree to waive the proviso that the existing legislation be amended before the release of the grant, also expressing the view that ‘it would probably be worthwhile for the New Zealand Māori Council to have some supervisory role until the wardens association finds its feet’.¹²³

The issue of how funding was to be distributed to Māori Wardens emerged again in relation to a series of grants for wardens from the Alcohol Liquor Advisory

116. ‘Māori Wardens’ Warrants’, *Māori Warden News*, vol 6, no 1, 1985 (second Waitangi Tribunal document bank, vol 15 (doc C18(o)), p 21)

117. NZMWA, Proposal for Rūnanga Status (second Waitangi Tribunal document bank, vol 8 (doc C18(h)), p 119)

118. Secretary to the Treasury to the Minister of Finance, 21 December 1979 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), pp 95–98)

119. Secretary to the Treasury to the Minister of Finance, 21 December 1979 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 97)

120. Fleras, ‘From Village Rūnanga’ (doc C1), 46

121. Mr Renata to Mr McPhail, 11 February 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 102)

122. Minister of Māori Affairs to Chairman, Cabinet Committee on Expenditure, draft, c 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 91)

123. Minister of Māori Affairs to Chairman, Cabinet Committee on Expenditure, draft, c 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 91)

Council. In 1979, the Advisory Council announced its intention to grant the wardens \$10,000 a year for the next three years. In 1979, this grant was paid directly to the NZMWA. However, for the subsequent two years the grant was paid to the NZMC, after the NZMC 'expressed unease' at the NZMWA's ability to manage the funds.¹²⁴ The Department stated in 1981 that, while for reasons of simplicity its preference was for the funding to be paid directly to the NZMWA, in the end it was a matter for the NZMWA and the NZMC to resolve between themselves.¹²⁵

The issue of funding for wardens surfaced again in 1984. Early that year, NZMWA President Peter Walden had written to the Minister to request another grant of \$50,000 to support the association's ongoing work. In response, Couch expressed his view that 'a full review of the Māori Warden scheme ought to be carried out under the control of the New Zealand Māori Council', and that he had written to the NZMC to put the matter to its consideration.¹²⁶ The Minister further advised Walden of his intention to 'put a hold on all pending appointments until I get a reply from the New Zealand Māori Council' and notified him that he had

given approval to seek an amendment to the Māori Community Development Act 1962 so that reappointments may be exercised by the Chairman, New Zealand Māori Council instead of Secretary for Māori Affairs who wished to have that authority given to the Council . . .¹²⁷

The planned review had not yet taken place by the time the Labour Government took power in the snap election of July 1984.¹²⁸ After the change of government, the proposed review appears to have been shelved and, in February 1985, the Auckland DMC wrote to the new Minister, Koro Wētere, to request that the planned review be dropped on the grounds that it was contributing to 'a loss of confidence and momentum among wardens'.¹²⁹

Soon after his appointment as Minister in July 1984, Wētere announced his government's intention to grant \$25,000 to the NZMC to support the wardens. Believing that the NZMWA 'did not have the full support of wardens', the NZMC announced that the grant would be divided among DMCs, to be 'used for the support of Wardens' activities.¹³⁰ The NZMWA interpreted the NZMC's decision as a

124. P Dunne to IP Puketapu, 6 August 1981 (second Waitangi Tribunal document bank, vol 1 (doc c18(a)), p13)

125. James de la Haye to P Dunne, 18 August 1981 (second Waitangi Tribunal document bank, vol 1 (doc c18(a)), p12)

126. Minister of Māori Affairs to Peter Walden, 13 April 1984 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p74)

127. Minister of Māori Affairs to Peter Walden, 13 April 1984 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p74)

128. NM Baker to Minister of Māori Affairs, no date (Waitangi Tribunal Second document bank, vol 7 (doc c18(g)), pp 37-38)

129. Chair of Auckland DMC to K Wētere, 18 February 1985 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p67)

130. Te Tai Tokerau District Māori Council, minutes, 24 November 1984 (Te Tai Tokerau District Māori Council minute books, 1974-1987) (first Waitangi Tribunal document bank, vol 20 (doc B26(t)), p270)

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slight on its own leadership.¹³¹ In April 1985, the Tairāwhiti District Māori Wardens' Association wrote to Wētere to 'register our disapproval' at the NZMC's decision to bypass their national association.¹³² It is unclear whether all districts paid out the \$2,000 to the wardens although later reports suggest that Te Waipounamu District Māori Council transferred the full \$2,000 to the local wardens' association in 1985.¹³³ The Tai Tokerau District Māori Council resolved in March 1985 to place the \$2,000 it received in a short-term bank deposit until such time as the wardens' association had held its triennial meeting and presented an audited financial statement.¹³⁴

(3) Calls for autonomy for Māori Wardens

Tensions between the NZMC and the NZMWA continued during the early to mid 1980s. They rehearsed what were by then familiar arguments on each side. On the one hand, those within the NZMC structure expressed concern that Māori Wardens were becoming a law unto themselves outside the control of their Māori Committees or DMCS. In 1981, Maanu Paul, then chair of the Waiariki DMC, told a newspaper reporter that wardens in his area 'were tearing around in marked cars with dogs and batons'. He 'urged the council to try and regain control of the wardens by requesting that future funding to the wardens be directed through the district councils':

the Minister had created 'a monster called the Māori Wardens' Association' and Māori committees – responsible for nominating wardens through the District Māori Councils – were losing all control.¹³⁵

For their part, however, members of wardens' associations complained of a lack of responsiveness to wardens' concerns at all levels of the structure. The Waikato–Maniapoto Māori Wardens Association complained in a 1985 letter, later republished by the *Māori Warden News*, that resolutions passed at the NZMWA's previous national hui in 1984 had been 'brushed under the table [by the NZMC] without any further thought'.¹³⁶ In the same letter, the association expressed its view that:

since 1979 our organisation has gone from strength to strength, but the New Zealand Māori Council does not want us to carry out our duties as Māori Wardens unless we

131. 'Tairāwhiti Māori Wardens' Association, February 1985 Newsletter', *Māori Warden News*, vol 6, no 1 (1985) (second Waitangi Tribunal document bank, vol 15 (doc C18(o)), pp 35–36)

132. Tairāwhiti District Māori Wardens' Association to Koro Wētere, 15 April 1985 (second Waitangi Tribunal document bank, vol 6 (doc C18(f)), p 96)

133. 'Māori Wardens in Strife over Funds', *New Zealand Herald*, 21 March 1989 (second Waitangi Tribunal document bank, vol 8 (doc C18(h)), p 143)

134. Te Tai Tokerau District Māori Council, minutes, 16 March 1985 (Te Tai Tokerau District Māori Council minute books, 1974–1987) (first Waitangi Tribunal document bank, vol 20 (doc B26(t)), p 277)

135. 'Māori Wardens Flayed', [Evening] *Post*, 18 June 1981 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 15)

136. Waikato–Maniapoto Māori Wardens' Association to Minister of Māori Affairs, *Māori Warden News*, vol 6, no 1 (1985) (second Waitangi Tribunal document bank, vol 15 (doc C18(o)), p 32)

do so under their direction, but when we ask for directions this is NOT forthcoming from the New Zealand Māori Council.¹³⁷

The second NZMWA had, from the outset, been vocal in its criticism of what it saw as shortcomings in the DMCS' administration of Māori Wardens. In a 1979 report, the NZMWA described most district councils as too overburdened by heavy workloads to pay anything more than 'lip service' to wardens' concerns.¹³⁸ In the same report, it attributed the failure of the previous incarnation of the NZMWA to the fact that: '[a]dministration for that body lay with the New Zealand Māori Council'.¹³⁹ The success of their new organisation, the report stated, would be in the fact that its leadership would have 'the Māori Wardens Association as their top priority'.¹⁴⁰ However, in the early years following its re-establishment, calls within the NZMWA for greater autonomy from the NZMC remained muted, and the NZMWA leadership continued to acknowledge their place within the NZMC structure. Speaking at his association's annual conference in 1980, NZMWA President Peter Walden told wardens that: 'The close liaison between this association and the New Zealand Māori Council needs to be clearly understood. We are but a branch which is flourishing on the tree of the NZMC.'¹⁴¹

By 1983, however, the NZMWA was beginning to change its official stance on autonomy from the NZMC. Addressing a June 1983 meeting of the NZMC, Peter Walden stated that some district wardens' associations supported autonomy from the NZMC due to what they regarded as a fundamental mismatch between the aims of the NZMWA and NZMC: '[t]hey are dealing with "people" issues whereas the NZMC and District Councils are concerned largely with land'.¹⁴² By the time of the NZMWA's sixth annual conference in November 1984, the NZMWA was openly advocating for its own autonomy. In an August 1984 article in the *Māori Warden News*, Walden described the NZMWA as 'at a crossroads' and stated that District Associations would have to choose to 'remain under the control of Māori Councils as set out under the Māori Community Development Act' or to ask the Minister of Māori Affairs to place the Māori Wardens 'under the control of your New Zealand Māori Wardens Association'.¹⁴³ Despite opposition by the NZMC, and reservations expressed by wardens' associations from Te Tai Tokerau and Waiariki, a majority

137. Waikato–Maniapoto Māori Wardens' Association to Minister of Māori Affairs, *Māori Warden News*, vol 6, no 1 (1985) (second Waitangi Tribunal document bank, vol 15 (doc C18(o)), p 32)

138. NZMWA, 'Report to District Associations', no date (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 118)

139. NZMWA, 'Report to District Associations', no date (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 118)

140. NZMWA, 'Report to District Associations' no date (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 118)

141. PA Walden, 'Presidents Report to Conference November 1980', 27 October 1980 (second Waitangi Tribunal document bank, vol 1 (doc C18(a)), p 50). See also, 'President's Report to Conference November 1980', *Māori Warden News*, vol 1, no 2 (December 1980) (second Waitangi Tribunal document bank, vol 13 (doc C18(m)), p 34)

142. NZMC, minutes, 17–18 June 1983 (second Waitangi Tribunal document bank, vol 4 (doc C18(d)), p 88)

143. 'Editorial', *Māori Warden News*, vol 5, no 2 (August 1984) (second Waitangi Tribunal document bank, vol 15 (doc C18(o)), p 5)

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of the NZMWA's 1984 conference voted to pass a motion that the NZMWA 'become autonomous in every respect, providing responsibility, control and jurisdiction for all Māori Wardens'¹⁴⁴

Other remits passed at the same November 1984 conference suggest, however, that while most branches supported autonomy from the NZMC in some form, opinions at the 1984 meeting differed markedly as to what 'autonomy' would mean in practice. Proposals that District Maori Wardens' Associations take over the responsibilities of DMCS under the overall control of the NZMC also received support at the conference, as did the suggestion that wardens be accorded 'direct representation' and 'full voting rights' at all levels of the council structure.¹⁴⁵ Discord over the NZMWA's position on autonomy was also evident at the NZMWA's annual conference of 1985, when JC Carroll, President of the Wellington Wardens' Association, questioned the 'separate NZMC/Assn stance' adopted by the NZMWA the previous year.¹⁴⁶

All of the issues so far outlined – warranting, funding, and growing support within Māori Wardens for autonomy – would come to a head in 1985, when the Minister Koro Wētere announced his government's intentions to review the 1962 Act.

(4) The Māori Wardens under review, 1985–86

In March 1985, Walden wrote to the Minister to express the NZMWA's concern at what he termed the 'continuing deplorable situation' surrounding warrants, an issue which he believed stemmed from failings in the DMCS' administration of warranting. He wrote: '[w]e believe the total number of Māori Wardens affected by non-reappointment to be in the vicinity of 400. This situation which has existed since 1977, is now intolerable.'¹⁴⁷ He proposed that 'full responsibility' for the wardens be transferred to the wardens' associations, while retaining 'direct representation to all levels of the Māori Council structure.'¹⁴⁸ Such an arrangement, he stated, would enable the NZMWA to 'provide positive assistance' to the NZMC.¹⁴⁹ In another letter to the Minister later that month, Walden remarked that

144. 'Sixth annual conference New Zealand Māori Wardens – Poho-O-Rāwiri Marae, Gisborne, 1984', *Māori Warden News*, vol 6, no 1 (1985) (second Waitangi Tribunal document bank, vol 15 (doc c18(o)), p 24)

145. 'Sixth annual conference New Zealand Māori Wardens – Poho-O-Rāwiri Marae, Gisborne, 1984', *Māori Warden News*, vol 6, no 1 (1985) (second Waitangi Tribunal document bank, vol 15 (doc c18(o)), p 25)

146. NZMWA Conference summary, [1985] (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 21)

147. Peter Walden to Koro Wētere, 1 March 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 101)

148. Peter Walden to Koro Wētere, 1 March 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 101)

149. Peter Walden to Koro Wētere, 1 March 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), pp 101–102)

This association has since 1979 tabled all recommendations from six Annual conferences to the New Zealand Māori Council meetings. Had some of those recommendations been adopted, the situation we now find ourselves in would not have arisen.¹⁵⁰

In June 1985, the Minister agreed to meet with Walden in person to discuss the NZMWA's concerns. At the meeting, Wētere agreed that the funds for wardens currently channelled through the NZMC should instead be paid directly to the NZMWA.¹⁵¹ The Minister also agreed that 'steps be taken to making the New Zealand Māori Wardens Association an autonomous organisation responsible for all its affairs, including nominations, appointments and re-appointments'.¹⁵² His staff informed him that the 1985–86 budget allocation for wardens had already been paid to the NZMC and that legislative changes would be required if the NZMWA was to become the controlling body for wardens.¹⁵³ The same official, J T Hauraki, told the Minister: 'Basically there is no departmental opposition to the Association becoming autonomous in any way. However, such autonomy should include the interests of all Māori Wardens'.¹⁵⁴ To resolve this impasse, the department recommended that the current arrangements for Māori Wardens be reviewed. Such a review should include: (a) 'a review of the current situation with a response from the New Zealand Māori Council'; and (b) 'seeking the mandate of the Māori people to either support or disagree with the autonomy'.¹⁵⁵

The NZMC had already completed its own review of arrangements for wardens in March 1985, and had voted in favour of retaining the status quo.¹⁵⁶ However, it was asked by the Minister to undertake another review.¹⁵⁷ The NZMC agreed to this request and established a sub-committee made up of Dr Ranginui Walker, Ranfurly Jacobs and Peter Walden (who was co-opted from the NZMWA) to carry out the review. This sub-committee reported back at the NZMC's September 1985 meeting.¹⁵⁸ It made three recommendations:

- 1) that the NZMC recognises the existence of the NZ Māori Wardens Association as an incorporated society and that it be given the right to seek its own funding, and

150. Peter Walden to Koro Wētere, 27 March 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 88)

151. J T Hauraki to Minister of Māori Affairs, 3 July 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 74)

152. J T Hauraki to Minister of Māori Affairs, 3 July 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 74)

153. J T Hauraki to Minister of Māori Affairs, 3 July 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 74)

154. J T Hauraki to Minister of Māori Affairs, 3 July 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 75)

155. J T Hauraki to Minister of Māori Affairs, 3 July 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 75)

156. T W Parata to K Wētere, 23 March 1985 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 65)

157. SM Ruawai to Tata Parata, 6 November 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 68)

158. J T Hauraki to Minister of Māori Affairs, 3 July 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), p 75)

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to take responsibility for appointing and reappointing wardens and withdrawing wardens' warrants;

- 2) that the NZMWA be accorded a statutory right of membership on the NZMC;
- 3) that the 1962 Act be amended accordingly.¹⁵⁹

However, the September 1985 NZMC meeting at which the recommendations were discussed was, in the words of NZMC secretary T W Parata, 'brought to a close without any satisfactory conclusion.'¹⁶⁰ It appears that the proposals to reform the arrangements for wardens had found little support among DMCS. Parata reported: 'At least nine out of the twelve District Councils are opposed to any change in the control of the wardens' activities and many of them are supported in this by their own Wardens.'¹⁶¹

In November 1985, Walden resigned from his position as NZMWA chair. His replacement, Jim Te Huna, issued public statements on his intention to seek a reconciliation between his organisation and the NZMC.¹⁶² The next month, Jim Te Huna and Sir Graham Latimer met with Koro Wētere to discuss the wardens. At the meeting, the parties agreed that a survey be circulated to all Māori Wardens and members of DMCS to seek their views on who should administer the wardens. The wording of the questionnaire was said to have 'been agreed to by both parties.'¹⁶³ The letter from the Minister accompanying the survey read:

Recently the New Zealand Māori Wardens Association has indicated that it should take responsibility for the nomination of Māori Wardens for appointment and reappointment. The New Zealand Māori Council is not in agreement with this viewpoint and considers that the responsibility should remain with the District Māori Councils. . . . On receipt of all the completed questionnaires, I intend to act on the majority decision and inform you of that decision.¹⁶⁴

However, the NZMWA would later claim that the letter had misrepresented their true position by presenting 'an either/or situation rather than the true situation where the NZMWA request was to add the right of their association to nominate . . . without impinging upon the right of District Maori Councils to continue to nominate persons to become Māori Wardens.'¹⁶⁵

159. T W Parata to Koro Wētere, 19 September 1985 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 62)

160. T W Parata to Koro Wētere, 19 September 1985 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 63)

161. T W Parata to Koro Wētere, 19 September 1985 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 63)

162. Transcript, 'Māori Wardens', *Morning Report*, 11 November 1985 (second Waitangi Tribunal document bank, vol 6 (doc c18(f)), pp 66–67)

163. J D T Hauraki to Minister of Māori Affairs, 28 February 1986 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 55)

164. Minister of Māori Affairs, 3 March 1986 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 56)

165. NZMWA, minutes, 15 March 1986, *Māori Warden News*, vol 6, no 3 (1986) (second Waitangi Tribunal document bank, vol 15 (doc c18(o)), p 60)

The Department announced the results of its survey in May 1986, and the claimants have cited it in their closing submissions as evidence of Māori Wardens' support for retaining the NZMC structure.¹⁶⁶ However, while the survey results were returned in favour of retaining NZMC control over wardens, this endorsement was not quite so resounding as it seemed. Of a total 1250 questionnaires sent out, the department had received only 322 valid votes, with 182 of these supporting a continuation of the NZMC's responsibility and 140 voting for the Māori Wardens' Association to assume control.¹⁶⁷ 768 votes were not returned, while a further 160 votes were considered not valid due to reasons such as having been 'returned, address not known', their recipients being deceased, or the individual filling in the form having voted for both organisations.¹⁶⁸ A Department of Māori Affairs official wrote to the Minister that 'although the majority is not overwhelming, it still gives an indication that the New Zealand Māori Council should continue to be responsible for the appointment and re-appointment of Māori Wardens.'¹⁶⁹

However, shortly afterwards, the Minister informed the NZMC of the department's view that the survey result had been inconclusive. He wrote, in a letter to Sir Graham Latimer of 9 July 1986: 'The survey has produced a result, but it is obvious to me that this result does not necessarily reflect the opinion of a large body of the people vitally concerned'. This view was based, he continued, on 'the fact that only 26% of questionnaire forms were validly completed and returned'.¹⁷⁰ Instead, he suggested a meeting between himself and the NZMWA and NZMC to discuss the matter further.¹⁷¹ It appears that this meeting took place, but was either inconclusive or cut short.¹⁷² At this point, the Minister seems to have resolved to take no further action on the wardens. As we will see below, the Government expected that, under its policies of iwi devolution then under development, control over Māori Wardens would eventually be transferred to tribal authorities. As Māori Affairs official Anne Carter put it in 1987:

Our view has been that with the move to devolve certain functions and responsibilities to Iwi Authorities, which we have assumed should include control and management of Māori Wardens, we have suggested to the Minister of Māori Affairs that in the meantime the status quo remain with the New Zealand Māori Council for the appointment and re-appointment of Māori Wardens. . . . I note in our financial allocations that provision has been made for a \$60,000 grant to the Māori Wardens. \$30,000

166. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p 74

167. JDT Hauraki to Minister of Māori Affairs, 28 May 1986 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), pp 51–52)

168. JDT Hauraki to Minister of Māori Affairs, 28 May 1986 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), pp 51–52)

169. JDT Hauraki to Minister of Māori Affairs, 28 May 1986 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), pp 51–52)

170. Koro Wētere to Sir Graham Latimer, 9 July 1986 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 50)

171. Koro Wētere to Sir Graham Latimer, 9 July 1986 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 50)

172. See the Minister's additional note dated 12 February 1987: R Gage to Minister of Māori Affairs, 11 February 1987 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 42)

of this has already been authorised by the Minister. . . . While I am fully supportive of the work which Māori Wardens do within our Community . . . I feel we are heading down a path where the next step must be to delegate to the NZMWA authority to recommend appointments and re-appointments of Wardens. . . . With the planning of the devolutionary process, and the development of the Iwi we must carefully look at how, and by whom funding should be delivered to the NZMC, MWFL and now the NZMWA, and at the same time promote a relationship between these and Iwi authorities. . . . The question also exists as to whether we provide funding to develop administrative structures of Iwi Authorities and also continue to put funds into building up the administration of national organisations like the NZMWA.¹⁷³

5.4.3 Maori Wārdens await devolution to iwi, 1987–91

By 1987, the Government had therefore decided to halt its review and leave the current arrangements under the NZMC intact, at least until its plans for devolution to iwi were implemented. In 1986, the department provided the NZMC with a \$18,000 grant to support the work of the wardens.¹⁷⁴ However, it soon became clear that the NZMWA was dissatisfied with the Government's decision to maintain the status quo and await eventual devolution to iwi. In April 1987, a delegation from the NZMWA travelled to Wellington to meet with the Minister in person.¹⁷⁵ At the meeting, the NZMWA representatives, who included President Jim Te Huna and former President Peter Walden, outlined their frustrations at their treatment at the hands of both the NZMC and the Government:

we have got nowhere, absolutely nowhere at all with government. No gains have been made either to recognise or reward this magnificent branch of social workers, except to receive platitudes. With no finance coming substantially from government . . . wardens meet his [*sic*] own out-of-pocket expenses to carry out this most important work.¹⁷⁶

The NZMWA then requested a \$200,000 grant to cover the cost of training, a travelling administrator, and a fund to reimburse wardens' expenses.¹⁷⁷ Departmental records indicate that it did not have the funds available for a \$200,000 grant, while the NZMC cautioned officials against granting such a large sum as 'the financial administration of the Wardens is weak'.¹⁷⁸ In July 1987, the Minister announced

173. Anne Carter to NM Baker and PM Kapua, August 1987 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 100)

174. JW Te Huna to Koro Wētere, 28 July 1987 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), pp 40, 43)

175. NZMWA representative to Koro Wētere, 10 April 1987 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 108)

176. NZMWA representative to Koro Wētere, 10 April 1987 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 109)

177. NZMWA representative to Koro Wētere, 10 April 1987 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), pp 103–105)

178. D F, 'Māori Wardens Association', 30 April [1987] (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 103)

that he would grant the NZMWA \$60,000 to support the work of wardens.¹⁷⁹ Over the next few years this would be followed by several more grants to the NZMWA, amounting to \$130,000 in total from 1987 to 1989.¹⁸⁰ Throughout this period, the NZMC continued to remind governments of its own statutory responsibilities for the Māori Wardens and its need to be kept in the loop over funding decisions. Following the Government's decision to award a further \$58,000 to the NZMWA in 1991, the NZMC wrote to the new Minister of Māori Affairs, Douglas Kidd, to express its concern that it had not been informed:

To reiterate the New Zealand Māori Council's position we wish to be consulted before the \$58,000 is distributed, in order to advise our district councils accordingly. The Council has a statutory responsibility to ensure that the systems under which the Wardens function are properly followed.¹⁸¹

While tensions continued between the NZMWA and NZMC during the second half of the 1980s, Department of Māori Affairs officials continued to repeat their view that no further action was necessary to review the arrangements for Māori Wardens, as their control would soon be transferred over to iwi. Senior official Neville Baker told wardens at the NZMWA's 1988 annual hui that

Any discussion of the future role and domain of Māori Wardens must . . . be considered within the context of the devolution of government resources for Māori development. The issues raised here include those of Māori responsibility for Māori development, the role of Māori culture as a catalyst for positive growth and change, and the need to address the development of appropriate Māori systems for handing resources back to the control of the Māori people in their own interests.¹⁸²

The view that Māori Wardens could, at some future stage, be transferred to iwi control was also voiced by some Māori leaders. Te Arawa kaumātua Sir John Bennett, addressing the 1988 annual conference of the NZMWA, stated that, while the administration of wardens remained 'uncertain', if necessary the wardens could return to the iwi.¹⁸³ Warden and policeman Tony Olsen wrote to Wētere in 1990 of his hope that Māori Wardens would eventually come 'within the Iwi structure under an umbrella of total social services.'¹⁸⁴ As well as strengthening the tribal structures

179. Minister of Māori Affairs, 'Māori Wardens Budget Allocation', 2 July 1987 (second Waitangi Tribunal document bank, vol 4 (doc c18(d)), p 43)

180. 'Māori Wardens In Strife over Funds', *New Zealand Herald*, 21 March 1989 (second Waitangi Tribunal document bank, vol 8 (doc c18(h)), p 143)

181. NZMC Secretary to Douglas Kidd, 4 October 1991 (second Waitangi Tribunal document bank, vol 8 (doc c18(h)), p 58)

182. Neville Baker, 'Māori Wardens Issues for Debate Presentation to the Māori Wardens' Association Annual Conference, Hastings, 12 November 1988' (second Waitangi Tribunal document bank, vol 5 (doc c18(e)), p 13)

183. NZMWA, '10th Annual Conference', no date (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), p 64)

184. Tony Olsen to KT Wētere, 26 January 1990 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 9)

themselves, he believed that ‘the National structure with dubious authority cannot under its present structure (Europeanised) give attention to or have intimate knowledge about the needs of the people at “Flax Roots” level.’¹⁸⁵ By the late 1980s, with Labour’s introduction of the Rūnanga Iwi legislation imminent, the NZMWA was laying plans for its own future under devolution by preparing its own proposal for Iwi Authority or Rūnanga status ‘to enable it to become part of the future Māori structure.’¹⁸⁶ The next year, the NZMWA forwarded its proposal for Iwi Rūnanga status to the Iwi Transition Agency.¹⁸⁷

5.4.4 The National Government reviews the Māori Wardens, 1991–92

Soon afterwards, a new National Government came to power in the 1991 election. With the repeal of the Rūnanga Iwi Act in May 1991, the future control of Māori Wardens was, once more, back on the table. In July 1991, David Kingi, of the policy and planning unit of Te Tira Ahu Iwi (Te TAI), was asked to prepare a review paper on the current administrative arrangements for Māori Wardens, for completion prior to the transfer of Te TAI’s responsibilities over to the Ministry of Māori Development, Te Puni Kōkiri (TPK). As noted in chapter 4, the new Ministry was to be a streamlined policy-based Ministry, without the heavy operational responsibilities of its predecessors. Kingi’s review was narrowly focused: his brief was to identify a suitable body or agency to which responsibility for the Government’s part in administering the Māori Wardens could be transferred following the disestablishment of the Iwi Transition Agency. The larger questions of the governance and control of the Māori Wardens were outside its scope.

Kingi completed his review of the Māori Wardens in December 1991, shortly before Te TAI’s responsibilities were transferred over to TPK. Kingi’s report, entitled ‘Review of Community Services Programme: Māori Wardens, December 1991’, identified seven ‘viable options’ for how the Māori Wardens could be administered:

1. the new Ministry of Māori Development;
2. the Māori Trustee;
3. rūnanga or iwi authorities;
4. the National Māori Congress;
5. Māori Associations (under the 1962 Act);
6. the NZMWA; and
7. a mainstream Government agency.¹⁸⁸

185. Tony Olsen to K T Wētere, 26 January 1990 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 8)

186. NM Baker to Minister of Māori Affairs, 25 August 1989 (second Waitangi Tribunal document bank, vol 7 (doc c18(g)), p 58)

187. NZMWA, ‘Proposal for Rūnanga Status’, not dated (second Waitangi Tribunal document bank, vol 8 (doc c18(h)), pp 116–126)

188. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc c18(i)), p 14)

Under option 1, responsibility for administering the wardens would be transferred to the new Ministry of Māori Development, which would then ‘determine any future changes.’¹⁸⁹

In relation to option 2, Kingi reported that the Māori Trustee was ‘able and willing to take on both the appointments and funding functions,’ in exchange for a small service charge.¹⁹⁰

On option 3, Kingi noted that the ‘possibility of Rūnanga or Iwi Authorities taking administrative control of the appointments procedure came in for serious consideration prior to the advent of “*Ka Awatea*”, but ‘Iwi development has since taken a different tack, and interest is waning.’¹⁹¹

On option 4, Kingi stated that the National Māori Congress was ‘a growing contender for the appointments process’ and had indicated some interest.¹⁹²

In relation to option 5, Kingi noted that the Māori Associations ‘already have an active role in the early stages of appointment (apart from any operational controls they exercise over Wardens)’. As such, Kingi believed that it would be ‘a logical extension’ for the NZMC to receive nominations from Māori Associations and pass them to the Minister, and following appointment, to issue warrants and badges. On this suggestion, Kingi observed: ‘The Council has lobbied in the past for this to happen, and the Chairman advises that their position has not changed.’¹⁹³

On option 6, Kingi noted that the administration of wardens by the NZMWA would also be a ‘logical extension’ of their existing functions.¹⁹⁴

Finally, in relation to option 7, transferring the wardens to a mainstream government agency, Kingi suggested that the Ministry of Justice would be the most obvious contender.

Kingi went on to recommend option 7 of ‘mainstreaming’ as the most suitable ongoing option for the Māori Wardens, with the rationale that, under the Government’s *Ka Awatea* policy framework, ‘there is no intention that this sort of operational function ought to be ongoing within the proposed Ministry for Māori Development’. Later in the paper, he observed: ‘it is clear that mainstreaming is intended as the end fate of all operational programmes, which are of an ongoing nature.’¹⁹⁵

189. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc C18(i)), p 14)

190. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc C18(i)), p 14)

191. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc C18(i)), pp 14–15)

192. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc C18(i)), p 15)

193. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc C18(i)), pp 14–15)

194. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc C18(i)), p 15)

195. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc C18(i)), pp 16–18)

However, he recommended that before this could occur, a thorough review of all community programmes, including the Māori Wardens, should take place to determine if ‘a mainstream department is adequately prepared to administer the programme in a manner which is appropriate to the intended outcomes.’¹⁹⁶ The time-frame which would be required for such a review, Kingi stated, meant that there was ‘no viable alternative’ other than to roll over the Māori Wardens programme intact to the new Ministry, and leave it to the Ministry to carry out the review.¹⁹⁷

Soon after the establishment of the new Ministry of Māori Development in January 1992, a comprehensive review of the Māori Wardens programme was launched, led by TPK official Tango Manuel. The aims of the review were to:

- › ‘Define functions and activities of Māori Wardens today and the need for their retention or otherwise.’
- › ‘Define whether an in depth review is required of structure and administration.’
- › ‘Define options for future funding mechanism and provide recommendation.’
- › ‘Assess potential for full autonomy.’
- › ‘Assess the need to review current legislation.’¹⁹⁸

During 1992, TPK officials conducted meetings with representatives of the NZMWA, NZMC, DMC, and wardens to gather their perspectives on the future of the wardens.¹⁹⁹ In April and May of that year, TPK official Uia Punga travelled to Te Waipounamu and Te Tai Tokerau to seek the views of Māori Wardens and DMCs on the issues facing Māori Wardens. In Te Waipounamu, Punga found, many of the Māori committees were either defunct or disengaged from their wardens, and the communications between the wardens and the DMC were also poor. None of the 17 Māori Wardens in the Dunedin area held current warrants, having received no response from the Te Waipounamu DMC to their applications.²⁰⁰ The chair of that DMC, George Te Au, acknowledged that there were issues in his council’s relationship with wardens, but maintained that Māori committees should control wardens to ensure that they maintained accountability to local people.²⁰¹ With no financial support forthcoming from either the NZMC or NZMWA, Te Waipounamu District Māori Wardens Association chair John Goldsmith told Punga that it was only the wardens’ kaupapa of ‘Aroha o te Tāngata’ that kept the wardens going.²⁰²

196. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc c18(i)), p 19)

197. David Kingi, ‘Review of Community Services Programme: Māori Wardens’, 10 December 1991 (second Waitangi Tribunal document bank, vol 9 (doc c18(i)), p 19)

198. ‘Community Services: Action plan for Programme Review – Māori Wardens’, October 1991 (second Waitangi Tribunal document bank, vol 9 (doc c18(i)), p 61)

199. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), pp 7–17)

200. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), pp 10–11)

201. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), pp 9–19)

202. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), p 9)

The situation with Māori Wardens was, however, markedly different in Te Tai Tokerau. In Whāngārei, Punga reported, Māori Wardens were ‘very active’ with ‘strong links with their 11 Māori Committees, Executive Committees and the District Māori Council.’²⁰³ Whāngārei wardens were active in a range of areas, including street patrols, crowd control and event work, hospital work assisting whānau coping with trauma, dealing with missing children and domestic violence.²⁰⁴ Asked for their views for future governance options for the wardens, Punga reported that ‘the wardens would like it to remain the same, but on the off chance that Te Puni Kōkiri were not going to be there to carry out their current job, the NZ Māori Council should take it on.’²⁰⁵ Asked on the future of the wardens, Kaitaia wardens stated that ‘they must stay under the District Māori Council because they feel they can get more protection and information from them.’²⁰⁶ One theme shared in common between Te Waipounamu and Te Tai Tokerau Māori Wardens was the lack of access to funding to support their work. Whāngārei wardens found it difficult to continue operating ‘with little funds in the pūtea’: ‘It can be a burden if you are unable to afford it because you are on the dole, have a family to support and the Association does not have the money to support its wardens.’²⁰⁷

Punga completed an interim report on the Māori Wardens programme later in 1992. His paper identified a range of proposed improvements to assist Māori Wardens. His recommendations were as follows:

1. Improve the Appointment and Reappointment process, by:
 - (a) Making improvements to the existing system. Suggested improvements could involve introducing a monitoring system to track warrants or reducing the number of people handling warrants; or
 - (b) Handing over the processing of warrants to the District Maori Councils and the NZMC, with accountability back to a government agency.
2. Provide funding for the Māori Wardens programme. On this point, Punga noted that the current government funding ‘is not sufficient for the amount of work that has been carried out by the wardens’, and that funding was needed for ‘travelling costs, training, uniforms, rental, food, vehicle etc.’
3. If a suitable government agency cannot be identified to take over the Māori Wardens programme from TPK, TPK could contract out its programme to the NZMC, NZMWA ‘or to some other group’.
4. Changes to the legislation with regards to the work of the Māori Wardens. Punga identified that, in many cases, Māori Wardens were involved in

203. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc C18(j)), p 12)

204. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc C18(j)), pp 12–13)

205. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc C18(j)), p 12)

206. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc C18(j)), p 16)

207. Uia Punga, ‘Review Paper on the Māori Wardens Program – Appendix A’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc C18(j)), p 13)

activities which stretched well beyond the duties prescribed for them in the 1962 Act, and were acting in the roles of ‘Counsellor, Mediator, Social Worker in the homes, on the streets’, and so forth. This discrepancy between Māori Wardens’ actual work and their responsibilities under the 1962 Act suggested a need for amendments to that Act.²⁰⁸

In presenting his recommendations, Punga stated that the ‘majority of Wardens are happy with the work of their Māori Councils, the Executive Committees and Māori Committees’ although there were ‘problems that need to be ironed out’. He also acknowledged that the Māori Associations faced serious funding issues: ‘There is no doubt that money presents a problem for most of the associations.’²⁰⁹ When Punga posed the question to the Māori Wardens: ‘Which Government Agency would they prefer to take over from Te Puni Kōkiri’s current duty to the programme?’, he observed that many of the suggestions ‘only created negative reasons on why they would not be suitable.’²¹⁰ Instead, it was the widely shared view of Māori Wardens that

only Māori can run the programme and ensure that it is still running into the next Century. If the Government Agency did not need to be there, then it should be left to those organisations already involved in the programme.²¹¹

Punga concluded his paper by stating his intention to carry out further consultations with Māori Wardens in Auckland, Waikato, Gisborne and Taranaki and to meet with the executive of the NZMWA.²¹² We have no evidence on whether or not these consultations took place. However, no further action on the review recommendations had taken place by mid-1993, when NZMWA secretary Pearl Erstich wrote to TPK Chief Executive Wira Gardiner to seek information on the review:

At a meeting of the NZ Māori Wardens on 5 June, 1993 I was instructed to seek the final copy of the Review on NZ Māori Warden Assn Inc conducted by Uia Punga . . . It is imperative for us to know where we are heading, under whose direction, are we under restructure, or do we exist at all.²¹³

We do not have a copy of Gardiner’s response, and it appears that no further action was taken on the recommendations contained in Punga’s interim report.

208. Uia Punga, ‘Review Paper on the Māori Wardens Program’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), p 3)

209. Uia Punga, ‘Review Paper on the Māori Wardens Program’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), p 4)

210. Uia Punga, ‘Review Paper on the Māori Wardens Program’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), p 4)

211. Uia Punga, ‘Review Paper on the Māori Wardens Program’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), p 4)

212. Uia Punga, ‘Review Paper on the Māori Wardens Program’, 1992 (second Waitangi Tribunal document bank, vol 10 (doc c18(j)), p 6)

213. Pearl Erstich to Wira Gardiner, 16 July 1993 (second Waitangi Tribunal document bank, vol 8 (doc c18(h)), p 20)

One possible by-product of the review, however, may have been to bring the urgent need for funding for Māori Wardens to the Government's attention. In 1993, Cabinet announced its decision to increase its annual grant to the NZMWA from \$58,000 to \$100,000.²¹⁴ It remained at that level until the late 1990s, when the Ministry launched a comprehensive review of the Māori Community Development Act 1962.

5.5 THE MĀORI WARDENS UNDER THE REVIEW OF THE MĀORI COMMUNITY DEVELOPMENT ACT, 1999

As discussed in chapter 4, the 1999 review of the Māori Community Development Act had been preceded by 'pre-consultation' and consultation hui during 1998. TPK released the outcome of its review, *He Pūrongo Whiriwhiringa i te Ture Whakapakari Hapori Māori 1962/ Discussion Paper on the Review of the Māori Community Development Act* in April 1999. As seen in the previous chapter, the discussion paper recommended that the NZMC be substantially modified and replaced with a new national body, to be named Te Rūnanga Pumanawa Tangata. The new body would be independent of the Government, although the Crown would retain a residual monitoring role, and it would consist of a three-tiered system of representation made up of marae-based committees or their urban equivalents at the lowest level. These would appoint representatives to regional bodies, who would in turn nominate delegates to the new national body.²¹⁵

In chapter 4, we discussed the 1999 *Discussion Paper's* recommended changes to the structure and functions of the NZMC. Here, we discuss the recommendations that related specifically to Māori Wardens.

By the late 1990s, according to information set out in the *Discussion Paper*, there were a total of 1,164 warranted Māori Wardens operating around the country. Of these, over half were concentrated in only four districts: Aotea (accounting for 195 Māori Wardens), Tairāwhiti (110 wardens), Te Tai Tokerau (162 wardens) and Waiariki (179).²¹⁶ Approximately half of all wardens were financial members of the NZMWA.²¹⁷ The only government funding to Māori Wardens was through the NZMWA, which received \$100,000 annually.²¹⁸ This grant went solely towards covering the NZMWA's administration costs and was not distributed to Māori

214. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc c15), p 248)

215. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc c15), pp 251–259)

216. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc c15), p 247)

217. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc c15), p 248)

218. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc c15), p 248)

Wardens.²¹⁹ The NZMWA had also recently had a further \$100,000 grant approved under the Youth at Risk programme.²²⁰

In relation to the duties carried out by Māori Wardens, the 1999 review noted that '[v]ery few undertake the duties relating to drunk and disorderly behaviour as set out in the legislation'. Instead, Māori Wardens were engaged in the following functions:

- ▶ 'assisting NZ Police in their street work, and are quite often asked to notify Māori families of bereavements'
- ▶ 'providing point duty at funerals or other places where large gatherings take place'
- ▶ 'working within the justice system in youth at risk programmes and also assisting in many places on court days. They act as support to young Māori offenders and give support by way of advice on court day procedures and court day behaviour'
- ▶ 'running contracted truancy programmes in some cities and have worked closely with many High Schools on this problem'
- ▶ entering 'in some areas ... into contracted security arrangements with local bodies, the business community and hospitals'.²²¹

Among the major issues raised by Māori Wardens during the consultation hui was the need to update their legislation to keep up with the changing times. On this point, the *Discussion Paper* noted that 'Māori have a strong affection for Māori Wardens and the work they do' and that there was strong support for them to remain operating under their legislation.²²² However, many felt that the legislation needed to be updated to match the reality of the roles that Māori Wardens performed in their communities. The provisions in the Act relating to drunk and disorderly behaviour, in particular, were identified by hui participants as 'insulting and paternalistic' and in need of removal.²²³ TPK concluded: Māori Wardens 'have been operating under legislation that has not kept pace with the changing demands that are facing communities today and tomorrow'.²²⁴

Another major issue to arise from the consultation hui was that of which organisation should have overall control over Māori Wardens. On this point, some NZMWA representatives who attended the hui felt that responsibility for Māori Wardens should be transferred to their own association. This view was strong, the review paper's authors noted, among the Māori Wardens who attended the Auckland and

219. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc C15), p 250)

220. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc C15), p 250)

221. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc C15), p 247)

222. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc C15), p 248)

223. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc C15), p 248)

224. Te Puni Kōkiri, 'Discussion Paper on the Review of the Māori Community Development Act 1962', 6 April 1999 (Crown counsel, TPK document collection (doc C15), p 248)

South Auckland consultation hui. It had received little support, however, in other areas where consultation hui were held. On this point, the *Discussion Paper* noted:

Māori and the Māori Wardens who attended were clear, that the communities had to be responsible for their Wardens, just as the Wardens had to be accountable back to their communities. Māori Wardens receive their mana from the communities; it is the communities that put them there and it is the communities that should determine their activities.²²⁵

On the basis of the ‘general resistance’ they encountered in the consultation hui to the notion of the NZMWA assuming some legislative responsibility for the Māori Wardens, TPK officials advised against this option.²²⁶

While TPK advised against handing over responsibility for Māori Wardens to the NZMWA, the authors of the *Discussion Paper* also noted that the existing system of governance under the Māori Associations was not operating well in many regions:

With the breakdown of processes and structures under the Act, Māori Wardens in a great many areas, have been operating on their own without having the support of a fully functioning Māori Committee or District Māori Council.²²⁷

Instead of the Māori Associations under the 1962 Act, the *Discussion Paper* recommended that the control of Māori Wardens be handed over to ‘Māori Communities’, by which the reviewers meant Māori communities as represented by committees centred on traditional or urban marae or those associated with urban Māori authorities.²²⁸ As noted previously, this aligned with the overall approach of the 1999 review which had recommended the replacement of Māori Associations with marae- or urban-based committees.

In August 1999, Cabinet gave authority for the amendment of the 1962 legislation to give effect to:

- ▶ the transfer of the power to appoint Māori Wardens to the new ‘marae and hūnuku²²⁹ communities’, as part of the three-tiered system for Māori representation under a new national body ‘Te Rūnanga Pumanawa Tangata’; and
- ▶ the repeal of the existing functions of Māori Wardens under the 1962 Act and their replacement with new functions, as follows: ‘youth work’; ‘family

225. Te Puni Kōkiri, ‘Discussion Paper on the Review of the Māori Community Development Act 1962’, 6 April 1999 (Crown counsel, TPK document collection (doc c15), p 248)

226. Te Puni Kōkiri, ‘Discussion Paper on the Review of the Māori Community Development Act 1962’, 6 April 1999 (Crown counsel, TPK document collection (doc c15), p 249)

227. Te Puni Kōkiri, ‘Discussion Paper on the Review of the Māori Community Development Act 1962’, 6 April 1999 (Crown counsel, TPK document collection (doc c15), pp 248–249)

228. Te Puni Kōkiri, ‘Discussion Paper on the Review of the Māori Community Development Act 1962’, 6 April 1999 (Crown counsel, TPK document collection (doc c15), pp 246–247)

229. As seen in chapter 4, hūnuku communities were defined as ‘local Māori communities of common interest, other than marae communities, who may or may not be joined by whakapapa and/or live within their own iwi rohe, but otherwise function in a manner similar to marae communities’. See Cabinet paper, ‘Review of Māori Community Development Act 1962: Proposals for Reform’, 27 July 1999 (Crown counsel, TPK document collection (doc c15), p 390)

RECOMMENDATIONS OF THE 1999 REVIEW

The 1999 Review of the Māori Community Development Act relating to Māori Wardens recommended that:

- ▶ Māori Wardens be renamed 'Kaiāwhina', or an alternative name as suggested by wardens;
- ▶ Māori Wardens 'be accountable directly to their communities' and determine their duties and responsibilities together in line with 'their communities' own specific needs and priorities';
- ▶ sections 30, 31, 32, 33, and 35 of the 1962 Act (relating to drunken and disorderly behaviour) be repealed;
- ▶ Māori communities be allocated funds to reimburse wardens for expenses incurred while carrying out their duties; and
- ▶ kaiāwhina be nominated by Māori communities and their nominations actioned by a national structure (the new independent body to be formed in place of the NZMC, to be known as Te Rūnanga Pumanawa Tangata).

support'; 'marae support'; 'kaitiaki of resources'; 'support for reo me tikanga' and 'marae organisational support'.²³⁰

These changes were not implemented following a change of government at the end of 1999. It would not be until the election of a new National-led Government in December 2008 that the Government would contemplate another comprehensive review of the 1962 Act. We will return to the subject of that review – initiated by the 2009 Māori Committee Inquiry into the Māori Community Development Act – in chapter 6.

5.6 MĀORI WARDENS AND THEIR WORK TODAY

In the course of gathering evidence for our Inquiry, many Māori Wardens have shared their own experiences of working as wardens and of what being a Māori Warden or wātene Māori means to them. We highlight that evidence here as a way of exploring the diverse roles performed by Māori Wardens today.

As community volunteers, Māori Wardens are called to respond to whatever the most immediate and pressing needs of their communities may be. For this reason, the types of work that Māori Wardens perform can vary greatly between different areas, and even within a single district. They have also changed significantly over time. Wellington warden Millie Hawiki has been an active member of the wātene

²³⁰. Cabinet paper, 'Review of Māori Community Development Act 1962: Proposals for Reform', 11 August 1999 (Crown counsel, TPK document collection (doc C15), pp 427–428)

movement since 1960. Since then, her roles as a Māori Warden have been ‘many and varied’:

In the 1960s, it involved working with young people in pubs in Wellington. We were expected to know all the people in our communities, so it was easier for us to help them if things got out of hand. At times this involved working in environments with gang members, when I often feared for my safety. Sometimes I was sent to watch over girls who worked in brothels. This was common for Māori women and girls who arrived in Wellington, looking for work without a place to stay. It was one of my main roles to work with these girls and try to ensure their safety.²³¹

In present day Wellington, Millie Hawiki describes her main role as a Māori Warden as to be a visible presence on the streets to discourage crime, supporting young families with domestic issues, and providing assistance at large gatherings. She told us that in her experience, ‘[w]ardens do not have a set list of activities, we just help out where we are needed by our people.’²³²

In Whanganui, Māori Wardens carry out street patrols with a focus on school truants. Billie Mills told us:

Our work involves street patrols in Whanganui township and in the suburbs. We go out in pairs usually between 8am and 4pm. Our focus is on school truants and just any members of the public. Sometimes we’re in uniform, but not always. I used to explain to people that I was a Wātene and what that meant, but my people know I’m a Māori Warden and respect me for that. Some kids avoid me if they see me in uniform, but most are willing to have a chat without worrying that they’re going to get in trouble. We talk about why they aren’t in school and let them know that they should head back. Our community is close and we all know each other so often we help local Pākehā as well as our own whānau.²³³

In the Gisborne region, Māori Wardens are involved with patrolling large events and festivals such as Rhythm and Vines and Matatini, in providing support at tangihanga, addressing the issue of school truancy, assisting in court, and in patrolling the central business district.²³⁴

Diane Black has been a Māori Warden in Tāmaki ki Te Tonga for the past 14 years and is a member of the Manurewa Māori Wardens Association. She told us she was attracted to becoming a Māori Warden because she ‘had admired the work being done in the community by Māori Wardens and their distinctive way of both defusing situations and providing support in the community.’²³⁵ The Manurewa Māori Wardens operate out of the Manurewa marae and are involved in the full range of community services which operate out of that marae:

231. Millie Hawiki, brief of evidence (doc B1), p 3

232. Millie Hawiki, brief of evidence (doc B1), p 4

233. Wilma Mills, brief of evidence (doc B3), para 26

234. Transcript 4.1.1(a), p 93

235. Diane Rachel Black, brief of evidence (doc B5), p 2

Manurewa Māori Wardens operate out of Manurewa Marae which has a health clinic. It has a kura tuarua, it has youth programmes and it has a Youth Court which is held there every fortnight. A part of tangi, hui, whatever. Our Māori Wardens are involved fully in everything that happens there.²³⁶

In Auckland, Ms Black informed us, Māori Wardens are trained to undertake a wide range of community roles:

They learn how to defuse situations, street patrols, public relations, crowd control and some prefer to concentrate on subjects such as budgeting, assisting and supporting beneficiaries with government agencies such as WINZ and CYFS.²³⁷

In West Auckland, Māori Wardens form a presence on public transport, at major events in a range of other community and welfare roles. Mrs Titewhai Harawira, who has had a long-standing involvement with Māori Wardens in the area, told us:

In West Auckland we've got the biggest majority of Māori Wardens, and they work on the trains to make the trains safe for people to travel on, they're called to all the big events in Auckland, and we have some huge events. They're called to all the domestics, the Courts, the schools, the communities . . .²³⁸

The versatility of Māori Wardens and their capacity to respond to the changing needs of their communities has been seen recently in the response of Māori Wardens to natural and human disasters, including the Christchurch earthquakes of 2010 and 2011 and the clean-up following the grounding of the *MV Rena* off the coast of Tauranga.²³⁹ In Christchurch, Māori Warden Melanie Mark-Shadbolt told us, Māori Wardens are still assisting their communities to cope with the after-effects of the Christchurch earthquakes:

Our Māori, our wātene, are patrolling regularly at the moment and they're patrolling red zoned areas. They are patrolling areas where there are very very vulnerable Māori communities and they're doing so on a budget of zero dollars.²⁴⁰

This varied range of roles that Māori Wardens may carry out in their communities also means that there is a place for people of a range of different ages and abilities in the Māori Warden movement. Age or limited mobility is not a barrier to becoming a Māori Warden. There is no one correct model of who can make a good Māori Warden, and persons of any age or ability can have valuable skills or experience to offer. Paiharehare Whitehead has been a Māori Warden since 1978,

236. Transcript 4.1.1(a), p 171

237. Diane Black, brief of evidence (doc B5), p 14

238. Transcript 4.1.1(a), p 149

239. Ngaire Schmidt, brief of evidence (doc B16), p 2

240. Transcript 4.1.1(a), p 187

and today remains active as a mentor and coordinator for Māori Wardens in the Tolaga Bay area:

I'm still here today, my family themselves say look mum, you can't be a warden look at you, your wheels have dropped off and I said my mouth is still working and that's how I learned to be a warden through my mouth. We spoke, we talked and sometimes of course if they were our mokopunas, well everybody up the coast is my mokopuna, if they're not my nephew or niece or if they're not my cousin, you give them a crack in the ears, well it broke them but today it doesn't.²⁴¹

Lady Emily Latimer, who has had a long involvement with Māori Wardens through her role as secretary of Te Tai Tokerau DMC and through her marriage to Sir Graham, a long-standing warden, told us:

The Wardens of the North come in all age brackets and in all levels of health. We do not exclude those unfit to walk the streets when they can give wise advice on the marae. . . . It also fits with our tradition of respecting elders that they continue to have a role in our communities. There is no thought of retirement in our traditions, only of an ongoing contribution. . . . I wish to emphasise that Wardens should not be recruited for just one type of task, like street patrols, but rather we should warrant people for the particular skills which they have and which may add to the task of community rebuilding. We should recognise that Wardens come in several different shapes, as event managers and traffic controllers though to those assisting disabled children, managing truants or keeping an eye out for kids simply roaming after school.²⁴²

We were struck by how many Māori Wardens spoke to us of coming from whānau of wātene. In these families, the Māori Wardens' kaupapa of Aroha ki te Tāngata has been handed down through the generations. Billie Mills has been a Māori Warden for the past 20 years, first in the Ruapehu district and then in Whanganui. Ms Mills told us how she grew up in a family immersed in the kaupapa of the Māori Wardens:

My koro was one of the 13 that were actually first inducted to be a Warden . . . Since then [on] my father's side, I have had two uncles, they were really involved in being Wardens . . . since then we have also had my own cousins and nephews and quite a few of my own family go through . . .²⁴³

Ms Mills explained to us how she had first been introduced to the wātene movement by her koro, Samuel Paeumu Arahanga, 'an original founding Māori Warden'. Growing up, Ms Mills was 'exposed to a whānau committed to Wātene principles'. She heard the stories about wardens' values and duties during the time her koro was a warden, and received her training by going out on wardens' duties with her

241. Transcript 4.1.1(a), p 317

242. Lady Emily Latimer, brief of evidence (doc B27), paras 28–29

243. Transcript 4.1.1(a), p 131

father, who was also a Māori Warden: ‘My father trained me by taking me out with him. If we were dealing with young people then my father would send me over to talk to them.’²⁴⁴

Like Ms Mills, Sandy Turei also grew up in a whānau of wātene. Ms Turei grew up in a family of 18 children. Her father, the late Abraham Turei, became a Māori Warden in Papakura during the 1950s and was still an active warden on his death at age 82. After her father died, Ms Turei decided to follow in his footsteps by becoming a Māori Warden herself: ‘looking at my dad lying in state in his Māori Warden uniform I thought, what a waste, so I decided to carry on his work.’²⁴⁵ Eventually Ms Turei was able to receive a badge with her father’s original warden number on it, 503:

I was looking for my warrant when I came down because my mokopuna always get my warrant and they hang it up in their bedrooms and I thought it was in my pocket but when I reached in my pocket it was a photo of my dad. So he walks with me whenever I’m out there. Kia ora.²⁴⁶

Beyond having immediate whānau members who were Māori Wardens, a number of wardens spoke to us of the wisdom and knowledge handed down from their tūpuna. As Auckland Māori Warden Richard Noble explained: ‘The evolution of the Māori Warden to who we are today stems from a lot of training that we pick up along the way from our tūpuna, from those who have experienced careers and decided to join up with the Māori Wardens.’²⁴⁷ This underscores that, for many Māori Wardens, being a warden is not simply unpaid work or something that they do in their spare time, but a part of who they are. As Māori Warden Anne Kendall told us:

As a Māori Warden I was taught you don’t start at 8 and wear black and white. If you’re at your job and something happens you must have your badge and your warrant. You are still a warden. And you must operate as one. So the black and white, it is beautiful and it’s great to see the uniformity, but that doesn’t make us. What makes us is what Titewhai referred to this morning about our kaumatua and kuia.²⁴⁸

The Māori Wardens’ kaupapa of Aroha ki te Tāngata (compassion and care for the people) remains central to the work of Māori Wardens today, reflecting the Māori values of ‘aroha (compassion), manaakitanga (caring and sharing) and

244. Wilma Mills, brief of evidence (doc B3), para 10

245. Transcript 4.1.1(a), p177

246. Transcript 4.1.1(a), p178

247. Transcript 4.1.1(a), p176

248. Transcript 4.1.1(a), p175

whanaungatanga (relationships).²⁴⁹ Diane Black spoke to us of her experiences working as a Māori Warden in Manurewa:

Now we have a high percentage of unemployed or beneficiaries in the Manurewa area and I can only speak for that Manurewa area. We have prostitution, we have drunks, we have too many nightclubs and liquor outlets. But at the end of the day, and I can say this in all good conscience, we love our people there and we will do whatever we can to defend them. But of course, we'll give them a growling as well. If we think they're naughty we'll growl at them. But we have the utmost respect from that community for our Māori Wardens. And we walk the streets until 3 o'clock in the morning. We take our vans around. We go around the side alleys and what have you and see what's happening. And we have respect not just from our people but from the Pacific Island people because the kaupapa of Māori Wardens as you've already been told is aroha ki te tangata and that's what we operate on.²⁵⁰

As we have seen in this chapter, Māori Wardens have continued to exist in the midst of major social transitions. As the Māori population shifted to the cities from the 1950s and 1960s, Māori Wardens adapted their voluntary roles to the new and complex problems of adjustment to city life. Wardens have survived years of government indifference or even resistance to their activities. For much of this period, they have continued their voluntary work on next to no resources. Rotorua Māori Warden Clare Matthews believes that it is the wardens' adherence to their kaupapa that has kept them going in times of adversity:

the Warden system survived by adherence to the kaupapa under which the Warden system was founded. For Māori Wardens there is no uncertainty in their minds surrounding compassion and service to one's people.²⁵¹

While the roles that Māori Wardens perform in their communities, and the contexts in which they operate, have changed dramatically over the fifty years surveyed in this chapter, the wardens' kaupapa has remained a constant. Interviewed in 1961, Whāngārei warden Mrs R Randall described the role of Māori Wardens as to 'do their utmost to prevent the Māoris – particularly the young folk – from getting into any kind of trouble'.²⁵² Her words still ring true today. In the end, it will be this Māori kaupapa of Aroha ki te Tāngata – not any policy or programme introduced by government – that will sustain the Māori Warden movement into the future.

249. Te Puni Kōkiri, Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010 (Crown counsel, TPK document collection (doc C15), p 843). The evaluators' report was originally filed as document A8 on the Tribunal's record of inquiry, however we are referencing document C15, which is more legible.

250. Transcript 4.1.1(a), p 172

251. Clare Matthews, brief of evidence (doc B29), p 3

252. 'The Work of the Māori Wardens', *Te Kaunihera Māori: New Zealand Māori Council Journal*, vol 1, no 2 (October 1966), pp 39, 41 (first Waitangi Tribunal document bank, vol 1 (doc B26(a)), pp 288–289)

5.7 CONCLUSIONS

Māori Wardens today are the inheritors of a tradition that stretches back over a century and a half of New Zealand history, back to the wātene of the Kingitanga Rūnanga, the pirihi mana of the Ringatū faith, the marae constables of the 1900 Māori Councils, and the katipa of the Rātana Church. The most recent manifestation of the Māori Warden tradition dates back to the passage of the Māori Social and Economic Advancement Act 1945, when the wardens gained their first statutory recognition in New Zealand law. The current duties and responsibilities of Māori Wardens under the Māori Community Development Act 1962 are essentially unchanged from what they were under the 1945 Act. The 1962 Act's emphasis on powers in respect of drunken and disorderly behaviour does not encompass the varied roles that Māori Wardens perform in their communities today, which – as explicit in the Act – are assigned to them by their communities (in statutory terms, as represented by their DMCS).

From early in their history, Māori Wardens have gathered together to form their own associations for mutual assistance and support. As we have seen in this chapter, the formation of some of these local and district Māori Wardens' associations occurred at the same time as the movement to establish Māori community self-government at the district and national levels, through District Māori Councils and a Dominion (or New Zealand) Māori Council. As voluntary Māori organisations, the wardens' associations have been a feature of the 'Māori representational landscape', as it pertains to Māori Wardens, for the past fifty years, and will continue to be so into the foreseeable future.

Since 1962, Māori Wardens have come within the ambit of the NZMC system, first under the Māori Committees and then, from 1969, under the DMCS. As we have seen in this chapter, in areas where this network of Māori Committees and DMCS has operated effectively, it has provided a robust system in which Māori Wardens are selected by and remain accountable back to their communities. As we have heard from many Māori Wardens, this community accountability is essential to ensuring that the kaupapa and the mana of Māori Wardens is upheld. It is undeniable, however, that this system has operated more effectively in some areas of the country than it has in others. The minimal resources upon which the Māori Committees and DMCS have been forced to operate for much of their existence must be held at least partially responsible for past dysfunction.

In many areas, local and district associations of Māori Wardens have, in the absence of an effective DMC structure, assumed significant operational responsibilities for Māori Wardens. These organisations now represent a significant proportion of Māori Wardens. Their existence has been crucial to the ability of the Māori Wardens to continue to operate in areas where the NZMC system has not functioned well. Many of these associations have now been in existence for decades.

It has only really been for the past decade, however, that the relationship between the two main national organisations with the greatest involvement with Māori Wardens – the NZMC and the NZMWA – has been characterised by division more

often than cooperation. But there is nothing inevitable about this situation. As we have seen throughout this chapter, the history of Māori Wardens show that there have been many instances of these two groups working together – at both the district and the national level – to their mutual benefit and that of the wider Māori Warden movement. For instance, we have seen that the NZMWA was originally formed under the auspices of the NZMC, and that in districts such as Te Tai Tokerau, the two bodies have worked together constructively for many decades. A reconciliation between these two groups seems to us to be one essential ingredient of successful reform. Sir Edward Taihakurei Durie acknowledged on behalf of the NZMC: ‘It seems the first discussion which needs to be had is between the New Zealand Māori Council and the Māori Wardens to ensure that we are working in sympathy with one another.’²⁵³

Finally, in bringing this chapter to a close, we wish to comment on the successive government efforts to review the Māori Wardens. Many of the Māori Wardens who have presented evidence to us have been involved in the movement for many decades, if not their entire lives. Those wardens have now experienced a number of reviews since the 1980s. They have good reason to be frustrated at the rounds of consultation that have occurred with little benefit to the Māori Wardens. In our view, whatever form any future review of the Māori Wardens’ governance takes, it must be Māori-led and generate sufficient support and momentum within Māoridom to ensure that the proposals that Māori do develop for the wardens are not simply shelved.

253. Sir Edward Taihakurei Durie, brief of evidence (doc B24), p 3

CHAPTER 6

**KA TŌ TE RĀ, KA WHITI MAI TE HAEATA /
THE SUN SETS AND A NEW DAWN
SHINES FORTH**

The Review and Reform of the Māori Community Development Act 1962

6.1 INTRODUCTION

6.1.1 Reviewing the 1962 Act

In 2009, the Minister of Māori Affairs initiated a review and reform process for the Māori Community Development Act 1962. In the short-term, this review arose because of the establishment of the Māori Wardens Project in 2007, although dissatisfaction with the Act has been evident since at least the time of the previous review in the late 1990s. When the Māori Wardens Project was established, several District Māori Councils were not functioning and it seemed that a new structure was needed to manage funds and training for wardens. The Crown set up an advisory group to address the problem, but the group could not agree as to how Māori wardens should be governed and managed in the future. The claimants attribute this failure to a TPK agenda for a new governance entity, separate from the council system. Because the advisory group did not reach agreement, the Minister asked the Māori Affairs Select Committee to hold an inquiry into the Act, which it duly did in 2009–10. TPK was the committee's departmental adviser. The claimants allege that the committee's inquiry, too, was influenced by a TPK agenda to sever Māori Wardens from the council system.

The select committee reported to Parliament in December 2010, recommending changes to the Act but – above all – extensive consultation with Māori first to determine what should be done. The Government accepted this recommendation in March 2011. The proposed consultation was finally carried out in September 2013, after initial delays in 2011 and a failure to reach agreement with the NZMC in 2012–13. The NZMC was in the process of re-establishing district councils and reforming itself. It wanted the Crown to wait for the reforms to be 'bedded in' before the review could proceed. The council also wanted a Māori-led review to decide what

should happen to the Māori self-government institutions in the Act, led specifically by the NZMC itself.

The Crown, on the other hand, decided to proceed with a TPK-led consultation process to inform its decisions. The Minister decided that the review was too urgent to delay, and that the NZMC had a conflict of interest and so could not lead the review in any case. Further, the Crown's view was that the representational landscape had changed significantly since 1962, and that the Crown had to balance multiple rangatiratanga interests. It decided to do so by putting options before Māori communities at a series of consultation hui. In deciding to proceed this way, we were told, the Crown took into account the Treaty partnership, its kāwanatanga duties, and the principle of options.

In the claimants' view, the Crown's decision in 2013 to progress the review and embark on consultation was a breach of Treaty principles and the UNDRIP. Māori institutions, they said, must be reviewed by Māori. Any reforms must be agreed among Māori and then brought to the Crown for legislative action. During the course of our hearing in March 2014, the Crown accepted this fundamental proposition but nonetheless denied that its previous actions were in breach of the Treaty. This key dispute between the parties is the subject of this chapter.

We also address the Crown's proposals for how a Māori-led review should proceed from now on, and the claimants' view that the Crown's proposals are inconsistent with Treaty principles and the UNDRIP.

6.1.2 The structure of this chapter

We begin by setting out the parties' arguments in section 6.2. We then assess the Crown's attempt to progress matters through the Māori Wardens Advisory Group, and make findings as to whether or not the advisory group process was Treaty-compliant (section 6.3). In section 6.4, we analyse the select committee process and make our findings as to TPK's role in the inquiry. We then move on to the key matters in dispute between the parties.

In section 6.5, we discuss the Crown's standard consult-and-decide process, and why it was applied to the review of the Māori Community Development Act. In particular, we examine the Crown's 'pre-consultation' with the NZMC in 2012–13, and the debate at that time between TPK and the council as to who should lead the review. Then, in section 6.6, we examine the Crown's reasons for deciding in 2013 to proceed with a TPK-led review, and the claimants' evidence and submissions about that decision. We also set out the Crown's change of mind in 2014. In particular, we examine the Chief Executive's evidence that it is appropriate in this case for Māori to review and decide for themselves what changes should be made to their own institutions. This admission raised an important question for the Tribunal to consider in this chapter: if the correct approach is for Māori to decide reforms and then agree them with the Crown, why does the Crown maintain that its previous approach – the Crown consults and decides – was nonetheless consistent with Treaty principles?

In section 6.7, we assess the matters discussed in the preceding sections against Treaty principles, as informed by the UNDRIP, and make our findings. In particular, we address the following questions:

- ▶ Was the Crown acting in accordance with the principles of the Treaty of Waitangi when it decided that the NZMC had a conflict of interest, such that the Crown was a more ‘independent’ body to lead the review and reform of the Act?
- ▶ Was the Crown acting in accordance with the principles of the Treaty of Waitangi when it decided that circumstances required the review to proceed without waiting for the NZMC’s internal reforms to be completed?
- ▶ Was the Crown’s argument correct that a standard, Crown-led review and consultation process was consistent with Treaty principles, even though it has now accepted that a Māori-led consultation followed by negotiation is appropriate?
- ▶ What was the significance of the changed representational landscape?
- ▶ How was the Treaty principle of options to be applied?
- ▶ Was the Crown’s argument correct that UNDRIP does not require Māori-led consultation followed by negotiation in this or other cases?

Having made our findings on these issues, we proceed in section 6.8 to examine the Chief Executive’s proposed way forward: that two reference groups should be established to consult Māori stakeholders and develop proposals for discussion and agreement with the Crown (if funding or legislative changes are sought). One reference group would be composed of NZMC representatives. The other would be a group of Māori Wardens nominated by stakeholders and appointed by the Crown.

In section 6.8, we highlight the areas of agreement between the parties, which are significant. The Crown now accepts that the Māori institutions in the 1962 Act must be reformed by Māori, and that the NZMC should take a lead role in reviewing the Act and proposing reforms. The claimants accept that the Crown has an ‘audit’ role at the end of the review, including assessment of whether the proposals have adequate support among Māori.

But there are significant points of disagreement as well. The claimants do not accept that the Crown should propose how Māori are to review their own institutions. Nor do the claimants agree that Māori Wardens should co-lead the review with the council as one of two reference groups. In section 6.8.6, we make our findings on these points of disagreement, and as to whether the Crown’s proposed way forward is Treaty-compliant.

We begin now by setting out the parties’ arguments that we must consider in this chapter.

6.2 THE PARTIES’ ARGUMENTS

6.2.1 The Crown’s case

We begin our summary of the parties’ arguments with the Crown’s case because it was the first party to make its closing submissions.¹ The Crown’s position in this

1. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3)

inquiry has evolved significantly since the urgency application proceedings in December 2013. At that time, the Crown's argument was that the review and reform of the Māori Community Development Act 1962 must be conducted by the Crown, which would consult the many Māori interests involved in the Act, and decide what changes (if any) were required to the Act after considering and balancing those interests. Now, however, the Crown accepts that the institutions accorded statutory status and powers under the Act are Māori institutions, and that Māori should lead the process for their reform. The Crown proposes that the Māori Treaty partner will conduct a review, develop proposals for change (if needed), then negotiate a new funding and legislative arrangement with the Crown Treaty partner (again, if needed). In the Crown's view, its new position is a complete and satisfactory answer to the claim.

According to Crown counsel, the claimants' broad position is: a Crown-led and controlled process for reform of the Māori institutions provided for in the 1962 Act is inconsistent with the Treaty and UNDRIP – the NZMC should design and lead the process. The Crown urges the Tribunal to take a 'forward-looking and solutions-focused approach' to this issue.² Relying on the evidence of Te Puni Kōkiri's Chief Executive, Ms Michelle Hippolite, the Crown's position is:

- ▶ The NZMC and Māori Wardens are Māori institutions, not Crown institutions;
- ▶ Māori should be 'free to consider for themselves and develop reforms to their own institutions';
- ▶ The Crown has an interest in the review and reform of those institutions 'to the extent that they are provided for in public legislation, the powers conferred by the Act are under the general direction and control of the Minister, and public funds are appropriated for those institutions';
- ▶ Both Māori and the Crown 'therefore have an appropriate role in the review of the Act' – Māori in reviewing and reforming their own institutions, and the Crown in 'agreeing to and promoting legislative reform and in funding';
- ▶ Both of these roles can be provided for 'within the spirit of the Treaty partnership, with Māori considering and then proposing reform of their institutions, and then coming to the Crown to discuss and negotiate the desired reform where legislative change is required and/or funding is sought'.³

In the Crown's view, 'Māori' in this equation means 'that "Māori" in the broadest sense should be involved in designing and proposing reform to Māori institutions within the Act', because there are a 'wide set of interests at play when it comes to the Māori Association[s] and Wardens'. According to the Crown, there has been a major change in 'the landscape of Māori representation' since the Act was passed back in 1962, especially with the 'resurgence of iwi representative structures acting on behalf of tribal constituents'. Iwi have made it very clear that they speak for themselves on all issues, including those of national scope. As a result, the Crown has proposed 'for further discussion' that there be two reference groups, which would engage with their constituencies and other stakeholders and then

2. Crown counsel, closing submissions (paper 3.3.3), p 6

3. Crown counsel, closing submissions (paper 3.3.3), p 7

put forward proposals for reform – and that the Crown would also inform itself by direct consultation with stakeholders if necessary.⁴ The Crown would then negotiate ‘in good faith as Treaty partner with the reference groups in relation to any proposals that require legislative change or for which public funding is sought.’⁵

We need not concern ourselves with the details of the Crown’s proposed way forward here. In brief, the Crown’s view is that – because it will be responsible for funding the Māori-led review process and for any legislative outcomes from that process – it is appropriate for it to put forward a proposal for discussion as to how such a Māori-led review might operate. Also, the Crown’s view continues to be that the NZMC ought not to lead the review (on its own). This is an important point for this section of our chapter, because the arguments apply to the Crown’s position in 2012–13 as well as to its ‘forward-looking’ proposal. The Crown acknowledges that the NZMC is central to discussions on the future of Māori Wardens, but ‘says that Māori wardens themselves and Māori Communities generally also have a central role.’⁶ The Act does not subordinate wardens to the NZMC in any way which affects how wardens should be involved in deciding their future, and – quite separately from how the Act is to be interpreted – Crown counsel submits that ‘it cannot be unreasonable to expect that Māori Wardens should have a central role in the review of the legislative provisions that govern their organisation and operation.’⁷

Thus, the Crown considers that its new proposal for a Māori-led review and reform process is compliant with Treaty principles because:

- ▶ ‘It seeks to balance the Crown’s kāwanatanga interests (through ensuring full participation, fiscal responsibility, and appropriate legislative provision) with the rangatiratanga interests of iwi, Māori, the New Zealand Māori Council and the Wardens (by recognising that Māori and Māori groups should be free to consider and develop reforms to their own institutions).’
- ▶ ‘It seeks to actively protect the interests of Māori communities by creating an environment where the relevant Māori groups, and Māori Communities generally have an opportunity to contribute to the reforms of Māori institutions.’⁸

Inevitably, this raises the question of whether the Crown’s previous TRK-led process was also compliant with Treaty principles. That is the main question which we need to consider in this part of our chapter.

Crown counsel submits that our inquiry should focus on the forward-looking proposals for reform and therefore ‘considers that little time need be spent on examining the review process to date’. Nonetheless, the Crown argues that ‘its process in relation to the review from 2009 to 2013 was consistent with Treaty principles.’⁹

The Crown makes this argument on the basis that the process is still not actually finished, and that the Crown’s evidence (especially that of Ms Hippolite) shows ‘what the Crown has learned through the consultation to date and these proceedings, and

4. Crown counsel, closing submissions (paper 3.3.3), pp 7–8

5. Crown counsel, closing submissions (paper 3.3.3), p 4

6. Crown counsel, closing submissions (paper 3.3.3), pp 8–9

7. Crown counsel, closing submissions (paper 3.3.3), p 9

8. Crown counsel, closing submissions (paper 3.3.3), p 9

9. Crown counsel, closing submissions (paper 3.3.3), p 10

provides proposals for a process moving ahead'. Thus, it would be premature for the Tribunal to condemn an unfinished process, which the Crown has learned it must change. Also, Ms Hippolite confirmed in her evidence that there is no intention of proceeding until the Tribunal has reported on the claim, and her proposal for the 'continuation of this review' has been discussed in good faith with the NZMC.¹⁰

So, the Crown says that the review of the 1962 Act is still at a particular stage which began back in 2009 with the Māori Affairs Committee inquiry. As a result of that inquiry, the Crown commenced consultation (as yet, it is emphasised, unfinished). In Crown counsel's submission, key points from the evidence about the first round of consultation for us to consider are:

- ▶ TPK regional offices advised as to the timing and location of the consultation hui – they are very experienced in the logistics of consultation and provided sound advice;
- ▶ The purpose of the consultation was to seek input from Māori communities as to what Māori wanted – the Government had no view of its own, and its consultation documents provided options solely as a means to stimulate discussion; and
- ▶ Following the written and oral feedback from the consultation hui, Cabinet decided to 'remove from the review the potential for changes to the Act relating to the New Zealand Māori Council'. That is what Māori wanted. Further engagement would, however, take place with 'key stakeholders to develop final proposals in relation to the governance, administration, functions, powers and warranting of Māori Wardens'. As stated at the 2013 urgency application hearing, the Crown had not pre-determined what form that further engagement should take (and will now discuss its new proposal with the claimants).¹¹

In sum, the Crown submits that its 2009–13 review process 'did not breach the principle of rangatiratanga' because:

- ▶ Given the 'existence of multiple parties with rangatiratanga interests in the matters being reviewed, the Crown has a responsibility to ensure that [all] those interests are considered and taken into account'.¹²
- ▶ The Crown has a legitimate kāwanatanga role to play because 'the structures being reviewed are provided for in government legislation, therefore the Ministers and departments responsible for administering that legislation must be involved in the engagement at some point in the process'.
- ▶ The 'review process was not an adversarial process with the Crown on one side and Māori on the other. The Crown simply wanted to ensure that its Treaty obligations were met throughout the review process and that the end result of the review (if any legislative reform was sought) was robust and would comply with any requirements in terms of drafting and provision of future funding'.¹³

10. Crown counsel, closing submissions (paper 3.3.3), pp 11, 12

11. Crown counsel, closing submissions (paper 3.3.3), pp 11–12

12. Crown counsel, closing submissions (paper 3.3.3), pp 12–13

13. Crown counsel, closing submissions (paper 3.3.3), p 13

Thus, the Crown now accepts that the review and reform process should be Māori-led, and should result in a negotiated agreement (rather than a Crown decision), but it does not accept that its previous review and reform process was in breach of Treaty principles.

6.2.2 The claimants' case

The claimants responded to the Crown's closing submissions on 28 May 2014.¹⁴ In their view, the Crown has implemented a 'seamless strategy' since 2007 to undermine the NZMC and District Māori Councils, and to sever the wardens from the council structure and community control, including a Crown-led review and reform process for the 1962 Act.

The claimants accept that part of the context for this alleged strategy was the NZMC's decline in the 1990s with the shift of support to the National Māori Congress and, later, the shift of interest from national policy to iwi development through the Treaty Settlement process. The NZMC, we were told, has been working through the resulting reform issues.¹⁵ The NZMC decline saw 'the collapse of some committees and the disturbing trend of some District chairs to hold onto office without conducting the elections required every three years in the manner set out in the 1962 Act'. But the NZMC has now reformed itself – although some districts are still inactive, the claimants anticipate that elections in at least some of those districts will occur in 2015.¹⁶ In post-hearing evidence, Ms Waterreus added that there is 'some evidence of interest in forming Committees and DMCS in all of the inactive Districts', and that the NZMC 'hopes to run successful elections in all Districts in the 2015 triennial elections'.¹⁷

In the meantime, however, the Crown had introduced the Māori Wardens Project, which included the aim of developing a new national governance body to manage wardens. Thus, quoting the MWP charter, an Advisory Group was established to 'consider, provide advice and make recommendations on a *new structure* for the management and governance for Māori Wardens' (emphasis in original).¹⁸ In the claimants' view, TPK eventually came to favour the NZMWA as the new body: 'In time the New Zealand Māori Wardens Association (NZMWA) emerged as the "new structure" proposed by TPK for management and governance, although not with the approval of the NZMC'.¹⁹

Thus, the claimants argue that the Crown very clearly intended to establish a new structure at the point of the formal commencement of the MWP in 2007. This needs to be borne in mind, the claimants say, given the Crown's evidence that 'in subsequent consultations on reform of the 1962 Act the Crown had "a completely open

14. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5)

15. Claimant counsel, closing submissions (paper 3.3.5), p 16

16. Claimant counsel, closing submissions (paper 3.3.5), p 17

17. Karen Waterreus, brief of evidence, 17 October 2014 (doc C22), p 3

18. Claimant counsel, closing submissions (paper 3.3.5), p 17

19. Claimant counsel, closing submissions (paper 3.3.5), p 17

6.2.2 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

mind” and had “not predetermined the outcome of the review or whether or not there will be any change to the legislation at all”²⁰.

In reality, the claimants believe that there has been a ‘seamless strategy’ at work throughout the project and the consultation process:

It is submitted that the evidence before the Tribunal supports an inference being drawn of a seamless strategy on the part of the Crown to sever the Wardens from the NZMC and that the option to strengthen the NZMC/DMCs and the Wardens as part of a self-governing system was not seriously considered.²¹

In the claimants’ submission, the following points are evidence of the ‘seamless Crown strategy’:

1. The Advisory Group was dissolved when the NZMC representatives did not support the establishment of a new structure or the severance of the wardens from the council system, or – alternatively – when the Advisory Group could not agree on recommending an alternative to the NZMC.
2. After the failure of the Advisory Group to do what TPK wanted and recommend a new structure, the matter was referred to the Māori Affairs Select Committee in the context of a review of the 1962 Act as a whole. TPK was the committee’s key adviser, and its report essentially reflected TPK’s advice and information.
3. Crown funding to the NZMWA has led that body to ‘increasingly agitate for changes to the 1962 Act in a quest to secure control of the Wardens, with the Crown’s support. That support continues. The evidence before the Tribunal is that the NZMWA has closely aligned itself with the Crown, and hence supports the Crown’s view that the 1962 Act should be changed.’²²

As part of the ‘seamless strategy’, the claimants also believe that the Crown is deliberately setting them up to fail, thus creating a justification for its desire to change the Act. The NZMC and District Māori Councils, they say, are being unfairly blamed by wardens for the Crown’s delays in warranting. The perception has arisen from this, and by how the Crown operates the Māori Wardens Project, that the Crown is:

setting the NZMC and DMCs up for a failure and, thereby, creating a problem that can be pointed to as a reason for changing the 1962 Act. This is problematic in terms of the Treaty, and also more generally: ‘It is a principle of law that no one can . . . take advantage of the existence of a state of things which he himself produced.’²³

Nonetheless, the claimants accept that the select committee rightly identified a need to review the 1962 Act and the current arrangements for Māori Wardens. In the claimants’ view, these matters have become problematic partly because of

20. Claimant counsel, closing submissions (paper 3.3.5), p 17

21. Claimant counsel, closing submissions (paper 3.3.5), pp 17–18

22. Claimant counsel, closing submissions (paper 3.3.5), p 41

23. Claimant counsel, closing submissions (paper 3.3.5), p 41

Crown actions, but also because of the NZMC's decline and the collapse of some committees and district councils. Thus:

The NZMC accepted that it was appropriate to look at whether the 1962 Act remains fit for purpose in the structure it provides for rangatiratanga/self-government, however it did not agree with the process that the Crown developed to determine that. The NZMC considers that it is the right of Māori to lead such a review . . . The difference of opinion has given rise to the present contemporary Inquiry.²⁴

In making that submission, the claimants have indeed identified the nub of our inquiry. They seek a finding that:

the Crown led and controlled process to reform the institutions in the 1962 Act, including the institution of the Wardens, has been inconsistent with the principles of the Treaty and UNDRIP. The Claimants seek recommendations that any reform should be NZMC led and negotiated with the government.²⁵

In addition to this primary question, the claimants seek findings on two 'subsidiary' issues: (a) whether the 'consultation process for reform developed by the Crown and applied by it to date, was compliant with the Treaty', and (b) 'whether sufficient consideration has been given to the NZMC's own proposals for the Wardens and the constitutional implications of the Wardens' claim to independence'.²⁶

The claimants reject the Crown's submission that the Tribunal should focus on its new proposal for forward progress rather than the review process to date. According to the claimants, this part of their claim should be approached the other way around:

- ▶ First, the consultation/reform process should be assessed for Treaty compliance. The claimants say that the Crown's 'immediately past actions' are important in understanding what TPK is likely to do in the future, especially if the Crown 'retains the discretion itself to ultimately decide what reform of the 1962 Act should look like, as the Crown continues to propose'.²⁷ Also, the Crown continues to insist that its previous process was Treaty compliant. The Tribunal must, in the claimants' view, make findings to ensure that 'relevant Treaty principles and UNDRIP rights appropriately inform future consultation processes – particularly in relation to the 1962 Act'.²⁸
- ▶ Secondly, having made findings on the consultation/reform process to date, the claimants say that the Tribunal should 'address and provide forward-looking guidance on managing a Treaty compliant process for any future reform of the 1962 Act'.²⁹

24. Claimant counsel, closing submissions (paper 3.3.5), p 20

25. Claimant counsel, closing submissions (paper 3.3.5), p 55

26. Claimant counsel, closing submissions (paper 3.3.5), p 55

27. Claimant counsel, closing submissions (paper 3.3.5), pp 55–56

28. Claimant counsel, closing submissions (paper 3.3.5), p 56

29. Claimant counsel, closing submissions (paper 3.3.5), p 56

In respect of the review process from 2009 to 2013, the claimants disagree with the Crown's submission that the process was Treaty-compliant. As noted above, the claimants' primary allegation of Treaty breach is the Crown's refusal 'to allow Māori themselves to reform the 1962 Act':

The Crown's refusal to let Māori themselves develop the particular structure(s) they want to self-govern by at a local, regional and national level, and indeed the failure of the Crown during its consultation process to identify that rangatiratanga/self-determination rights are implicated, breached the principle of the right to govern in exchange for protection of rangatiratanga, the partnership principle, and Arts 4, 5, 18, 19, 20(1) and 33(2) of UNDRIP.³⁰

In addition, the claimants allege that the Crown committed the following particular Treaty and UNDRIP breaches during the 2013 consultation process:

1. Inadequate time was provided for written submissions, 'despite the absence of any reasonable need to expedite the consultation process.' In the claimants' view, this breached both UNDRIP and the Treaty principles of partnership and informed decision-making. The consultation process seems to have been designed for 'bureaucratic efficiency' instead of 'truly allowing the people and leadership to develop and agree upon a vision for Māori self-determination,' which was, the claimants accept, the Crown's purported aim.
2. The claimants submit that the Crown failed to give affected Māori a reasonable opportunity for *kanohi ki te kanohi* (face-to-face) discussion of 'proposed changes to legislation that uniquely and specially affects them.' Hui were held on weekdays and during work hours, there was only two hours for discussions, and some hui were held at inadvisable locations (given where most Māori in the particular districts live). These flaws in the consultation process are alleged to have breached the 'rangatiratanga and informed decision-making principles' and UNDRIP.³¹ Crown witness Kim Ngārimu conceded that the hui did not generate the detailed discussion that the Crown had hoped for – which the claimants say was an avoidable outcome had the process been better and more inclusive (and Treaty compliant).³²
3. The problem of inadequate opportunities for input (both written and face-to-face discussions at consultation hui) was, in the claimant's view, compounded by unfair, inaccurate, or misleading information disseminated by the Crown in the consultation process. This action of the Crown breached the 'partnership and utmost good faith principles'. 'It was also inconsistent with administrative law requirements (which should inform those Treaty principles), and in particular the obligation upon the government to publish only accurate and adequate information.'³³

30. Claimant counsel, closing submissions (paper 3.3.5), pp 56–57

31. Claimant counsel, closing submissions (paper 3.3.5), p 57

32. Claimant counsel, closing submissions (paper 3.3.5), pp 58–59

33. Claimant counsel, closing submissions (paper 3.3.5), p 59

4. The Crown proceeded with its consultation and review over the opposition of the reformed NZMC (elected in June 2012). In the claimants' submission, this meant that the NZMC had no opportunity to prepare its own proposals or to seek a mandate for those proposals from the Māori community. The NZMC has a broad vision of the future role of Māori Wardens. It also has a number of concerns about such issues as the constitutional implications of an independent wardens' body. The Crown's decision to proceed with consultation in the manner it did, including its unilateral and rushed timeframes, has prevented the NZMC from airing its views 'in a Māori-centric manner, and precipitated the need for the present Inquiry', thus breaching the principles of partnership, good faith, and informed decision-making, and articles 4, 5, 18, and 20(1) of UNDRIP.
5. The Minister of Māori Affairs failed to attend the hui in person to represent the Crown and consult Māori *kanohi ki te kanohi* on such a unique and important matter, thus breaching the principle of partnership.³⁴
6. The Crown failed to allow the NZMC to co-chair the consultation hui. In the claimants' view, this breached the *rangatiratanga* principle, which requires the Crown to 'facilitate cooperative governance', and it also prevented the presentation of a more balanced view to the hui. Further, it breached articles 18 and 19 of UNDRIP, and signalled to hui attendees that the Crown does not value the institutions and structures 'Māori developed for themselves under the 1962 Act'.³⁵

6.3 THE MĀORI WARDENS ADVISORY GROUP

6.3.1 Introduction

According to the evidence of Kim Ngārimu, the 'current chapter' of the review of the 1962 Act began in 2009 with the Māori Affairs Committee's inquiry. But Ms Ngārimu acknowledged that there had been a 'previous chapter' of the review, which was the 'work of the Advisory Group on Māori wardens'.³⁶

As will be recalled from chapter 4, there was an even earlier chapter (or prologue): TPK had conducted a very extensive consultation with Māori back in 1998–99. Cabinet approved significant changes to the Act as a result in August 1999, including revamped functions for the NZMC and direct Māori community control and appointment of wardens, but the National-led Government lost office before legislation could be passed. Then, in the words of a TPK official, the 'reform of the MCDA did not progress further as it was not included in the legislative priorities of the new Labour Government'.³⁷

34. Claimant counsel, closing submissions (paper 3.3.5), pp 62–63

35. Claimant counsel, closing submissions (paper 3.3.5), p 63

36. Transcript 4.1.1(a), p 320

37. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 9)

CABINET'S APPROVED REFORMS TO THE NZMC STRUCTURE, 1999

As we discussed in chapter 4, Cabinet approved a proposal on 9 August 1999 from the Hon Tau Henare, Minister of Māori Affairs, to reform the NZMC as part of reforms to the Māori Community Development Act 1962. The council would retain its title and functions 'similar' to those already provided for in section 18 of the Act, and would have a secretariat with policy, financial, and research staff. The NZMC would be free to develop its own constitution and rules. Māori committees, executives, and District Māori Councils would be abolished. Instead, each marae and 'marae equivalent' community could send a delegate to 16 regional forums (the 16 Māori Council districts). Each regional forum would send three delegates to the NZMC. Marae or 'marae equivalent' communities (including iwi organisations and urban Māori groups) would assume appointment, control, and direction of Māori wardens, who would be accountable to those communities. The NZMC secretariat would administer the warrants. Section 3 (giving the Minister a general power of direction) would be repealed.

Sources: Cabinet paper, 27 July 1999; Cabinet Minute, 9 August 1999 (Crown counsel, TPK document collection (doc C15), pp 388–434)

There was thus a hiatus in government concern or attempts to address the Act until the Māori Wardens Project was instituted in 2007. At that time, as Te Rauhuia Clarke explained, the Government considered that most District Māori Councils were either inactive or consisted of a single active member (who processed warrant applications), and that some 'Māori Warden groups [were] making their own decisions about how to operate at a local level'. That being the case, the Government decided that TPK would administer the project funds as a temporary measure, while a new body or structure was developed through which the funds could be distributed. From Mr Clarke's evidence, it appeared that this decision was made partly as a result of representations from wardens but without formal consultation of any of the Māori institutions involved, including the NZMC.³⁸ As we discuss in chapter 7, however, TPK did engage with the NZMC, the NZMWA, and Māori Wardens before establishing the project and its interim administration. The detail of that engagement will be expanded upon in the next chapter, where we focus on the specific claimant allegations about the MWP.

The Māori Wardens Project was established with 'two separate work streams':

- ▶ the first workstream is operational in nature, it involves the delivery of a capacity and capability building programme for Māori Wardens; and

38. Te Rauhuia Clarke, brief of evidence (doc B14), pp 2–3

- ▶ the second workstream involves policy development on the functions and governance of Māori Wardens, initially through advice to the Minister of Māori Affairs by an Advisory Group comprising key stakeholders.³⁹

It should be noted that the Advisory Group was never intended to make the final decisions; its task was to provide advice (authoritative or even determinative as that advice might be), but TPK also planned to provide its own, separate advice to the Minister. In 2009, the TPK team responsible for providing support to the Advisory Group recommended that this task be outsourced to an independent secretariat, for fear of a conflict of interest when developing TPK's own advice to the Minister.⁴⁰ In our view, this was an important admission.

Nonetheless, in many ways the Advisory Group was an attempt by the Crown and the Māori organisations involved to fulfil their Treaty partnership obligations; it was also, in effect, a dress rehearsal for the kind of process now proposed by Ms Hippolite in 2014. Ms Hippolite made this comparison herself in her evidence to the Tribunal, noting that, while iwi leaders may not have been involved in it, the Advisory Group 'certainly was a mechanism to seek to engage multiple parties' in reviewing the Act's arrangements for Māori Wardens.⁴¹

6.3.2 The Māori Wardens Advisory Group, 2007–09

The Māori Wardens Advisory Group was formed in June 2007 to provide the Minister with advice 'on the future activities and governance arrangements of Māori Wardens'.⁴² This brief was significantly broader than the perceived need to establish a new body to administer funding. The group was called together as a body to represent both Treaty partners. On the Crown's side, it included the Chief Executive of TPK as its convenor and chair, a representative of the Police Commissioner, and a TPK secretariat (which provided advice and drafted most of the proposals considered by the group). On the Māori side, it included representatives from the two 'key stakeholder groups', the NZMC and the NZMWA.⁴³ It also included two 'independents' from other Māori organisations: the Māori Women's Welfare League and Te Kōhanga Reo National Trust.⁴⁴

According to TPK officials, the Advisory Group's decisions about the roles, functions, management, and governance of Māori Wardens were intended to 'form the basis of the eventual policy advice developed by Te Puni Kōkiri' and, if necessary, any legislative changes.⁴⁵ The makeup of the Advisory Group, with two senior

39. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 11)

40. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 21)

41. Transcript 4.1.1(a), p 229

42. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 12)

43. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 12–13)

44. Te Rauhuia Clarke, brief of evidence (doc B14), p 4

45. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 12)

Crown officials working directly with (mostly) representatives of the NZMC and NZMWA, was a deliberate attempt to negotiate an agreed way forward: ‘It was recognised that gaining the support of the key stakeholder groups to any changes was integral to making any change at all (both the process and the result)’.⁴⁶

But a potential flaw in the process is identified by the stated intention of ‘gaining the support’ of the two key stakeholders. In other words, the Crown took a lead role and, as the Māori Council members felt, attempted to propose reforms and persuade them to particular changes. Mrs Harawira, for example, was especially perturbed by the Chief Executive’s proposal that the Māori Trustee should become the new body to administer the funds and manage Māori Wardens.⁴⁷ The governance model which the Chief Executive believed the group had adopted in December 2008 (‘option 2’) had been put forward by TPK.⁴⁸ But the Advisory Group was also a genuine attempt to reach consensus and to provide a forum for Māori to work out their own solutions. The Māori members proposed models and solutions for discussion with each other and the Crown.⁴⁹ The Advisory Group process was capable of delivering a partnership outcome, so long as the organisations it represented could reach agreement (and Ministers acted upon that agreement).

The Advisory Group’s official task was to provide the Minister with a report and recommendations on:

- ▶ a vision and strategic goals for Māori Wardens;
- ▶ the key functions of Māori Wardens;
- ▶ ‘an appropriate organisational structure, and governance and management arrangements, for Māori Wardens’; and
- ▶ any changes to the 1962 Act necessary to implement the recommendations.⁵⁰

The Government’s expectation that the group would complete this work quickly was soon dashed.⁵¹ The ‘vision, mission, values and strategic goals for Māori Wardens’ were worked out at meetings in 2007 and refined in 2008. On 21 May 2008, the Advisory Group formally adopted the part of its draft report that related to these matters. The ‘key functions’ section of the report was also drafted over a number of sessions and formally adopted at the same meeting in May 2008. This process provided time and space for discussion, development of ideas, and for representatives to engage with their parent bodies and constituencies as necessary.

46. Donna Thomson to Claire Mason, ‘Handover Brief – Māori Wardens Project’, 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 12–13)

47. Transcript 4.1.1(a), p 148

48. See Crown counsel, TPK document collection (doc C15), pp 530–542, 568–582, 665–666, 671).

49. See, for example, Māori Wardens Advisory Group meeting, minutes, 15–16 December 2008 (Crown counsel, TPK document collection (doc C15), p 665).

50. Donna Thomson to Claire Mason, ‘Handover Brief – Māori Wardens Project’, 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 12)

51. The project’s designers expected to have the final Advisory Group meeting in October 2007 and ministerial approval for a ‘policy for new national entity’ by December 2007: Te Rauhuia Clarke, ‘Project Charter: Te Puni Kōkiri and New Zealand Police, Māori Wardens Project’, July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 60–61).

MEMBERS OF THE MĀORI WARDENS ADVISORY GROUP, 2008–09

The membership of the Advisory Group fluctuated over time, but the members during the key 2008 to 2009 period were:

- ▶ Titewhai Harawira, Diane Black, and Noel Jory from the NZMC;
- ▶ Gloria Hughes, Peter Walden, Ruka Hughes, Matiu King, and Bill Blake from the NZMWA;
- ▶ Jacqui Te Kani from the Māori Women's Welfare League;
- ▶ Dame Iritana Tawhiwhirangi from Te Kōhanga Reo National Trust;
- ▶ Wallace Haumaha (on behalf of Police Commissioner Broad) from the Police; and
- ▶ Tuahine Joe Northover, the Advisory Group's kaumātua and patron of the NZMWA.

Even so, NZMC and NZMWA representatives later questioned whether they had actually agreed to parts of this approved text.⁵²

But the most contentious topic for the Advisory Group was the question of governance and management of Māori Wardens. Here, the Crown had certainly entered the Advisory Group process with at least a general imperative for change, since the group took into account 'the stated preference of Ministers that a new entity be proposed, towards which government funding would be directed'.⁵³ Nonetheless, the group was not bound by that 'preference'. The Chief Executive stressed more than once that 'in determining the structure that the AG recommends is the best structure, that it may well be that which is already in place, something totally new, or a combination of both'.⁵⁴ After debate at a number of meetings, the opportunity for consultation with parent bodies, and five drafts of the Advisory Group's report, a deadlock emerged on issues of governance and management. But Leith Comer believed that he had achieved a breakthrough at the group's December meeting in 2008, at which – he understood – the group had agreed to the establishment of a new national and regional governance structure for Māori Wardens along the lines proposed by TPK.⁵⁵ This agreement soon proved illusory.

52. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 13–17)

53. 'Report of the Māori Wardens Advisory Group', draft, 2009 (Crown counsel, TPK document collection (doc C15), p 711; 'Report of the Māori Wardens Advisory Group')

54. T Harawira, D Black, and N Jory, 'Report to Leith Comer re Draft Report on Māori Wardens for comment by the Māori Wardens Advisory Group Members', 1 March 2009 (Crown counsel, TPK document collection (doc C15), p 757)

55. Leith Comer to Noel Jory, 19 February 2009, forwarding 'Report of the Māori Wardens Advisory Group', draft, February 2009, 'Māori Wardens: the Board of the National Governance Entity', discussion paper, undated, and 'Minutes: Māori Wardens Advisory Group Governance Workshop', 15–16 December 2008 (Crown counsel, TPK document collection (doc C15), pp 673, 710–737)

Following the December 2008 meeting, the Chief Executive distributed the Advisory Group's draft report in February 2009. It recommended amending the 1962 Act to establish a new, independent, statutory entity to govern Māori Wardens, and to repeal sections 7(5) and 16(5) of that Act. This entity would consist of an administration, governed by a board made up of NZMC, NZMWA, and other Māori representatives. There would also be new committees at regional level (made up of representatives from the same bodies as well as local iwi bodies).⁵⁶ Mr Comer anticipated that TPK could incorporate minor written feedback and present this report to the Minister at the next Advisory Group meeting.⁵⁷

The NZMC members, however, denied that they had agreed to the report's recommendations, which they considered were:

little different to the 'New Entity' that has been pushed by the Te Puni Kōkiri/Project Team since day one. It is in fact an almost identical carbon copy of the Option proposed by the Chairman, which in turn was an extension of Option #2 and which was rejected outright by the AG at the 15th/16th December meeting. It also has a striking resemblance to the New Entity Option that the Chairman proposed be placed under the Māori Trustee many months ago, and subsequently scrapped.⁵⁸

In fact, the NZMC members' view was that the group had supported their own detailed proposal to establish a new national committee in association with the NZMC and District Māori Councils.⁵⁹

Peter Walden of the NZMWA also dissented, stating that the new entity should be part of the NZMWA and its sub-associations.⁶⁰ Gloria Hughes, president of the NZMWA at the time, did support the primary recommendation but felt that important details were incorrect – the NZMWA members, she said, had not agreed to the board and regional committees being made up of representatives of the NZMC, NZMWA, and other Māori bodies. Also, the NZMWA had not agreed with the recommendation that the new structure should be part of the 1962 Act.⁶¹

We received no evidence as to how the police, Te Kōhanga Reo Trust, and Māori Women's Welfare League members responded to Mr Comer's February 2009 report.

56. Report of the Māori Wardens Advisory Group, draft, February 2009 (Crown counsel, TPK document collection (doc C15), pp 710–719)

57. Leith Comer to Noel Jory, 19 February 2009 (Crown counsel, TPK document collection (doc C15), p 673)

58. T Harawira, D Black, and N Jory, 'Report to Leith Comer re Draft Report on Māori Wardens for comment by the Māori Wardens Advisory Group Members', 1 March 2009 (Crown counsel, TPK document collection (doc C15), p 757)

59. T Harawira, D Black, and N Jory, 'Report to Leith Comer re Draft Report on Māori Wardens for comment by the Māori Wardens Advisory Group Members', 1 March 2009 (Crown counsel, TPK document collection (doc C15), pp 755–760)

60. Peter Walden to Leith Comer, undated (Crown counsel, TPK document collection (doc C15), pp 781–783); Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 20)

61. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 19); Gloria Hughes to Leith Comer, undated; Gloria Te Whareroa-Hughes to Leith Comer, 28 April 2009, forwarding NZMWA, 'Report', undated (April 2009) (Crown counsel, TPK document collection (doc C15), pp 778–780, 786–792)

But the two groups viewed by TPK as the key stakeholders both dissented from the recommendations in major as well as minor ways.⁶² Also, the lead NZMWA representative took the view that agreement would never be reached in the Advisory Group: 'In your position as our chairman you may decide to call it a day for the Advisory Group; we need to express we too with our membership are at the point of calling it a day as well.' In the NZMWA's view, the Government should immediately proceed to establish the new governance entity and consult wardens nationwide on the best way forward.⁶³ On the other hand, the NZMC members thought it was worth persevering with the Advisory Group. They believed that they had won support in the group for their proposed option of a new oversight committee (working with the councils), and that the 'independents' on the group had come around to support them. In their view, further Advisory Group meetings could have developed a consensus.⁶⁴

It would be easy but unfair to assume that institutional self-interest was responsible for the disagreement between the Advisory Group representatives, and this accusation was levelled at the NZMC and NZMWA at the time. But all parties had the best interests of Māori communities and Māori Wardens at heart, and cared passionately about the principles involved as well as securing the best outcome for Māori. The NZMC's position, Diane Black explained, was based on a determination to keep Māori Wardens accountable to their communities, and to ensure that those communities and their self-government structures remained independent of the Government. It was a short step, it was feared, from the 'government-like structure' promoted by TPK to Government control.⁶⁵

In any case, the draft Advisory Group report was placed before the new Minister of Māori Affairs, Dr Pita Sharples, in early 2009, and preparations were underway for going outside the Advisory Group process to undertake a full review of the 1962 Act. Mr Clarke told us: 'During the course of that report being considered by the Minister, the Council advised him that they did not agree with the options that had been put before him.'⁶⁶ Dr Sharples decided that any changes to the Act, regardless of what the Advisory Group's 'stakeholder' representatives might come up with, would need consultation to confirm Māori agreement to the changes.⁶⁷ But what form should that consultation take? Under the heading 'Consultation on the future of the New Zealand Māori Council', a TPK briefing paper of early April 2009 stated that the new 'Minister has indicated that he will not be making any changes to the MCDA and its existing governance structures without wider confirmation from

62. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 19–20)

63. Gloria Te Whareroa-Hughes to Leith Comer, 28 April 2009, forwarding NZMWA, 'Report', undated (April 2009) (Crown counsel, TPK document collection (doc C15), pp 784, 786, 792)

64. T Harawira, D Black, and N Jory, 'Report to Leith Comer re Draft Report on Māori Wardens for comment by the Māori Wardens Advisory Group Members', 1 March 2009 (Crown counsel, TPK document collection (doc C15), pp 755–760); Transcript 4.1.1(a), pp 352–355

65. Diane Rachel Black, brief of evidence, 21 February 2014 (doc B5), pp 8–9, 12–13, 17–18

66. Te Rauhuia Clarke, brief of evidence (doc B14), p 4

67. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 22)

'OPTION 1B': THE NZMC'S PROPOSAL TO THE ADVISORY GROUP, 2008

The NZMC's proposal to the Advisory Group was that District Māori Councils and the NZMC should continue to govern Māori Wardens, with some modifications to the structure. The NZMC would build up and support presently inactive District Māori Councils, which would continue to be responsible for coordinating and directing the activity of Māori Wardens in their districts, and for nominating appointments and reappointments. The NZMC sub-committee on Māori Wardens would also continue to operate. But the current structure would be augmented 'to improve governance and oversight of Māori Wardens and provide government with assurances as to the use of any government funding'. A new committee would be established (called the Community Overseer – Māori Wardens) which would have 'functions additional (but complementary) to those of the existing structure'.

The Community Overseer Committee would be responsible at a national level, on behalf of the Māori community, for ensuring that wardens were being 'properly managed and adequately resourced', and that wardens were carrying out their duties according to the Act and the NZMC's code of conduct. The Overseer Committee would also receive reports from the council's sub-committee, and would hold ultimate responsibility for ensuring that funds 'were used appropriately and properly accounted for'. This committee could be included in the 1962 Act or set up independently of the Act. It would have nine members,

Māori that such changes are supported'. Officials were to draft a briefing paper to the Minister 'outlining an initial proposal to consult with Māori on the current and future operation of the MCDA, the NZMC and Māori Wardens'. TPK officials considered that this was a 'good opportunity to consider parts of the MCDA which are not directly related to Māori Wardens but also prima facie require amendment'.⁶⁸

Without further consultation with its members, the Advisory Group was dissolved in mid-2009 and its work discontinued.⁶⁹ According to the evidence of Te Rau Clarke, the Minister decided to start a new process by asking the Māori Affairs Committee to 'carry out a review of the Māori Community Development Act and all of its structures', as a prelude to Government consultation directly with Māori. He was influenced not merely by the failure of the Advisory Group to reach consensus, but also by pleas from wardens for greater support at a local level.⁷⁰

68. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 22)

69. Diane Black, brief of evidence (doc B5), p 9

70. Te Rauhuia Clarke, brief of evidence (doc B14), p 4

four appointed by the NZMC, four appointed by the Minister, and one (a non-voting chairperson) appointed jointly. The council's existing Māori Wardens Sub-Committee would be expanded from four to seven, including the four appointed from the council, a member from the NZMWA, a member from TPK, and a member from the Police (involved in wardens' training).

District Māori Councils would be reinforced by regional coordinators to assist with training, management of a contestable funding pool, and to assist with administration and management. The Community Overseer Committee and the NZMC Māori Wardens Sub-Committee might also need administrative support.

Under option 1B, the Minister's current responsibilities would continue unchanged (for warranting wardens). In addition, the Minister would be responsible for appointments to the Community Overseer Committee, and for monitoring funding. The NZMC and District Māori Councils would remain accountable to their community through the triennial elections, and the chair of the Community Overseer would report directly to the council chair and the Minister on 'such matters as are required and are deemed necessary'. It was intended that option 1B would also bring in other major stakeholders such as the NZMWA into the governance and support of Māori Wardens, particularly by means of membership of the Community Overseer and council sub-committee.

Source: Advisory Group, 'Report of the Māori Wardens Advisory Group', draft, April 2008 (Titewhai Harawira, comp, papers in support of brief of evidence (doc B10(a)), pp 32–35).

Thus, it seemed as if the Advisory Group had failed and matters had reverted back to where they were in 1998: Crown plans to consult Māori and reform the 1962 Act. But we do not agree with the claimants' view that there was a 'seamless strategy' on the part of the Crown to change the 1962 Act, in which 'the Crown's 1997/98 support for change to the Wardens regime' can be linked with the stated preference of different Ministers a decade later, as part of the Māori Wardens Project, for a new national entity to administer funding for wardens.⁷¹

In the claimants' submission, we should also draw two further conclusions from our analysis of the Advisory Group:

- ▶ First, that the Advisory Group process shows that the Crown was not (and has never been) a neutral facilitator with no view of its own to promote – the Crown very clearly wanted the Advisory Group to come up with a new national entity, and dissolved it when it refused to do so. This is, the claimants say, significant both for the Advisory Group process and for the question of

71. Claimant counsel, closing submissions (paper 3.3.5), pp 77–78

whether the Crown genuinely had no view to promote in the review and consultation that followed it.⁷²

- ▶ Secondly, the claimants say that ‘an important lesson to be learnt from this last Crown attempt at setting up stakeholder groups to inform a decision ultimately to be made by Ministers’ is that the Crown, not Māori, had controlled the Advisory Group process. The group was established by the Crown, given an advisory role only, and was set aside when it failed to do what the Crown wanted. ‘That is not consistent’, said claimant counsel, ‘with the history and intent of the 1962 Act, with Treaty principles or with UNDRIP, and the Claimants do not want to see a repeat.’⁷³

As we noted above, Ms Hippolite also drew a parallel between her proposal to establish reference groups and the former attempt to engage ‘stakeholders’ through the Advisory Group. One key difference, of course, was the Crown’s direct involvement in and leadership of the Advisory Group, which the claimants consider so fatal to its success.

In the Crown’s submission, we should see the Advisory Group as a good faith endeavour to involve ‘a range of Māori stakeholders’ directly in developing proposals for the governance and management of wardens (and for the administration of project funding). The Advisory Group failed, however, simply because its members could not agree. That failure to reach consensus, we were told, was the ‘immediate catalyst’ for an alternative attempt to reach consensus: the Māori Affairs Select Committee inquiry and the current review process.⁷⁴

In our view, the reality lies somewhere between these two positions.

We agree with the claimants that the Crown was not solely trying to play an ‘honest broker’ role, bringing the NZMC and the NZMWA together to facilitate Māori in developing a way forward. The Crown had its own view as to what should happen, and that view was promoted (however well intentioned) by the TPK chairperson and secretariat during the meetings and drafting of proposals. But, we also note, the Crown did not claim to be impartial at that time, although it said that it was open to keeping the status quo (with modifications). Ministers had made it clear that they wanted some kind of new national entity, and TPK tried to bring that about. We do not consider that this was automatically fatal to the success of a partnership endeavour to develop joint Crown–Māori proposals for a way forward. As part of the process, the NZMC had agreed that there should be a new national entity and proposed one of its own, the Community Overseer Committee, with joint Crown–Māori membership and accountability. The Council also proposed to expand the representivity of its wardens’ sub-committee so that the NZMWA could be represented on it as well as on the Community Overseer (see the sidebar on pages 318 and 319).⁷⁵

72. Claimant counsel, closing submissions (paper 3.3.5), pp 77–78

73. Claimant counsel, closing submissions (paper 3.3.5), pp 78–79

74. Crown counsel, closing submissions (paper 3.3.3), pp 14–17

75. ‘Report of the Māori Wardens Advisory Group’, draft, April 2008 (Titewhai Harawira, comp, papers in support of brief of evidence (doc B10(a)), pp 32–35)

Thus, there was room for compromise and for all sides to get what they wanted within the Advisory Group's terms of reference, so long as Ministers accepted its proposals once consensus was reached. We agree with the claimants that, in this respect, the Advisory Group process was lacking – the ultimate outcome would not be a negotiated agreement between Māori and the Crown if a ministerial decision was made solely on the basis of its 'advice'.

Was the Crown to blame for the Advisory Group's failure to reach consensus? Did it pull the plug too soon? Ultimately, the NZMC members believed that they had won the support of the 'independent' members and that agreement could be reached if further discussions were held. They were open, they said, to debating the constitution and details of the new national body that they were proposing. The NZMWA, however, felt that the Advisory Group was deadlocked and the time had come to put an end to it. The NZMC members were not willing to see the wardens separated from the council system, and the NZMWA members refused to contemplate continued Māori Council control of wardens. These two positions would have been very difficult to reconcile without a significant compromise by one or both parties. As far as we can tell, TPK intended to persevere with the Advisory Group even so. The Chief Executive's response to the NZMC's March 2009 letter, disagreeing with his draft report and its recommendations, was to call for a further meeting. There were scheduling problems but a meeting was still planned for May 2009. From the evidence available to us, it appears that the new Minister of Māori Affairs cut across this process and decided that the time had come to try a different approach. As Crown counsel submitted, the Advisory Group's 'lack of consensus' was the immediate catalyst for the Minister's decision to start the Māori Affairs Committee's inquiry in mid-2009.

6.3.3 The Tribunal's findings

In respect of the present review and reform process, the Crown's first engagement with Māori started in 2007 with the Māori Wardens Advisory Group. As the Tribunal has found in its Wai 262 report, specialist advisory committees can serve as forums for partnership and engagement between Māori and the Crown. Depending on the importance of the matter at hand to Māori, such partnership bodies might be appointed by the Crown or by both Treaty partners. They can offer advice that feeds into government decision-making or into further consultation with Māori, or can participate in making the decisions, or even be the decision maker if the Māori interest is sufficiently important.⁷⁶

We add, however, that only those with a reasonable interest should be involved in an advisory group. As Ms Diane Black put it, describing a conversation with Advisory Group members Dame Iritana and Ms Te Kani:

⁷⁶ See, for example, Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 685–686.

It may be a Māori organisation or they may be representing their Māori organisations but that doesn't mean they know about the structure of the New Zealand Māori Council and they admitted they didn't know it.

And when I had a discussion with Iritana I said to her: 'well, how would you feel if I came along to your Trust and said no, I think you should run the Kohanga Reo this way?' She said: 'I'd tell you to get lost.' I said: 'well, what do you know about the New Zealand Māori Council?' And she said: 'point taken.'⁷⁷

Sir Edward underlined this point for us, referring to Ms Black's evidence on this issue and explaining that 'we all look after our own houses' but cooperate and work together where there are 'synergisms.'⁷⁸ We agree that advisory groups should be composed of those with a reasonable interest in the matter at hand, and that the composition of such groups must therefore be a matter of discussion with the 'key Māori stakeholders' in an issue, which – in this case – TPK had identified as the NZMC and the NZMWA.

The Crown used the Māori Wardens Advisory Group as a 'mechanism to seek to engage multiple parties.'⁷⁹ Its main purpose was to bring the NZMC and NZMWA together to redesign the roles, functions, governance, and management of Māori Wardens.⁸⁰ According to the Wai 262 Tribunal, true partnership comes through forums that include Māori experts, specialists, and stakeholders alongside 'representatives of the wider Māori perspective'. Such forums should serve as 'sites for the necessary conversations to occur between interested Māori and the Crown, when consultation or negotiated agreement . . . is required'. Partnership or engagement mechanisms of this kind will 'always be valuable, even in an instance like [UN]DRIP, where positions appeared to be entrenched and deeply oppositional'. In the case of the Crown–Māori disagreement over UNDRIP, the Tribunal found, there was 'a great deal of the declaration about which the parties were relatively close together if not in actual agreement, and those issues could have been fully worked through.'⁸¹

In our view, the Māori Wardens Advisory Group met all of these criteria. There were certainly entrenched and oppositional views for its members to work through. Those members were appointed by the Crown, which also provided technical support. They included leaders and experts from the NZMC and the NZMWA, as well as a kaumātua and two 'independent' members from other national Māori organisations. The Crown had membership of the committee and provided its chair and secretariat. The group worked through complicated and sometimes emotive issues, reaching agreement on some matters of substance, including the roles and functions appropriate for Māori Wardens.

The issue of management and governance, however, proved a sticking point. All parties agreed that there should be a new national body to administer funding and

77. Transcript 4.1.1(a), p 181

78. Transcript 4.1.1(a), p 271

79. Transcript 4.1.1(a), p 229

80. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 12)

81. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 2, p 686

manage wardens, and that wardens should be accountable to their local Māori communities. But TPK and the NZMWA preferred the new entity to be entirely separate from the council system, with its own, new regional bodies. The NZMC wanted the new national body to be a part of its structure, accountable jointly to the council and the Minister, and that the District Māori Councils should remain the bodies with regional responsibility for Māori Wardens.

By the end of the Advisory Group process in 2009, the NZMC members felt that the Crown was trying to dictate governance arrangements for the wardens but they were not ready to give up. The NZMWA members felt that the Māori Council was being obstructive and that no more progress could be made. The Advisory Group was ultimately unsuccessful in reaching agreement; but it was not a Treaty breach for the Crown to have tried to use such a partnership mechanism and for that mechanism to have failed. We note, too, as we discuss in chapter 7, that the advisory group process was established after discussion and agreement between TPK and the NZMC. It was established by collaborative agreement – the evidence and our findings on this point are contained in chapter 7. It is not clear to us, however, whether the actual appointment of members to the Advisory Group was mutually agreed – if not, it should have been.

With that caveat, our view is that the Advisory Group mechanism was a good way of starting the conversations that were necessary at some point between the NZMC and the NZMWA, and between Māori and the Crown. It might have produced an initial agreement for further discussion between Māori, and between Māori and the Crown. That it failed to do so does not make the attempt inconsistent with Treaty principles. We stress that the Advisory Group should never have been more than a start of the conversations that needed to happen. Its role was advisory only. Both the group and the Minister knew that a further process would be needed to ascertain Māori wishes in respect of how wardens should be governed and managed. The key issue for the Tribunal is the Crown's decision as to what that further process should be, which we discuss in the following sections of this chapter.

6.4 THE SELECT COMMITTEE INQUIRY, 2009–10

6.4.1 Introduction

On 29 July 2009, the Māori Affairs Committee resolved to conduct an inquiry into the Māori Community Development Act 1962, at the request of the Minister of Māori Affairs. The public were given until February 2010 to make submissions. The committee received 87 submissions, 36 of which were heard and examined at public hearings in Wellington, Auckland, and Taupo. After the hearings, the committee reported to Parliament on 1 December 2010.⁸² Thirty-six of the 87 submissions were made by Māori Warden groups or individual wardens, and there were ten

82. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Mereana Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 8)

6.4.2 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

submissions from the NZMC, District Māori Councils, and Māori committees.⁸³ In terms of Government support and advice, the committee was advised by TPK, and thanked the department for its ‘clear, comprehensive, and timely advice throughout the inquiry’.⁸⁴

According to the claimants, their issue is not with the select committee but with the advice that it received from TPK. In the claimants’ view, the advice tendered by the department shows an ongoing Crown strategy to sever the wardens from the Māori councils.⁸⁵ This is significant, the claimants say, for two reasons:

- ▶ the committee’s findings and recommendations were influenced by this advice; and
- ▶ the advice is one of the pieces of evidence which challenges TPK’s claim that it went into the subsequent consultation with a ‘completely open mind’ and had not ‘predetermined the outcome of the review or whether or not there will be any change to the legislation at all’.⁸⁶

In considering this issue, we begin first by outlining the select committee’s findings and recommendations.

6.4.2 The select committee’s findings and TPK’s role as adviser

The Māori Affairs Committee’s report in 2010 made recommendations on the following matters:

- ▶ The need for urgent action on Māori Wardens, preceded by comprehensive consultation:
 - Any changes to the 1962 Act must focus urgently on improvements for Māori Wardens, ‘an invaluable body of volunteers who deserve comprehensive support’.
 - Before any changes to the Act, there must be ‘comprehensive consultation’. ‘Input’ should be sought from ‘all Stakeholders’, including wardens, Māori communities, the NZMC, iwi, and ‘other Māori authorities’.
- ▶ Māori Wardens:
 - A legislative framework solely for wardens should be established.
 - An ‘independent organisation [should] be established to take sole charge for the leadership, administration, coordination, and support for Māori Wardens’.
 - Funding for wardens should be increased and distributed consistently across New Zealand so that all wardens at least have access to basic resources.

83. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010, p 22 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSC_H_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

84. ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 8)

85. Claimant counsel, closing submissions (paper 3.3.5), pp 17–20

86. Claimant counsel, closing submissions (paper 3.3.5), pp 17–20

- The Act should be amended to remove the District Māori Councils from the warranting process.
 - If there was not to be new legislation, then the section prescribing specific, limited functions for wardens should be repealed as wardens' roles 'are increasingly diverse and should be adaptable to specific community needs'.⁸⁷
 - Basic training should be mandatory for all wardens, and the promotion and provision of advanced training should be one of the roles of the (recommended) 'new, independent Māori Wardens organisation'.
 - Further consideration should be given to the 'future relationship' between police and wardens.⁸⁸
- ▶ Māori Associations:
- A 'comprehensive re-evaluation of the role of and funding for the New Zealand Māori Council be undertaken'.⁸⁹ This should include consulting Māori as to whether a national body of this kind was even needed any more, although the council should not be abolished unless such a change was 'fully supported' by Māori.⁹⁰
 - Māori Committees and Māori Executive Committees should be abolished.
 - Consideration should be given to abolishing District Māori Councils or 'revitalising them to ensure that they provide a functional link between Māori communities and the New Zealand Māori Council'.⁹¹

According to the claimants, TPK 'was the sole provider of advice and information and provided six reports to the Māori Affairs Select Committee'.⁹² This is largely correct, although committee staff did summarise submissions – and there were, of course, 86 public submissions which also provided advice and information to the committee. Neither the Crown nor the claimants supplied us with TPK's six advisory reports, but these reports are publicly available on the New Zealand Parliament website and we have read them for the purpose of assessing the claimants' allegations. The parties were advised of this step and none have objected.⁹³

87. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 4)

88. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 5)

89. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 4)

90. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 17)

91. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 4)

92. Claimant counsel, closing submissions (paper 3.3.5), p 18

93. Waitangi Tribunal, memorandum-directions, 3 October 2014 (paper 2.7.7); claimant counsel, memorandum, 17 October 2014 (paper 3.4.9); Crown counsel, memorandum, 17 October 2014 (paper 3.4.10)

The department's initial advice consisted of an issues paper prepared at the start of the inquiry, and a report on the purposes of the 1962 Act. The first paper was mainly a summary for the committee of the issues, recommendations, and decisions which came out of the 1998–99 review. As such, this paper did make a number of criticisms of the Act and its structures, based on the 1998 consultation outcomes and Cabinet's 1999 decisions.⁹⁴ The second paper relied on the contents of the Act itself, earlier legislation, and the Parliamentary debates about the Act. Broadly speaking, TPK advanced views which continued to dominate government thinking until the 2013 consultation process: that the Act was welfare-oriented and established Māori 'self-management' Associations, but its purpose was to assimilate Māori to urban Pākehā culture and society, and to control Māori behaviour (especially 'unruly behaviour', related to controlling alcohol).⁹⁵ This was how officials had seen the Act back in 1998 as well.⁹⁶

Later in its inquiry, the committee asked for information about amendments that had been made to the Act, how wardens' funding was administered, whether a Treaty clause was needed, and the 'activity and accountability' of District Māori Councils.

The report on amendments was purely informational. The committee had also asked for any information as to consultation with Māori before amendments were made, but TPK had no information to offer on this question.⁹⁷ The financial report was a brief description of what the Māori Wardens Project funding had been spent on.⁹⁸ The report on a Treaty clause explained that an assessment would be needed if significant changes or a new Act were required, but otherwise the present Act did not relate to the Crown or Crown agencies and was already 'consistent with Treaty principles' in establishing 'mechanisms to enable Māori communities to voluntarily advocate for and on behalf of Māori via pan-Māori structures.'⁹⁹ Information for the report on District Māori Council activities was drawn largely from TPK re-

94. See Te Puni Kōkiri, 'The Māori Community Development Act 1962: An issues paper prepared for the Māori Affairs Committee', August 2009 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A13213/initial-issues-paper, last modified 26 August 2009).

95. Te Puni Kōkiri, 'Purpose of the Māori Community Development Act 1962: Advice requested by the Māori Affairs Committee', September 2009 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A13215/purpose-of-act, last modified 23 September 2009).

96. See, for example, Minister of Māori Affairs to Cabinet Strategy Committee, 'Review of Māori Community Development Act 1962: Proposals for Reform', 27 July 1999 (Crown counsel, TPK document collection (doc C15), pp 395–396).

97. Te Puni Kōkiri, 'Māori Affairs Select Committee inquiry into the Māori Community Development Act 1962: 26 May [2010] hearing – questions for Te Puni Kōkiri officials', section 1 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A48994/dmc-activity-and-accountability-nzmc-funding, last modified 26 May 2010).

98. Te Puni Kōkiri, 'Māori Affairs Select Committee inquiry into the Māori Community Development Act 1962: 26 May [2010] hearing – questions for Te Puni Kōkiri officials', section 2 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A48994/dmc-activity-and-accountability-nzmc-funding, last modified 26 May 2010).

99. Te Puni Kōkiri, 'Māori Affairs Select Committee inquiry into the Māori Community Development Act 1962: Question for Te Puni Kōkiri officials arising from 18 August [2010] hearing', paras 19–21 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A138669/treaty-of-waitangi-clause, last modified 13 October 2010).

gional staff and not from the NZMC. According to TPK staff, only a limited number of district councils were producing audited accounts – the majority either said that they had no money to account for or were ‘silent’.¹⁰⁰ Also, the TPK information from regional staff was that ‘of the 16 councils, four are inactive, six meet very irregularly, four meet regularly, and two have not provided information about their meetings for some time’.¹⁰¹

TPK’s final and most important report to the committee came in October 2010, when its staff prepared an ‘adviser’s report’ on the outcomes of the submissions process and the options for the committee to consider in its report to Parliament.¹⁰² TPK’s report was mostly neutral in tone and presented options that were derived from the submissions. On three options, the department offered its own opinion. First, the option of retaining the current NZMC and seeking resources to revitalise the District Māori Councils was discouraged: ‘This option is unlikely to address the concerns raised in submissions about the current structure’s need to be more representative, and to take account of the changes that have taken place in Māoridom.’¹⁰³ The option of amending the Act to create a new national body was presented much more positively.¹⁰⁴ Secondly, the TPK advisers gave an unfavourable opinion on the option of retaining NZMC and District Māori Council control of wardens:

This option is unlikely to address the concerns raised by those submissions calling for a separate dedicated body for the administration and co-ordination of Māori Wardens. The nature of these concerns suggest a fundamental mismatch between the role of the New Zealand Māori Council as an advocate for pan-Māori issues, and the need for practical support for Māori Wardens at the local level.¹⁰⁵

100. Te Puni Kōkiri, ‘Māori Affairs Select Committee inquiry into the Māori Community Development Act 1962: 5 May [2010] hearing, questions for Te Puni Kōkiri officials’ (http://www.parliament.nz/resource/en-nz/49SCMA_ADV_OODBSCH_INQ_9297_1_A48994/dmc-activity-and-accountability-nzmc-funding, last modified 26 May 2010)

101. Te Puni Kōkiri, ‘Māori Affairs Select Committee inquiry into the Māori Community Development Act 1962: 5 May [2010] hearing, questions for Te Puni Kōkiri officials’ (http://www.parliament.nz/resource/en-nz/49SCMA_ADV_OODBSCH_INQ_9297_1_A48994/dmc-activity-and-accountability-nzmc-funding, last modified 26 May 2010); ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 15)

102. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

103. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010, p 14 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

104. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010, pp 14–16 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

105. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010, p 19 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

Thirdly, the TPK advisers recommended against the option of retaining community officers in the Act.¹⁰⁶

There is no doubt that TPK's advice and information was influential with the committee. The committee's recommendation, for example, that the District Māori Councils were largely inactive and should be abolished or rejuvenated was explicitly based on that advice.¹⁰⁷ But the content of the submissions was also very influential, and TPK's main report to the committee fairly summarised, in our view, the public submissions and the options that arose from those submissions (except for the three points noted above).

In our inquiry, we are mostly concerned with what the committee recommended about governance and management arrangements for Māori Wardens. Here, the committee was particularly influenced by a submission from the Advisory Group's successor, the Māori Wardens Governance Board:

We think that the best way to deliver the necessary support [for Māori wardens] is to establish a legislative framework dedicated to Māori Wardens. This could mean creating a separate Māori Wardens Act, or amending the current Act to ensure the governance of Māori Wardens is independent of Māori Associations; deciding how best to achieve effective separation is ultimately a policy question. The benefits of legislative independence were outlined by a number of submitters, including the Māori community members of the Māori Wardens Governance Board which includes representatives of the New Zealand Māori Council and the New Zealand Māori Wardens Association. *The support of this group, which represents both Māori Associations and Wardens, encourages us to strongly support the separation of the two groups [that is, the separation of wardens from the council structure].* [Emphasis added.]¹⁰⁸

As a result, the committee felt justified in recommending a new Act and a new national entity to manage Māori Wardens, similar to what TPK and the NZMWA had advocated previously in the Advisory Group.

We received little information about this submitter, the Māori Wardens Governance Board, but it appears to have been appointed as part of the Māori Wardens Project after the dissolution of the Advisory Group. According to Gloria Hughes' evidence, it was not active for very long.¹⁰⁹ But it did make this very important submission to the select committee in August 2010. The 'Māori community members' of the board consisted of two NZMC members, Jim Nicholls (Hauraki) and Brian Joyce (Tāmaki ki Te Tonga), two NZMWA members, Gloria Hughes

106. Te Puni Kōkiri, 'Inquiry into the Māori Community Development Act 1962: Advisers' Report to Māori Affairs Committee', October 2010, p 21 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_ADV_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

107. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 15)

108. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 10)

109. Tangihaere Gloria Hughes, answers to written questions (doc C19), answer 6B

and Rawiri Te Whare, and three members of the old Advisory Group – Tuahine Northover, Jacqui Te Kani, and Dame Iritana Tawhiwhirangi. The submission was filed on behalf of these members and ‘the organisations they represent.’¹¹⁰ It proposed a new national entity and regional committees to govern and manage wardens, entirely separate from the NZMC and District Māori Councils, which would lose their statutory responsibilities in respect of wardens.¹¹¹

Because this submission was so influential, we need to consider its status a little further. The members of the board were appointed by the Chief Executive of TPK in consultation with the Minister.¹¹² There is no suggestion that the NZMC had the opportunity to nominate ‘representatives’. We have no information as to how the members of this board prepared their submission, but it seems clear that – despite what was claimed – the board’s submission was not made with the support of the council. The council made its own submission, reflecting its previous support of ‘option 1B’ in the Advisory Group: it called for the creation of a new national entity to govern and manage wardens as part of the council structure, with appropriately resourced and rejuvenated District Māori Councils continuing to carry out their duties in respect of wardens.¹¹³ It also called for the select committee to pause its inquiry and institute a joint Parliament–NZMC-led review from thereon. The committee and the NZMC would together appoint a person or body to:

inquire and discuss options with Māori groups nationally and make proposals back to the Select committee.

[It is] considered that the matter has such significance in terms of history, constitutional development and compliance with international human rights law as to warrant that course.¹¹⁴

The select committee was not moved to halt its inquiry, and it favoured the option for wardens’ governance proposed by (among others) the Māori Wardens Governance Board. The committee did, however, agree that extensive consultation with Māori, including and especially with the NZMC, would be necessary before any changes could be made to the Act.

110. Māori community members of the Māori Wardens Governance Board, submission to Māori Affairs Committee, 14 August 2010, p1 (http://www.parliament.nz/en-nz/pb/sc/documents/evidence/49SCMA_ADV_OODBSCH_INQ_9297_1_A61738/maeori-wardens-governance-board, last modified 18 August 2010)

111. Māori community members of the Māori Wardens Governance Board, submission to Māori Affairs Committee, 14 August 2010, pp 2–7 (http://www.parliament.nz/en-nz/pb/sc/documents/evidence/49SCMA_EVI_OODBSCH_INQ_9297_1_A61738/maeori-wardens-governance-board, last modified 18 August 2010)

112. Gloria Hughes, answers to written questions (doc C19), answer 6B

113. NZMC, submission to the Māori Affairs Committee, [5 May 2010] (http://www.parliament.nz/en-nz/pb/sc/documents/evidence/49SCMA_EVI_OODBSCH_INQ_9297_1_A45963/new-zealand-maeori-council, last modified 5 May 2010)

114. NZMC, submission to the Māori Affairs Committee, [5 May 2010] (http://www.parliament.nz/en-nz/pb/sc/documents/evidence/49SCMA_EVI_OODBSCH_INQ_9297_1_A45963/new-zealand-maeori-council, last modified 5 May 2010)

6.4.3 The Tribunal's findings

TPK's advice clearly did inform and influence the select committee, but it mostly consisted of summarising the outcomes of the 1998–99 review, providing factual information, or summarising and analysing the 87 submissions made during the inquiry. Where TPK was most influential, perhaps, was in defining the historical origins and purposes of the Act. The committee largely adopted TPK's text on those matters, reflecting ideas held by TPK since the 1998 consultation. Ngāti Kauwhata's submission, for example, that the 1962 Act was an important exception to the assimilation drive,¹¹⁵ was given no weight.

Does this show a 'seamless Crown strategy' to sever the wardens from the councils? We think it would be fair to say that such a strategy was at least part of what TPK had hoped to achieve in the Advisory Group, but there is less evidence of it in the department's advice to the Select Committee. In its initial discussion paper, TPK mostly summarised the 1998–99 concerns and decisions. The department also fairly summarised the level of inactivity among District Māori Councils at the time, as far as we can tell from the evidence available to us. Further, the main advisers' report of October 2010 was mostly neutral in analysing the submissions that had been received and the options that appeared to arise from them, except in three instances. In particular, the TPK advisers explicitly discouraged retaining the NZMC in its current form or retaining council responsibility for the wardens. There was nothing improper, of course, in government officials advising a select committee of their opinions in this way. But, given TPK's approach in the Advisory Group and its avowed open-minded neutrality in the later consultation, we agree with the claimants that this was a worrying sign. The Māori Affairs Committee itself, however, chose what weight to give the different submissions (and, indeed, what weight to give the departmental advice).

In any case, the committee's primary recommendation was that nothing should be done without further, extensive consultation with Māori.¹¹⁶ We turn next to consider that consultation process, which did not take place until 2013.

6.5 DESIGNING A CONSULTATION PROCESS, 2010–13: CROWN-LED OR MĀORI-LED?

6.5.1 The Crown's approach to consultation on the 1962 Act

As noted above, TPK provided advice to the select committee inquiry. One of its key pieces of advice in the initial discussion paper was that community development does not work unless it is designed and owned by the community itself:

115. Ngā Kaitiaki o Ngāti Kauwhata Inc, submission to Māori Affairs Committee, 12 February 2010, p 3 (http://www.parliament.nz/en-nz/pb/sc/documents/evidence/49SCMA_EVI_OODBSCH_INQ_9297_1_A34620/nga-kaitiaki-o-ngati-kauwhata, last modified 21 April 2010)

116. Minister of Māori Affairs to the Deputy Chairperson of the NZMC, 2 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 92)

In recent years communities and government agencies have supported a community-driven community development approach across all population groups. This has involved the communities themselves having a lead role in deciding their own needs and priorities and participating in the design, implementation, and evaluation of community development initiatives.¹¹⁷

For that reason (among others), TPK agreed that it was ‘timely to re-look at the MCDA in light of the needs and priorities of Māori today.’¹¹⁸ But was a parliamentary select committee really the best forum for Māori to have a ‘lead role in deciding their own needs and priorities’?

As we also noted above, the NZMC asked that the committee stop its inquiry while a person or body appointed jointly by the committee and the council conducted national consultation with Māori and developed the options that Māori wanted. The council argued that the historical and constitutional importance of the 1962 Act, as well as international norms (presumably the UNDRIP), merited Parliament taking this unusual step during a select committee inquiry. A similar submission was made by Ngāti Kauwhata, who suggested that an independent panel, with terms of reference and membership to be negotiated between the council and the Crown, should conduct a fresh inquiry.¹¹⁹ The Māori Affairs Committee did not agree with this idea, but the importance of what it called ‘comprehensive consultation’ with Māori was emphasised by it in its report. It reached this view partly on the final advisory report from TPK, which recommended:

- ▶ If the committee wanted no changes to the Act, as preferred by some submitters, then it should consider whether Māori organisations should be encouraged to discuss problems among themselves in order to ‘resolve issues around the effective operations of the New Zealand Māori Council and its subsidiary bodies, and administrative support for the Māori Wardens.’¹²⁰
- ▶ If the committee advised significant changes to the Act, as sought by other submitters, then it should consider whether to recommend ‘a consultation process that enables Māori to be involved in the development of these arrangements, and thereby have ownership of the new organisation.’¹²¹ TPK noted the call from the NZMC and Ngāti Kauwhata for ‘an independent consultation

117. Te Puni Kōkiri, ‘The Māori Community Development Act 1962: An issues paper prepared for the Māori Affairs Committee’, August 2009, p 2 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_EVI_OODBSCH_INQ_9297_1_A13213/initial-issues-paper, last modified 26 August 2009)

118. Te Puni Kōkiri, ‘The Māori Community Development Act 1962: An Issues Paper Prepared for the Māori Affairs Committee’, August 2009, p 2 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_EVI_OODBSCH_INQ_9297_1_A13213/initial-issues-paper, last modified 26 August 2009)

119. Ngā Kaitiaki o Ngāti Kauwhata Inc, submission to Māori Affairs Committee, 12 February 2010 (http://www.parliament.nz/en-nz/pb/sc/documents/evidence/49SCMA_EVI_OODBSCH_INQ_9297_1_A34620/nga-kaitiaki-o-ngati-kauwhata, last modified 21 April 2010)

120. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010, p 4 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_EVI_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

121. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010, p 4 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_EVI_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

process, and suggested that the committee may wish to consider how a consultation process could enable Māori to own the results.¹²²

- ▶ If the committee suggested a repeal of the Act altogether, as suggested by a few submitters, wardens could continue as community volunteers without statutory powers, and it would 'be left to Māori to decide if they wanted to set up an organisation to address pan-Māori issues, and if so, what its role will be and how it will be structured'.¹²³

Thus, under two of these three scenarios, Māori would decide what should happen – but, if the committee recommended changes to the Act, then TPK advised that participation in a consultation process would suffice to involve Māori and give them 'ownership' of any subsequent changes. Nonetheless, the committee was invited to consider the possibility of an 'independent' consultation (that is, independent of the Crown).

In the event, the Māori Affairs Committee made no out-of-the-ordinary suggestions as to how the consultation should be conducted or who should conduct it. The committee emphasised that Māori 'input' was essential and that consultation must be 'comprehensive' and 'thorough'. Some changes to the Act, such as abolishing the NZMC altogether, could only be made if 'fully supported by Māori communities', and this had to be ascertained through consultation.¹²⁴

The Government's response to the select committee's report was equally alive to the need for consultation. The Government told Parliament that it 'agrees that it is important that the views of Māori are sought on future options for the New Zealand Māori Council and Māori Wardens before any legislative changes are made to the Act'.¹²⁵ This was the only committee recommendation with which the Government specifically agreed. On all other matters, it stated that it would take the submissions and the committee's report into account when developing specific options for consultation with Māori.¹²⁶

From this response, it is clear that government thinking had not shifted since the 1998–99 review. In both cases, it was considered that Māori views could be ascertained by the Crown developing options and putting them to Māori through standard consultation processes – that this would suffice for Māori 'ownership' of any resulting changes to their community structures. This was not a cynical approach.

122. Te Puni Kōkiri, 'Inquiry into the Māori Community Development Act 1962: Advisers' Report to Māori Affairs Committee', October 2010, p 15 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_EVI_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

123. Te Puni Kōkiri, 'Inquiry into the Māori Community Development Act 1962: Advisers' Report to Māori Affairs Committee', October 2010, p 5 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA_EVI_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

124. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), pp 14, 15, 17)

125. 'Government response to Report of the Māori Affairs Committee on Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues', tabled in Parliament on 1 March 2011 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 24)

126. 'Government response to Report of the Māori Affairs Committee on Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues', tabled in Parliament on 1 March 2011 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), pp 24–26)

In both cases, the evidence suggests that the Crown genuinely sought to ascertain Māori views and act on them. We note, in particular, Kim Ngārimu's explanation for how the Crown believed that a standard consultation process would deliver the appropriately high and even determinative level of Māori 'input':

Importantly at the beginning of each hui I made it clear that the Government was seeking input from Māori communities on the Act's review including the organisations set out within it. I emphasised that we wanted to know what Māori wanted in relation to these organisations, that the options we were presenting were not the only options and we were open to hearing other views, and that the Government did not have a preferred option. We wanted to create the opportunity for proposals for change, if any, to come from the Māori community. So, this was a consultation where we asked people what we should do, so that their views could directly inform any subsequent policy proposals for change that may be before Cabinet. This is a contrast to other consultation processes which involve the presentation of proposals that have already been fully developed for comment. We think that this appropriately places with Māori communities the ability to shape the direction of the review of the Act. It is an example of Māori communities providing direction on legislation that affects them. The legislation comes under the responsibility of Te Puni Kōkiri so we need to facilitate any legislative change in a practical sense, however the impetus for any change does not come from us, it comes from Māori communities and submitters to the earlier Select Committee process.¹²⁷

Ms Ngārimu's statements here brought her very close to the claimants' position that this should be a Māori-led decision-making process. The key problem lay in seeing the review of the 1962 Act as just any other consultation, in which the Crown informs itself and decides, even though a different approach was possible since the Crown said that it had no preferences of its own and wanted the decision to be made (or shaped) by Māori themselves. But the Crown seemed unable to free itself from its straitjacket as consulter and decision-maker, even when – as officials acknowledged – community development structures required communities to take the lead in designing and deciding for themselves what should happen. Despite recognising that the councils and the wardens were Māori, not Crown, institutions, the Crown's thinking could not move beyond seeing itself as the consulter and the decider: 'It [the Crown] expressly recognised that the institutions provided for by the Act are Māori institutions, and accordingly has sought to understand the preferences of Māori for the future of those institutions.'¹²⁸

Pre-consultation discussions in 2012 between the Crown and the NZMC focused on this contested issue, because the NZMC sought a Māori-led, not a Crown-led, review and reform process. We turn to that 'pre-consultation' next.

127. Kim Ngārimu, brief of evidence (doc A2), p 9

128. Kim Ngārimu, brief of evidence (doc B13), p 7

6.5.2 Pre-consultation: the Crown and the NZMC, April to May 2012

As noted in Kim Ngārimu's evidence, there was a significant delay before the Crown began its pre-consultation process. This was because the consultation was deferred 'to avoid the pre-election and caretaker periods' around the 2011 election. Following the election, consultation was deferred again so as to avoid overloading Māori by adding it to 'an already full programme of consultation', which included the Emissions Trading Scheme, the partial privatisation of state assets, the Crown Minerals Act, the Resource Management Act and water reforms, and Te Ture Whenua Māori Act.¹²⁹

It was not until April 2012, therefore, that the Crown was ready to begin what Ms Ngārimu called 'pre-consultation' with the NZMC and the NZMWA.¹³⁰ According to Ms Ngārimu, a 'good public policy process includes working with entities who will be affected by any policy and/or legislative change'.¹³¹ It was also necessary in Treaty terms to engage early with the institutions most affected by the review, and to act in good faith on their input.¹³² In the case of the 1962 Act, this principle necessitated consultation and discussion with the NZMC and wardens (via the NZMWA).¹³³ The claimants agreed with the Crown that the centrality of their institutions to the Act, regardless of whether they were Māori institutions or who should lead the reform process, required a high level of engagement with them. Sir Edward told us: 'Due to the significant effect that any changes to the 1962 Act would have on the New Zealand Māori Council and associated structures, we would expect to play a central role in any review process.'¹³⁴ This is an important, additional point for us to consider as we evaluate the claim.

TPK officials had already drafted consultation documents (a discussion paper and two fact sheets) back in 2011. The purpose of the pre-consultation, as Ms Ngārimu explained it, was to put this material to the two most affected institutions for their feedback.¹³⁵ But there was also the issue of how the consultation itself would be conducted, and who would lead it. This issue dominated the first pre-consultation meeting between TPK officials and the NZMC, which took place on 19 April 2012. The Minister had sent the NZMC a letter advising the council that the Minister intended to consult Māori 'on proposed changes to the Act' in May or June 2012. Officials would now consult both the NZMC and the NZMWA to ensure that their views as to the options to be put to Māori were taken into account. The Minister forwarded a copy of the select committee report, the Government's response, and the draft consultation materials (which set out the options for Māori to consider).

129. Kim Ngārimu, brief of evidence (doc A2), p 4

130. Kim Ngārimu, brief of evidence (doc A2), p 7

131. Kim Ngārimu, brief of evidence (doc A2), p 10

132. Kim Ngārimu, brief of evidence (doc B13), p 7

133. Kim Ngārimu, brief of evidence (doc A2), pp 10–11

134. Sir Edward Tāihakurei Durie, brief of evidence (doc B9), p 9

135. Kim Ngārimu, brief of evidence (doc A2), p 7

THE STANDARD PROCESS FOR HOW THE CROWN CONSULTS MĀORI

Kim Ngārimu explained in her evidence to the Tribunal that one of TPK's 'key outcomes', as the Crown's principal advisor on Crown–Māori relationships, is the formation of Crown–Māori relationships to address matters of mutual significance. In doing so, TPK must ensure that Crown–Māori relationships 'demonstrate the principles of mutual respect, good faith and the recognition of each other's contribution'. To give effect to the Treaty's promise of partnership, it is necessary for TPK to ensure full 'Māori engagement in government policy and decision-making processes'.

A standard consultation process with Māori involves the following steps:

- ▶ identify the issue being discussed;
- ▶ identify those with an interest in participating in the discussion;
- ▶ arrange consultation so that those with a 'legitimate interest' in the discussion 'have enough time and opportunities to be heard'; and
- ▶ listen to the 'feedback' and take it into consideration when providing advice to the Minister on the matters under discussion.

These standard steps are applied so as to 'have effective discussions with as many people who will be affected by a review or issue as possible'.

Source: Kim Ngārimu, brief of evidence (doc A2), pp 2–3, 7

He also advised that two representatives each from the NZMC and NZMWA would be funded to participate in the upcoming consultation process.¹³⁶

At the 19 April meeting, Richard Orzecki, NZMC Deputy Chairperson at the time, referred to an earlier meeting with the Minister and Ms Ngārimu. Ms Ngārimu did not mention this meeting in her evidence to the Tribunal, and we have no official record of what was discussed at it. 'Our understanding from that meeting', Mr Orzecki said, 'was that no decisions regarding consultation had been made, and that there were still options open for the NZMC to lead the consultation.' But now the council had been presented with a letter advising that the Crown was going to consult Māori, and that two council members would be funded to attend the hui, which indicated that the decision had already been made. Sharyn Watene, a member of the NZMC, added: 'Our understanding is that the NZMC would be leading the consultation on the MCDA.'¹³⁷

In response to these statements, TPK officials at the 19 April meeting responded:

¹³⁶ Kim Ngārimu, brief of evidence (doc A2), pp 11–12; Minister of Māori Affairs to the Deputy Chairperson of the NZMC, 2 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 92)

¹³⁷ Record of TPK–NZMC meeting, 19 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 142)

No, this isn't the case. We can talk about how the NZMC will be involved, but there has not been a decision to have the NZMC lead the consultation.¹³⁸

The NZMC then proposed three options for consideration: another select committee inquiry, an independent panel (appointed by Māori and the Crown), or a 'NZMC-led process'. In the council's view, a TPK-led consultation was not appropriate. In response, officials stated that there would not be another select committee inquiry, and that the Crown had 'concerns with the idea of the NZMC leading the consultation process – this could compromise the independence of the consultation process'. The 'Minister must now progress with an independent consultation process'.¹³⁹

As a compromise, the council suggested a jointly appointed independent panel, to which TPK responded that there could be discussions as to who would be chosen to facilitate the consultation hui, the format of the hui, and the content of the consultation documents. On the latter point, the council expressed its concerns about some of the content of the draft documents. We will return to that point later. Here we are concerned with the fundamentals of how the consultation should be conducted, and by whom. TPK was interested in hearing further from the council as to the 'option of having a panel working on the issues in more depth'. This appears to have recast the idea of a panel conducting the consultation to a panel as a focus group.¹⁴⁰

At the next meeting, on 4 May 2012, TPK delivered the Crown's response to concerns raised about who should lead the consultation:

The consultation will be carried out independently on behalf of the Minister of Māori Affairs. It will be independent in the sense that we won't be going out with any preconceived notions of what the outcome should be.¹⁴¹

This was the first mention of what was to become the Crown's main argument over the next 18 months: the Crown could conduct an 'independent' consultation because it had no views of its own, and was simply seeking to ascertain and give effect to what Māori wanted.

At the 4 May 2012 meeting, the council representatives accepted the Minister's decision on this point as a fait accompli, and focused on the substance of the consultation documents and what options would be presented by the Crown to Māori, and how those options would be couched. TPK officials agreed to make requested changes to the consultation material, and also renewed their offer that a joint

138. Record of TPK-NZMC meeting, 19 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p143)

139. Record of TPK-NZMC meeting, 19 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p144)

140. Record of TPK-NZMC meeting, 19 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), pp144-145)

141. Record of TPK-NZMC meeting, 4 May 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p146)

selection could be made of a facilitator for the hui. They refused, however, to budge on the need for equal support for participation in the whole review by the NZMC and NZMWA. (The NZMWA's participation, it had been argued, should be restricted to wardens' issues.)¹⁴²

At this point, the NZMC had made its pitch for a NZMC-led or independent panel consultation, and had been turned down by the Crown. It seemed as if the consultation would then proceed on the basis of NZMC involvement in revising the consultation material, and funding for two NZMC representatives to participate in the hui. The idea of a NZMC–Crown panel or focus group to look at matters in more depth than one-off hui had not been pursued.

But an unexpected development now brought the pre-consultation process to a halt. Triennial elections had produced a new and reformed Māori Council, with which the Minister had to engage afresh.

6.5.3 The Māori Council is reformed and revitalised, June 2012

Back in 2010, the TPK advisers had reported a majority view from the select committee submissions that:

The New Zealand Māori Council was seen as having the potential to represent and advocate for all Māori on issues that run across tribal and other Māori groupings. A successful, revitalised New Zealand Māori Council was seen as an organisation that would provide an avenue for Māori to act together on pan-Māori issues; that would be able to engage with government at all levels, participating in policy development; and that would have a strategic role within Maōridom, while being accountable to communities.¹⁴³

In the interim between 2010 and 2012, certain Māori leaders had taken up this very challenge and moved to revitalise and re-establish the NZMC, its district councils, and its grass-roots committees without any legislative intervention or Crown assistance. As in the late 1950s and early 1960s, Māori took the initiative and established (or re-established and reformed) their own institutions. Also, as we saw in chapters 3 and 4, this kind of renewal process has happened periodically in the council system, based as it is on the time and resources of volunteers who have little or no funding, and on rallying to meet challenges or opportunities at particular times.

The reform in 2012 began within the sitting NZMC, which sought legal advice and put out a call from Sir Graham Latimer that proper elections be held at all levels of the council system. Following Sir Graham's initiative, elections were held in seven of the 16 districts, resulting in properly constituted and reactivated Māori

142. Record of TPK–NZMC meeting, 4 May 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), pp 146–148)

143. Te Puni Kōkiri, 'Inquiry into the Māori Community Development Act 1962: Advisers' Report to Māori Affairs Committee', October 2010, p8 (http://www.parliament.nz/resource/mi-nz/49SCMA_ADV_OODBSCH_INQ_9297_1_A138975, last modified 13 October 2010)

Councils in those districts. The NZMC itself was then elected in June 2012.¹⁴⁴ The process of reform did not end there. The reformed council has been working in the inactive districts to prepare for reconstitution of committees and district councils in the 2015 elections.¹⁴⁵ We heard evidence about this process from witnesses in the Te Waipounamu district, who – at the time of our hearing – had already set up two committees and were preparing to establish two more.¹⁴⁶ Four provisional DMCS, referred to by the claimants as ‘District Māori Councils-in-waiting’, have been appointed as a result of elections outside of the time specified in the 1962 Act. According to the NZMC’s secretary, Ms Waterreus, this creates local networks and provides a sure foundation for the elections that will need to be held in 2015. It also provides some representation on the NZMC for those districts in the meantime.¹⁴⁷

6.5.4 Pre-consultation with the reformed council, 2012–13: who should lead the review and reform of Māori institutions?

The Minister of Māori Affairs approached the reformed NZMC about the ‘pre-consultation’ process on 2 July 2012. In his letter to the council, Dr Sharples suggested that the Government had agreed to changes in the consultation documentation, and that the previous NZMC had expressed satisfaction with the changes. Now, given the elections, the Minister sought to re-engage with the new council and confirm that its members were satisfied with the consultation documents.¹⁴⁸

Following this approach from the Crown, there was an unexplained eight-month hiatus during which (we presume) both the Crown and the NZMC were pre-occupied with the Waitangi Tribunal hearing, consultation, and Supreme Court litigation on the partial sale of the state power companies. The Supreme Court decision was issued at the end of February 2013. The Crown then approached the council again on 14 March 2013, asking for its view on the consultation documents that had been sent to it back in July 2012.¹⁴⁹ The requested feedback was not received within the two weeks specified (by 28 March 2013). Instead, there was a meeting between the Minister and NZMC representatives on 7 May 2013. We were supplied with no information as to what transpired at that meeting.¹⁵⁰ On 31 May 2013, the Crown sent a second letter, suggesting that the documents had been amended to reflect the original feedback from the previous NZMC, and seeking further comment by 7 June 2013 before the document went to Cabinet for approval.¹⁵¹

144. Sir Edward Taihakurei Durie, brief of evidence (doc B9), pp 3–5; Sir Edward Taihakurei Durie to Minister of Māori Affairs, 27 June 2012 (Crown counsel, TPK document collection (doc C15), p 810)

145. Sir Edward Taihakurei Durie, brief of evidence (doc B9), pp 3–4

146. Transcript 4.1.1(a), pp 190–191

147. Karen Waterreus, brief of evidence, 28 October 2014 (doc C24)

148. Minister of Māori Affairs to Sir Edward Taihakurei Durie, 2 July 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), pp 150–152)

149. Chief Executive of Te Puni Kōkiri to Sir Edward Taihakurei Durie, 14 March 2013 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 203)

150. Kim Ngārimu, brief of evidence (doc B13), p 4

151. Chief Executive of Te Puni Kōkiri to Sir Edward Taihakurei Durie, 31 May 2013 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), pp 204–206)

DISTRICT MĀORI COUNCILS

Current councils

The current District Māori Councils, in office as a result of committee elections held on the required dates in February 2012, are: Te Tai Tokerau; Tāmaki Makaurau; Waiariki (now renamed 'Te Arawa'); Mataatua; Aotea; Raukawa; and Wellington.

Councils-in-waiting

The 'District Māori Councils-in-waiting', appointed as a result of committee elections held after the required date in February 2012, are: Tāmaki ki Te Tonga; Tairāwhiti; Tākitimu; and Te Waipounamu.

Inactive districts

The inactive districts are: Waikato; Hauraki; Tauranga Moana; Maniapoto; and Te Tau Ihu.

Sources: Karen Waterreus, brief of evidence, 17 October 2014 (doc C22); Karen Waterreus, brief of evidence, 28 October 2014 (doc C24); Sir Edward Taihakurei Durie to Minister of Māori Affairs, 27 June 2012 (Crown counsel, TPK document collection (doc C15), p 810).

The council responded on 11 June 2013. Its secretary, Karen Waterreus, explained in the letter that the council 'looks forward to reform [of the Act] in time but says that this is not the time because of changed circumstances since the Select Committee reviewed the matter'. The council's position was, first:

*There should be no consultation until the reformed Council is properly bedded in. The Council's initiative to re-establish District Councils on the basis of democratic elections and good governance has been successful but is not yet complete and some districts have still to be re-established. [Emphasis in original.]*¹⁵²

Secondly, there should be no consultation until the council's legal status vis-à-vis the 'objectors' was settled by an impartial process.¹⁵³ This was a reference to the disputed Wellington district elections, and TPK's recognition of a Te Tau Ihu chairperson where the NZMC held that no legitimate District Māori Council was in place.¹⁵⁴ Thirdly, the council argued that there should be no consultation 'until the

152. K Waterreus to Minister of Māori Affairs, 11 June 2013 (Karen Waterreus, comp, papers in support of brief of evidence (doc A1(b), p 1)

153. K Waterreus to Minister of Māori Affairs, 11 June 2013 (Karen Waterreus, comp, papers in support of brief of evidence (doc A1(b), p 2)

154. Sir Edward Taihakurei Durie, brief of evidence (doc B24), pp 3–4

wardens are returned to the Council according to the statute'. This point referred to the Māori Wardens Project and the Government's allocation of funds and training to wardens, which the council felt did not comply with the Act.¹⁵⁵

Finally, and perhaps most importantly, the council stated:

Any consultation must be led by the Council according to kaupapa Māori. The establishment of Māori Councils in 1900 and the reforms of the Council in 1945 and 1962 came about by direct dealings between Māori and Ministers, with local hui in support. The same process fits with the principle of rangatiratanga in the Treaty of Waitangi and the principle of self-determination in the UN Declaration of the Rights of Indigenous Peoples (as expressed in provisions that indigenous peoples determine the structure of their institutions through their own processes). [Emphasis in original.]¹⁵⁶

This June 2013 letter was a key statement of the council's position. The Crown's decision in response led to the present claim.

6.6 THE CROWN'S DECISION TO PROCEED WITH A CROWN-LED CONSULTATION PROCESS IN 2013

6.6.1 The Crown's decision to proceed

On 3 July 2013, the Minister responded to the council's letter of 11 June. He advised Sir Edward that he would remove the option of disestablishing the NZMC from the consultation material. This was because 'the NZ Māori Council has a valuable contribution to make'.¹⁵⁷ As will be recalled, the option of getting rid of the council had been recommended by the select committee in 2010 for serious consideration by Māori and the Government. In response to the NZMC's request in 2012 that the consultation material be made more positive as to the role and achievements of the council, TPK had responded at the 19 April meeting: 'Our main question is more fundamental: "do we need the NZMC", not "how can we make the NZMC better"'.¹⁵⁸ And, again, at the 4 May meeting: 'TPK position – we have to pick up where the Māori Affairs Committee left off. We're starting from "do we need a pan-Māori body", not "how can we make the NZMC better"'.¹⁵⁹

Nonetheless, TPK did make changes to the consultation materials at the request of the then sitting council to portray its history and achievements in what was seen as a fairer manner. And in 2013, the Minister decided to withdraw this option from the discussion paper. He clearly hoped that this would suffice to allay some

155. K Waterreus to Minister of Māori Affairs, 11 June 2013 (Karen Waterreus, comp, papers in support of brief of evidence (doc A1(b), p 2)

156. K Waterreus to Minister of Māori Affairs, 11 June 2013 (Karen Waterreus, comp, papers in support of brief of evidence (doc A1(b), p 2)

157. Minister of Māori Affairs to Sir Edward Durie, 3 July 2013 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 253)

158. Te Puni Kōkiri, record of meeting between TPK and NZMC representatives on 19 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 144)

159. Te Puni Kōkiri, record of meeting between TPK and NZMC representatives on 4 May 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 146)

of the NZMC's concerns. Otherwise, the Crown was not prepared to agree to any of the council's requests in respect of the consultation: 'Having considered all views on these matters I have decided to proceed with consultation, which I will lead through Te Puni Kōkiri.'¹⁶⁰

The Minister's letter of 3 July 2013 was followed by a meeting with NZMC representatives, at which no progress appears to have been made. On 25 July 2013, the NZMC confirmed that two representatives would participate in the consultation hui, subject to agreement between the Crown and council as to their role at the hui. But the council also said that it would file the present claim with the Waitangi Tribunal, seeking a 'declaration that the proposed consultation is contrary to the principles of the Treaty: first, as contrary to the principle of self-determination (as found also in UNDRIP) and second as prejudicial to the on-going water claim [before the Waitangi Tribunal]'.¹⁶¹

The Minister was not persuaded to change his mind and the 20 consultation hui proceeded in September 2013. The claimants had many specific complaints about these hui, which we will return to later in the chapter.

6.6.2 The Crown's explanation of the decision to proceed

We need to consider why the Crown made these two decisions in mid-2013 (that is, to proceed without waiting for the council reforms to be completed, and to proceed with a Crown-led consultation instead of a NZMC-led process).

First, on the question of who should lead the consultation, Ms Ngārimu told us:

The decision for Te Puni Kōkiri to lead the consultation on behalf of the Minister was made for two key reasons. Firstly, the Minister is responsible for the Act, and it is appropriate for his agency to service him in discharging that responsibility. Secondly, as the consultation could impact on the future of the NZMC, it was considered that there was a potential conflict of interest if the NZMC was to lead the consultation. Alongside this, given that Government did not have a preferred option for the future, it was considered that Te Puni Kōkiri was able to be a neutral party facilitating the consultation and seeking the views of Māori communities on their preferences for the future.¹⁶²

In the Crown's view at the time, its early engagement with what it considered to be the most affected bodies, the NZMC and the NZMWA, showed that both had 'pre-existing views about the preferred outcome of the review'. Ms Ngārimu acknowledged the claimants' view that the characterisation of this as a 'conflict of interest' was 'oversimplified'. But, she reiterated, TPK officials considered that the Crown was best placed to lead the review and consultation:

160. Minister of Māori Affairs to Sir Edward Taihakurei Durie, 3 July 2013 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 253)

161. Acting Secretary, NZMC, to Minister of Māori Affairs, 25 July 2013 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 255)

162. Kim Ngārimu, brief of evidence (doc A2), p 15

the potential for the review to impact on the structure and roles of these organisations; the fact that pre-existing views were held by these organisations; the wider set of interests at play (including those of other representative entities and Māori communities themselves); and the fact that in the lead-up to the public consultation the Crown position was that it did not have a pre-determined view, or indeed a preference, regarding the outcome of the consultation meant that it was best positioned to lead the public consultation process in 2013. In reaching this view, the Treaty principles of rangatiratanga and kāwanatanga were foremost in officials' consideration, in that it was necessary to balance the rangatiratanga interests of a number of parties with the kāwanatanga responsibilities of the Crown, and particularly the Minister of Māori Affairs (the Minister) who is responsible for administration of the Act.¹⁶³

Ms Ngārimu also stressed the Government's view at the time that the representational landscape had changed so significantly as to make the council's origins and statutory mandate much less relevant. The Crown's Treaty obligations required it to balance the many rangatiratanga interests involved in Māori Wardens and in the shape and role of a national Māori body. The Crown, we were told, had no preferred outcome of its own and so was best placed to balance these Māori interests and ensure that all relevant points of view were heard and considered.¹⁶⁴ TPK also considered it consistent with the Treaty principle of options, for the Crown to put options in front of Māori for them to make choices.¹⁶⁵

According to Ms Ngārimu, the Crown's decision to proceed with a Crown-led process was thus Treaty compliant.¹⁶⁶ This view was endorsed by Michelle Hippolite, the Chief Executive of TPK, who told the Tribunal that the department was satisfied that there had been 'strong practical reasons' for its role in the review to date, and that 'the review thus far has been conducted in full compliance with Treaty principles'.¹⁶⁷

On the second decision made in 2013 (not to delay the consultation until the council's reforms were further advanced), Ms Ngārimu explained that the Crown made this decision for two reasons:

- ▶ first, because 'it was considered that the review process, which had commenced in 2009, had already been delayed for too long, and the particular concerns of the Select Committee that better support needed to be provided to Māori Wardens had to be addressed'; and,
- ▶ secondly, because the Government had reported to Parliament back in 2011 that it would conduct consultation, so it was 'important that it can demonstrate that it has undertaken this'.¹⁶⁸

163. Kim Ngārimu, brief of evidence (doc B13), p 3

164. Kim Ngārimu, brief of evidence (doc B13) pp 2–3, 7

165. Kim Ngārimu, brief of evidence (doc B13) p 8

166. Kim Ngārimu, brief of evidence (doc B13) pp 7–8

167. Michelle Patehepa Parewhero Hippolite, brief of evidence (doc B18), p 5

168. Kim Ngārimu, brief of evidence (doc A2), p 15

6.6.3 The claimants' view of the Crown's decision to proceed

In the claimants' view, the Crown's decisions in 2013 were wrong, and they were made in breach of Treaty principles and UNDRIP.

Sir Edward Taihakurei Durie emphasised in his evidence that the reforms which Māori themselves were instituting to the council system had removed some of the problems earlier perceived as requiring amendment. He could see no true urgency for the consultation to proceed without waiting for the council reforms to be completed. Perhaps, he suggested, the answer lies partly in the Crown's failure to appreciate that a significant reform and revamping of the council system was indeed underway. Also, in Sir Edward's evidence, there was no conflict of interest of a kind that could prevent the NZMC from leading a review and reform process, and no suggestion that the many Māori interests concerned could not be accommodated and consulted in such a Māori-led process.¹⁶⁹

This was the nub of the dispute between the claimants and the Crown when it was brought before the Tribunal in late 2013. As claimant counsel submitted:

The NZMC accepted that it was appropriate to look at whether the 1962 Act remains fit for purpose in the structure it provides for rangatiratanga/self-government, however it did not agree with the process that the Crown developed to determine that. The NZMC considers that it is the right of Māori to lead such a review . . . This difference of opinion has given rise to the present contemporary Inquiry.¹⁷⁰

Above all, the claimants argued that the wardens and the councils were Māori institutions, created by Māori for their own self-government and then given statutory recognition and powers by negotiation with the Crown. This view is correct, as we found in chapter 3. Sir Edward explained the consequences of this point for any significant review or reforms of those institutions:

It is of further concern to me that Te Puni Kōkiri have failed to appreciate the context and history of the 1962 Act. . . . If sufficient weight was given to the United Nations Declaration on the Rights of Indigenous People and the history of the New Zealand Māori Council, I believe that the process of consultation would be very different, namely, reform of the historic Māori organisations of Māori self-government would not be led by the Crown. . . . [T]he structures created by the 1962 Act are seen as the product of a very long history of a search for some limited form of self-government. The structures were not created by the Crown, but by Māori, and as such, we do not believe that it is appropriate for the Crown to lead any inquiry into their reform. Ultimately, this process should be led by Māori in accordance with accepted principles of tikanga.¹⁷¹

169. Sir Edward Taihakurei Durie, brief of evidence (doc B9), pp 7–9; Sir Edward Taihakurei Durie, brief of evidence (doc B24), p 6

170. Claimant counsel, closing submissions (paper 3.3.5), p 20

171. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 8

This was by no means an academic argument. Diane Black, Māori Warden and treasurer of the Tāmaki ki Te Tonga District Māori Council-in-waiting, spoke with great eloquence to the point that the wardens and the councils are Māori institutions, independent of the Crown and accountable to Māori communities. In her view, a government department could not understand and value the intrinsic culture and relationships between wardens, councils, and communities in the same way as those institutions and communities themselves could do. Nor was a government department responsible to the communities as those institutions were.¹⁷² She told us:

I strongly object to TPK, as a Crown agency, making any decisions on how Wardens should be funded or organised as they have shown their lack of understanding of how and why Māori Wardens have been successful for so long, ignorance of their origin from within the Māori community, and their [TPK's] ongoing attempts to have Wardens operate in a government-like structure that Te Puni Kōkiri understands. This whole issue is not about what Te Puni Kōkiri wants. It's about what is best for Māori Wardens. I believe that, although they lack funding, the New Zealand Māori Council and District Māori Councils are what is best for Māori Wardens. This structure comes from the Māori community, supports and protects the community and does this in a manner that puts Māori first. Māori Wardens as an integral part of this structure are always respected for who they are and where they come from and are never expected to change to fit a stereotype of how Māori Wardens should act.¹⁷³

Many witnesses spoke in this way. Some of the interested party witnesses, such as Jordan Winiata Haines, emphasised the need for wardens themselves to play a lead role in deciding what happens to their institution.¹⁷⁴ Clare Matthews, who supported a national wardens' body independent of the Māori councils, told us: 'surely the right of choice must be returned [to Māori Wardens] to determine their future pathway'.¹⁷⁵ While arguing that wardens must remain accountable to their communities (preferably through the council structure), some claimant witnesses agreed that wardens should have a large say in what happens next. In addition, the claimants relied on UNDRIP and its self-determination provisions. They argued that the Crown's 2013 decision to proceed with a Crown-led process to review and reform the institutions provided for in the 1962 Act was in breach of UNDRIP. The claimants relied on the evidence of Dr Claire Charters, who argued that Māori, as an indigenous people, have a 'right to determine, autonomously, the constitution of their organisations, including their representative and governing structures at a national level'. This right would apply 'even where Indigenous peoples' organisations have been legislatively recognised and/or constituted in the past', such as the NZMC and other institutions provided for in the 1962 Act. According to Dr Charters, the right would extend to 'determining and managing the processes' by which the constitu-

172. Diane Black, brief of evidence (doc B5), pp 13, 17–18

173. Diane Black, brief of evidence (doc B5), p 18

174. Jordan Winiata Haines, brief of evidence (doc B28), paras 16–17, 22–29

175. Clare Matthews, brief of evidence (doc B29), p 3

tion of Māori institutions is considered and determined.¹⁷⁶ In other words, UNDRIP recognises a right inherent in the Māori people to decide for themselves the constitution of their own organisations, even where such organisations are provided for in statute, and to manage the process for making such decisions – which would have included the 2013 consultation about the 1962 Act. Further, Māori ‘rights to culture’ may include the right to determine the constitution and membership of their own organisations, which is significant for section 20 of the New Zealand Bill of Rights Act.¹⁷⁷

Dr Charters also commented that there are no legal or constitutional factors which required the Crown to lead the review and reform of the 1962 Act, although she accepted that only Parliament could amend the Act ‘in line with the outcomes of any review’.¹⁷⁸ She concluded:

the Government’s consultation proposals raise human rights issues for Māori in that they assume that the review, and associated consultation processes, of a Māori organisation, should be led by Government. In my view . . . that would not comply with Indigenous peoples’ rights under international law.¹⁷⁹

6.6.4 The Crown’s new position in response to consultation and the NZMC’s Treaty claim: ministerial decisions and the Hippolite proposal

In her evidence for the judicial conference to determine urgency, dated 1 November 2013, Ms Ngārimu stated that the Crown’s position had not changed as to who could or should lead the review: ‘the Crown continues to consider that a review being led – even jointly – by one of the institutions provided for within the legislation being reviewed would be inappropriate and not seen as independent’. The proper approach, in the Crown’s view, was still that it should lead the review, because it had no predetermined views and so ‘is able to act independently in the consultation on the review of the Act’.¹⁸⁰

In December 2013, however, Cabinet made some key decisions as a result of the 20 consultation hui, 86 ‘unique’ submissions, 1,193 ‘form submissions’ in support of the NZMC, and ‘submissions representing 840 individuals supporting the work of Māori Wardens’.¹⁸¹ The NZMC submission argued that the 1962 Act ‘gave effect to an agreement to recognise a measure of Māori self-government’. Such an historic agreement with Māori, the council said, could not be changed by one side alone: ‘If reform is needed, the reform process should be agreed and should fit with the Treaty of Waitangi and the United Nations Declaration of the Rights of

176. Dr Claire Winfield Ngamihi Charters, brief of evidence, 20 January 2014 (doc A10), p 51

177. Dr Claire Charters, brief of evidence (doc A10), p 51

178. Dr Claire Charters, brief of evidence (doc A10), p 52

179. Dr Claire Charters, brief of evidence (doc A10), p 52

180. Kim Ngārimu, brief of evidence (doc A2), pp 2–3, 5

181. Cabinet Social Policy Committee, minute of decision, 4 December 2013 (Crown counsel, papers in support of submissions (paper 3.1.8(a)), p 1)

Indigenous Peoples'.¹⁸² Based on the history of the Act as an agreement between the Treaty partners, the council argued: 'Māori should develop its kaupapa or position, the Crown should develop its, and the two should be negotiated under the mana of the Treaty'.¹⁸³ The council also provided its Tribunal statement of claim to illustrate and explain its submission.¹⁸⁴ As we shall see, this submission – in conjunction with evidence and submissions in the Tribunal's urgency process – was taken very seriously by the Crown.

TPK summarised the content, themes, and outcomes of the September hui and the written submissions, a copy of which was provided to the Tribunal.¹⁸⁵ Cabinet concluded that the views of Māori, as revealed in these submissions and at hui, were:

- ▶ the Act should be changed to better enable the NZMC to 'provide national advocacy and leadership on pan-Māori social, economic and community development issues', including adequate resourcing for the NZMC;
- ▶ Māori Wardens' roles should be updated and their resources increased;
- ▶ views were divided as to whether wardens should remain under the umbrella of the NZMC or 'become independent'; and
- ▶ views were divided as to whether community officers should be abolished.¹⁸⁶

Based on these expressions of Māori views, the Government decided that no changes would be made to the Act in respect of the NZMC, that TPK should undertake 'further engagement with key stakeholders' to develop final proposals in respect of wardens, and asked the Minister to provide these proposals by April 2014.¹⁸⁷ In announcing these decisions, Dr Sharples stated:

The overwhelming view was that the New Zealand Māori Council should remain and provide services in Māori communities. The Council has also advised me that it is currently rejuvenating its structure. I have taken those views on board, and this week Cabinet agreed there would be no changes to the Act in respect of the New Zealand Māori Council.¹⁸⁸

The Crown's position in December 2013, therefore, was that TPK would lead a process of engagement with 'key stakeholders' on Māori Wardens' issues, including

182. NZMC, 'Statement on proposed changes to the Māori Community Development Act 1962', 30 October 2013 (Crown counsel, TPK document collection (doc C15), p 884)

183. NZMC, 'Statement on proposed changes to the Māori Community Development Act 1962', 30 October 2013 (Crown counsel, TPK document collection (doc C15), p 885)

184. Crown counsel, TPK document collection (doc C15), pp 886–912

185. Te Puni Kōkiri, 'Summary of oral and written submissions in response to proposed changes to the Māori Community Development Act 1962', March 2014 (Kim Ngārimu, comp, papers in support of brief of evidence (doc B13(a)))

186. Cabinet Social Policy Committee, minute of decision, 4 December 2013 (Crown counsel, papers in support of submissions (paper 3.1.8(a)), p 1)

187. Cabinet Social Policy Committee, minute of decision, 4 December 2013 (Crown counsel, papers in support of submissions (paper 3.1.8(a)), p 2)

188. Dr Pita Sharples, 'New Zealand Māori Council to continue unchanged', press release, 11 December 2013 (Crown counsel, papers in support of submissions (paper 3.1.8(b)))

‘exploring models of establishing a stand-alone entity’.¹⁸⁹ The Crown’s review had now ‘ended in respect of the NZMC’. But, Crown counsel submitted, the rejuvenating NZMC had the power to review its own structures and requirements and ‘come to the Crown with proposals for legislative change should these be considered necessary’.¹⁹⁰ This submission in December 2013 marked the beginning of an important shift in the Crown’s position towards the principles advocated by the claimants. It made no mention of government support for such a NZMC-led review, which – as Dr Charters pointed out – was important under UNDRIP.¹⁹¹

Be that as it may, the position in December 2013 was less clear for the Crown’s proposal to continue its review of the Act in respect of Māori Wardens. No decisions had been made as to what form or process would be involved in the Crown’s forthcoming ‘engagement with key stakeholders’. It was on this question that the Crown’s thinking underwent a further, important shift in 2014.

On 28 February 2014, the Chief Executive of TPK, Michelle Hippolite, filed her evidence with the Tribunal. In it, she stated: ‘The Crown agrees and accepts that the New Zealand Māori Council and Māori Association structure, and the Māori Wardens, are Māori institutions and not Crown institutions.’¹⁹² The Crown, however, saw itself as having a legitimate interest in those institutions because they were provided for in a statute, because the powers conferred by the Act were ‘under the general direction and control of the Minister’, and because public funds were used for both the NZMC and Māori Wardens.¹⁹³ Nonetheless, Ms Hippolite said that, ‘upon reflection, and having considered the submissions made as part of the review and evidence filed by the claimants in this matter, the Crown confirms that Māori should be free to consider for themselves and develop reforms to their own institutions, and to the extent that legislative reform might be required or public funding sought, to come to the Crown as Treaty partner to discuss and negotiate desired reform.’¹⁹⁴

This was the most important admission of principle made by a Crown witness in our inquiry. It went a long way towards recognising and agreeing to what the claimants had sought from the Crown since 2010, although Ms Hippolite stated the Crown’s belief that a Māori-led reform could not be conducted by the NZMC alone.¹⁹⁵

In Sir Edward Taihakurei Durie’s reply to the Crown’s evidence, he welcomed the Chief Executive’s ‘willingness to reconsider the review process’. He also welcomed her express ‘recognition that “Māori should be free to consider for themselves and develop reforms to their own institutions”’. This did not, however, meet some other

189. Dr Pita Sharples, ‘New Zealand Māori Council to continue unchanged’, press release, 11 December 2013 (Crown counsel, papers in support of submissions (paper 3.1.8(b)))

190. Crown counsel, closing submissions in the urgency application proceedings, 19 December 2013 (paper 3.1.13), p3

191. Dr Claire Charters, addendum to brief of evidence, 1 April 2014 (doc A10(a)), pp 3–4

192. Michelle Hippolite, brief of evidence (doc B18), p1

193. Michelle Hippolite, brief of evidence (doc B18), p1

194. Michelle Hippolite, brief of evidence (doc B18), p2

195. Michelle Hippolite, brief of evidence (doc B18), pp 2–3

concerns which the council had put forward in mid-2013: that the review should be delayed until the council's internal reforms were completed; and that the administration and control of Māori Wardens must first be returned to the council in compliance with the Act.¹⁹⁶

Dr Charters questioned whether the outcome of a Māori-led review and reform process should legitimately require negotiation with the State. In her view, the Crown's role 'should be confined to ensuring there is adequate support by relevant Māori for the chosen organisation structure or change to that structure before moving to implement the proposed change into legislation.'¹⁹⁷ Arrangements by which the Crown had a role in determining the substance of how Māori organisations are constituted or changed 'would likely be inconsistent with the Declaration', Dr Charters advised, unless agreed to by Māori.¹⁹⁸ In this case, however, the claimants clearly do agree that the outcome will require some negotiation. It was a matter of political reality, Sir Edward told us, that Māori must take reasonable, fully canvassed and supported proposals to the Crown Treaty partner for discussion and agreement.¹⁹⁹

There was thus significant agreement between the parties by the end of our hearings. But the principles now recognised by the Crown on which the review must proceed – Māori to be assisted with funding to review their own institutions and then come to the Crown to discuss and negotiate any changes to the Act – came with a caveat. Ms Hippolite told us:

The Crown's recognition that Māori should be free to themselves consider and develop reforms to their own institutions, does not mean that the Crown accepts it was inappropriate for Te Puni Kōkiri to have facilitated the review to date.²⁰⁰

In support of this position, the Chief Executive endorsed Ms Ngārimu's evidence of how and why the review had evolved, and the practical and Treaty considerations in TPK taking the lead role on the instruction of its Minister. The Minister, in turn, had been acting appropriately on the recommendation of a parliamentary select committee. Ms Hippolite concluded: 'I consider that recognition of the appropriateness of Māori developing reforms to their own institutions does not render the review process to date inappropriate.'²⁰¹

This raises a very clear question for the Tribunal to consider: if the Crown now recognises that a new or different approach must be adopted in order to meet its Treaty obligations, was the previous approach necessarily inconsistent with Treaty principles? We address this question in the next section, in which we resolve key arguments and make our findings on the issues discussed in sections 6.5–6.6.

196. Sir Edward Taihakurei Durie, brief of evidence (doc B24), pp 1–2

197. Claire Charters, addendum to brief of evidence (doc A10(a)), p 4

198. Claire Charters, addendum to brief of evidence (doc A10(a)), p 3

199. Transcript 4.1.1(a), p 273

200. Michelle Hippolite, brief of evidence (doc B18), p 5

201. Michelle Hippolite, brief of evidence (doc B18), p 5

6.7 THE TRIBUNAL'S FINDINGS ON THE FIRST LIMB OF THE CLAIM**6.7.1 Agreement between the parties: Māori institutions must be reformed by a Māori-led, not Crown-led, process**

The parties now agree that the Māori self-government institutions provided for by the 1962 Act must be reformed by a Māori-led, not Crown-led, process. The parties also agree on their respective roles under the Treaty: Māori should lead a review and reform process (with funding and technical assistance from the Crown), and then come to the Crown Treaty partner to discuss and negotiate any requested funding or changes to the Act.

But this agreement does not cover all matters and it is not retrospective; it does not apply to the Crown's actions to date in conducting a Crown-led review of the 1962 Act, in which the Crown intended to consult Māori in the standard way and then make decisions as to reform of the Act.

This is a matter of some concern to us. If, as we were told, the Crown has learned the correct approach through consultation and our hearing process, then its refusal to accept that its previous approach was wrong means that Māori can have little reliance on the Crown adopting the correct approach the next time that Māori institutions are in apparent need of review and reform. There are many Māori self-government institutions that have been given statutory form by agreement between the Treaty partners. Māori trust boards, rūnanga, and post-settlement governance entities are obvious examples. Nonetheless, the Crown has submitted that, while its proposed new process is in keeping with the 'spirit of partnership', so was its previous process. Further, the Crown has submitted that the agreement as to principle in this claim is not necessarily required by the UNDRIP or applicable in other cases:

Where the parties do not agree . . . is in one or possibly two respects.

The first, and most specific, is that the claimants see any change here as requiring consultation between Māori first, followed by agreement with the Crown. While the Crown is proposing that such is appropriate in this case, it does not agree that there is necessarily a basis for that sequence in UNDRIP.²⁰²

The claimants, on the other hand, submitted:

Tribunal findings of defects in the process adopted by the Crown (TPK) to date are also necessary to 'correct for' the misperception that that process has been Treaty and UNDRIP compliant, as the Crown continued to insist in its evidence to the Tribunal. Prophylactically, findings of breach of Treaty principles and associated UNDRIP rights are also likely to ensure that relevant Treaty principles and UNDRIP rights appropriately inform future consultation processes – particularly in relation to the 1962 Act.²⁰³

In light of these submissions, we need to consider the Crown's process from 2010 to 2013, which we have discussed in some detail in the preceding sections, to

202. Crown counsel, closing submissions (paper 3.3.3), pp 25–26

203. Claimant counsel, closing submissions (paper 3.3.5), p 56

determine whether it was consistent with Treaty principles. That discussion has raised six questions for us to answer in this section:

- ▶ Was the Crown acting in accordance with the principles of the Treaty of Waitangi when it decided that the NZMC had a conflict of interest, such that the Crown was a more ‘independent’ body to lead the review and reform of the Act?
- ▶ Was the Crown acting in accordance with the principles of the Treaty of Waitangi when it decided that circumstances required the review to proceed without waiting for the NZMC internal reforms to be completed?
- ▶ Was the Crown’s argument correct that a standard, Crown-led review and consultation process was consistent with Treaty principles, even though the Crown has now accepted that a Māori-led consultation followed by negotiation is appropriate?
- ▶ What was the significance of the changed representational landscape?
- ▶ How was the Treaty principle of options to be applied?
- ▶ Was the Crown’s argument correct that UNDRIP does not require Māori-led consultation followed by negotiation in this or other cases?

We address each of these questions in turn. In doing so, we apply the principles of the Treaty as set out and explained in chapter 2. Where appropriate, we also apply the articles of the Declaration, which were relevant for the parties to have considered in 2013 and which – as we explained in chapter 2 – inform understanding of Treaty principles.

6.7.2 Was the Crown acting in accordance with the principles of the Treaty of Waitangi when it decided that the NZMC had a conflict of interest?

As we discussed above, the Crown decided in mid-2013 to proceed with a Crown-led review and consultation process. One of its reasons for doing so was its view that the NZMC had predetermined ideas and a conflict of interest in reviewing itself and the Act which governed it. The Government, on the other hand, was said to have no ideas or preferences of its own, and thus was a more independent body to lead the review, consult the necessary range of interested Māori groups as to their views, and embody those views in legislative change.

Although given some prominence in the Crown’s evidence, this matter was not pursued by Crown counsel. We set out TPK’s view of the matter in section 6.6.2. In the initial response on 1 November 2013 to the application for an urgent hearing, Crown counsel did submit that the NZMC could not be ‘independent’ in leading a review of itself and its own functions, whereas TPK ‘has no similar conflict or lack of independence.’²⁰⁴ The Crown did not refer us to any case law or legal analysis in support of this submission, and the allegation that the council had a conflict of interest was not addressed again in the Crown’s substantive submissions during the urgency application proceedings, nor in the Crown’s opening or closing submissions for the March 2014 hearing.

204. Crown counsel, memorandum, 1 November 2013 (paper 3.1.3), p 10

According to claimant counsel, the Crown's view oversimplified and misapplied the concept of 'conflict of interest'. There is no parallel with trust law: 'The principle that to protect beneficiaries decision-makers should stand down from decisions where they have interests distinct from their beneficiaries does not apply here, as the Council does not serve any interests other than the interests of Māori generally.'²⁰⁵ Also, courts have found that the concept of a conflict of interest must be applied with due regard to context, including any relevant statutes. The NZMC has the statutory authority to make representations to the Crown on matters affecting all Māori. Its own constitution and Act must come under that statutory authority to make representations. Further, the reformed council is a democratic body reflecting the views and aspirations of its constituents.²⁰⁶

We agree with the evidence of Sir Edward Taihakurei Durie, when he said:

I understand that Te Puni Kōkiri's reasons for refusing to allow the New Zealand Māori Council to act as more than a mere stakeholder in the September 2013 consultation of the 1962 Act is because they see the New Zealand Māori Council as having a conflict of interest in the outcome of the review. In my view, this is an oversimplification of the understanding of conflicts of interest. The New Zealand Māori Council would be uniquely affected by any changes to the 1962 Act due to the formal recognition provided therein of this limited form of self-government, but it does not necessarily follow that the New Zealand Māori Council is then conflicted. As is consistent with the purpose of the New Zealand Māori Council under the 1962 Act, I believe that the New Zealand Māori Council is well placed to understand the needs of the community, even when it relates to our own structure.²⁰⁷

Further, as we discussed in chapter 2, any identification of the Crown's Treaty partner in respect of the 1962 Act starts with the Act's primary self-government institution, the NZMC, and the Māori communities that it represents for the purposes of the Act. The idea of a 'conflict of interest' is antithetical to the status of these institutions and how they were established and revised in partnership with the Crown. As we saw in chapter 3, the Act's arrangements were discussed intensively and negotiated over a five-year period. The Dominion Māori Conference in 1959, the provisional Dominion Māori Council in 1961, the 1961 Amendment Act's NZMC in 1962, and the 1962 Act's NZMC in 1963 were the Māori bodies responsible for proposing (in essence) their own constitutions, and for negotiating the shape of the Māori institutions given statutory recognition in 1961–63, including their own.

There is no doubting that council members had views in 2012–13 as to preferred or likely outcomes. This did not disqualify the council from leading a consultation process and developing an agreed Māori position with other interested groups and organisations. If it did, then the Crown would never be able to consult, since Ms Ngārimu told us that the Crown almost always goes out seeking feedback on

205. Claimant counsel, closing submissions (paper 3.3.5), p 71

206. Claimant counsel, closing submissions (paper 3.3.5), pp 70–72; claimant counsel, submissions by way of reply (paper 3.1.5), pp 3–5

207. Sir Edward Taihakurei Durie, brief of evidence (doc B9), pp 7–8

its preferred options or pre-developed proposals.²⁰⁸ Also, the council has shown itself capable of flexibility and creativity. When the Crown, for example, told the Advisory Group that it wanted a new national entity to administer funds and oversee the administration of Māori Wardens, the council proposed the establishment of a Community Overseer Committee to perform those tasks, jointly appointed by the Minister and the council, and responsible to both (see section 6.3). The claimants pointed to another example, their internal reform process: ‘it was apparent that there were problems and that the structure was not working as effectively as it might, and as a result, changes were made and significant progress has been made to reinforce the strength and accountability of the New Zealand Māori Council.’²⁰⁹ The claimants also admitted in our inquiry that they would need technical assistance because new and complex solutions must be designed to meet some of the problems in the administration of Māori Wardens.²¹⁰

The NZMC’s ‘conflict of interest’ was said to arise in part from the council having prejudged matters, whereas the Crown presented itself in 2012–13 as a neutral, independent, and therefore preferable body to lead the review.²¹¹ We accept that the Crown did not intend to conduct the consultation on the basis of its own developed proposals or preferred options.²¹² But the advice that TPK gave to the Advisory Group and the Select Committee shows that officials did have their own preferences and preconceived notions about the Act and what should happen to it (see sections 6.3–6.4). Also, as noted earlier, TPK signalled in 2009 that secretarial services to the Advisory Group should be outsourced, so that no conflict of interest arose when TPK offered its own advice to the Minister as to what should be done. Neither side, therefore, could claim complete neutrality or no preconceived notions in 2013 when it came to deciding which of them should lead the review of the Act.

In sum, we do not accept that the NZMC in 2013 had a conflict of interest that would have precluded it from conducting a Māori-led or joint Māori–Crown review of the 1962 Act.

6.7.3 Was the Crown acting in accordance with the principles of the Treaty of Waitangi when it decided that circumstances required the review to proceed without waiting for the NZMC to complete its internal reforms?

As we set out in chapter 4, the council system at all levels had been seriously lacking in funding for decades by the time of the select committee inquiry in 2010. The committee recommended that there was an ‘urgent need for better [administrative] support for Māori Wardens.’²¹³ Any changes to the 1962 Act, it said, ‘must focus

208. Kim Ngārimu, brief of evidence (doc A2), p 9

209. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 8

210. Transcript 4.1.1(a), pp100–101

211. See, for example, Record of TPK–NZMC meeting, 19 April 2012 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 146)

212. Kim Ngārimu, brief of evidence (doc A2), p 9

213. ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 6)

urgently on improvements for Māori Wardens, an invaluable body of volunteers who deserve comprehensive support.’²¹⁴ At that time, the committee found, the level of dysfunction in District Māori Councils meant that most wardens were without the necessary support. This led the committee to conclude that there was ‘no longer a good fit between Māori Associations and Māori Wardens’ and that a new governance structure was needed.²¹⁵ Also, the committee felt that there was too much distance and bureaucracy between the NZMC and local Māori communities, while the NZMC lacked the funding ‘to run itself, let alone its subsidiary bodies’, with a flow-on effect of too little support for Māori Wardens. Reform of the council system, therefore, was also ‘needed urgently’.²¹⁶

As we discussed in section 6.5, this call for urgent action in December 2010 was met in March 2011 by the Government’s response that something must be done, and the first thing to do was to consult Māori as to their wishes. Nothing happened for 12 months, however, because other matters were prioritised for consultation with Māori, and because there was a general election in late 2011. By the time the Government was ready to begin pre-consultation in March–April 2012, the NZMC structure was beginning a significant internal reform and rejuvenation. Māori committees were restored, seven of the 16 District Māori Councils were properly elected, and a re-energised, more democratic NZMC was ready to take on its responsibilities with regard to Māori Wardens, as well as to continue reviewing and strengthening the council structure. But the process was incomplete. Between 2012 and 2014, four other districts were re-established on a provisional basis, having elected committees and appointed DMCS-in-waiting. There were also still five inactive districts, which the council was working to restore by the next triennial elections in 2015.

Witnesses in our inquiry, such as Gloria Hughes, emphasised that wardens have been waiting a long time to have their issues addressed, and are not prepared to wait much longer. As we set out in chapter 5, reviews of their situation (among other things relating to the Act) have been happening since the 1980s. The NZMWA, however, with which the restored NZMC needed to work, had experienced its own internal problems and had gone out of official existence by 2012–13. Jordan Haines, who is on an interim committee, and Gloria Hughes, who still claims to be president, both told us that they hoped the NZMWA would be properly re-established later this year (in 2014).

It seems that both of the key Māori organisations involved in the work of Māori Wardens were in the process of reforming and re-establishing themselves. Was a review of the Act so urgent in 2013 that it justified proceeding with a Crown-led

214. ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 4)

215. ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 6)

216. ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 15)

consultation, without waiting for the council to fully re-establish itself or for its reforms to begin to improve the situation?

We accept that there was a need for urgent action. Māori Wardens certainly told us so during our hearings. We also accept that the review had already been delayed significantly by the 2011 election and the Government's other priorities for Crown–Māori consultation.

But interim arrangements could have been made for administration of the Māori Wardens Project and to assist wardens in the meantime. It was vitally important that the review proceed on the correct principle and thus result in sustainable outcomes, properly considered and supported by both Māori and the Crown. Otherwise, the review ran the risk of what happened in 1999, when the major review and consultation conducted by TPK resulted in no outcomes whatsoever because of a change of government. It seems that the standard consultation process in 1998 had created no momentum in Māoridom or outside of the Government to push for the proposed changes. A Crown–Māori compact on a matter of such importance, of the kind negotiated between 1959 and 1963, was the right way to achieve major change no matter which political parties went in or out of power. This was as true in 2013 as it was in 1999.

6.7.4 Was the Crown's argument correct that a standard, Crown-led review and consultation process was consistent with Treaty principles?

As we discussed in section 6.5, the Crown took the approach in 2012–13 that the review of the Māori Community Development Act required a standard consultation process, in which the Crown would identify those affected by an issue, consult them, listen to their feedback, and then decide what to do. It took this approach despite two countervailing factors identified by its own officials at the time.

The first was the theory, which TPK officials put to the select committee, that local communities needed to take the lead in designing and implementing their own development structures (see section 6.4).

The second was the Crown's view that the review of the Act was not, in fact, a standard consultation in which a government policy or proposal was being taken out for comment. Rather, according to Ms Ngārimu's evidence, this consultation was atypical because the Crown had no proposals of its own to put forward and simply wished to canvass options and find out what Māori wanted. TPK rightly wanted to 'create the opportunity for proposals for change, if any, to come from the Māori community'. This 'appropriately places with Māori communities the ability to shape the direction of the review of the Act'. TPK wanted Māori communities to provide 'direction' so that any changes would come from them, not from the Crown.²¹⁷

We do not doubt the sincerity or convictions of the officials involved. But it seems to us that these points ought to have raised questions among the Crown's policy-makers as to whether a standard consultation process in which Māori would

217. Kim Ngārimu, brief of evidence (doc A2), p 9

have ‘input’, culminating in departmental advice and ministerial decisions, was in fact appropriate in this case.

At the same time, the NZMC was proposing a different way forward. As we discussed in section 6.4, the council called for a halt to the select committee inquiry in 2010, so that a jointly appointed, independent panel could ascertain Māori wishes and propose reforms to the Act. At that time, TPK had put this possibility to the Māori Affairs Committee, pointing to the need for a process that ‘enables Māori to be involved in the development of these arrangements, and thereby have ownership of the new organisation.’²¹⁸ In the event, the select committee did not recommend an independent panel or, indeed, any specific deviation from the standard consultation process.

The NZMC put forward the idea of a jointly appointed, independent panel again in 2012, when the Crown began its ‘pre-consultation’ with stakeholders (see section 6.5.4). But the NZMC’s primary view in 2012 and 2013, both before and after the reformed council was elected, was that the council itself should lead the review, consult Māori and develop an agreed Māori position, and then come to the Crown to negotiate any proposed reforms.

The Crown and claimants agree that the Crown was right to work with the NZMC in 2012–13, before making any decisions about the review. According to Ms Ngārimu, a good, Treaty-compliant public process required the Crown to engage early with the institutions most affected by a review, and to act on their ‘input’ in good faith.²¹⁹ Sir Edward agreed: ‘Due to the significant effect that any changes to the 1962 Act would have on the New Zealand Māori Council and associated structures, we would expect to play a central role in any review process.’²²⁰ This would have been the case regardless of what kind of institutions were at issue or their significance in Treaty terms. But in this case they were Māori self-government institutions, which TPK acknowledged. Nonetheless, TPK did not agree that this fact required anything other than the standard Crown-consults-and-decides approach. Thus, the Crown refused to agree to the NZMC’s requests in 2013 and proceeded with a Crown-led review.

Crown counsel relied on Ms Hippolite’s evidence to argue that both the Crown and Māori have an appropriate role in the review of the Act: Māori in respect of ‘the review and reform of their own institutions’; and the Crown in respect of ‘agreeing to and promoting legislative reform and funding’. Both roles can be ‘provided for within the spirit of the Treaty partnership, with Māori considering and then proposing reform of their own institutions, and then coming to the Crown to discuss and negotiate desired reform where legislative change is required and/or funding sought.’²²¹ Crown counsel also emphasised that this understanding of appropriate roles under the Treaty comes from what the Crown has learned ‘through the

218. Te Puni Kōkiri, ‘Inquiry into the Māori Community Development Act 1962: Advisers’ Report to Māori Affairs Committee’, October 2010, p 4 (http://www.parliament.nz/en-nz/pb/sc/documents/advice/49SCMA-ADV_OODBSCH_INQ_9297_1_A138975/advisors-report-october-2010, last modified 13 October 2010)

219. Kim Ngārimu, brief of evidence (doc A2), pp 9–10; Kim Ngārimu, brief of evidence (doc B13), p 7

220. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 9

221. Crown counsel, closing submissions (paper 3.3.3), p 7

consultation to date and these proceedings.²²² Thus, the Crown has learned and taken on a new understanding of matters as part of a process which is – to date – incomplete.

Nonetheless, Crown counsel argued that the review process from 2009 to 2013 had also been Treaty compliant.²²³ The Chief Executive told us:

The Crown's recognition that Māori should be free to themselves consider and develop reforms to their own institutions, does not mean that the Crown accepts it was inappropriate for Te Puni Kōkiri to have facilitated the review to date. . . . I consider that recognition of the appropriateness of Māori developing reforms to their own institutions does not render the review process to date inappropriate.²²⁴

One difference, we were told, is that the Crown is now better informed than when the NZMC made the same proposal in 2013, and has learned from the consultation and the claimants' evidence in the meantime.²²⁵

We do not accept TPK's reasoning on this matter. If it is appropriate as a matter of principle that Māori self-government institutions should be reviewed by Māori, who should then bring legislative reform to the Crown for negotiation and agreement – as both parties submit – then that was just as appropriate in 2013 as it is now. The Crown's previous approach was a standard consultation in which the Crown would inform itself and then make decisions as to Māori self-government institutions. That was inconsistent with Treaty principles and UNDRIP. In particular, the Māori interest in their own self-government institutions was so clearly of central importance, compared to the Crown's much lesser interest, that any legislative change would require the collaborative agreement of the Māori Treaty partner. Even if the Crown was correct that the NZMC was not the right Māori body to lead the review, it does not change the fact that a Crown-led process was inconsistent with Treaty principles. Further, we think the Crown was well-informed enough to know that in 2013.

Where the Crown was not well informed, however, was in the significance of the Māori Community Development Act 1962 to the Treaty partnership. The Crown's view was dominated by ideas generated in TPK's review of the Act back in 1998, which were repeated in the 2009 select committee process and are still prevalent among officials. This conception of the Act is that it is a piece of legislation from the 1960s, and that its purpose was assimilation and behaviour-control, much more than development or self-government.²²⁶ Alternative views of the Act were

222. Crown counsel, closing submissions (paper 3.3.3), p 11

223. Crown counsel, closing submissions (paper 3.3.3), pp 12–13

224. Michelle Hippolite, brief of evidence (doc B18), p 5

225. Michelle Hippolite, brief of evidence (doc B18), p 2; Crown counsel, closing submissions (paper 3.3.3), p 11

226. See, for example, Minister of Māori Affairs to Cabinet Strategy Committee, 'Review of Māori Community Development Act 1962: Proposals for Reform', 27 July 1999 (Crown counsel, TPK document collection (doc C15), pp 395–396)

disregarded, both by the Māori Affairs Committee in 2010²²⁷ and largely by TPK from 2009 to 2013. Even now, the most that Crown counsel would say in our inquiry was that ‘evidence on the formation of the NZMC and DMCS under the MCDA (and its predecessors) will be relevant to inform the Tribunal of the context in which the Wardens currently operate.’²²⁸ The Crown did not accept that these matters are relevant to how *the Crown* operates.

We hope that our report will clarify this issue in no uncertain terms. The 1962 Act (as revised in 1963) gave effect to an historic agreement between Māori and the Crown. As we set out in chapter 3, the institutions in the Act were self-government institutions, established by Māori leaders and then given statutory recognition in 1945 (for committees and Māori Wardens), 1961, and 1962, by agreement between the Treaty partners. Although it certainly reflected the times, the 1962 Act also reflected a negotiation between peoples, not entirely a Crown or a Māori agenda. We do not accept that assimilation was its primary aim. Rather, the Act incorporated the wishes of Māori leaders of the 1960s; it is dominated by the need to preserve and enhance Māori communities and their culture, to enhance Māori social development and well-being in urban as well as rural areas, for Māori communities to police themselves, and to provide for a measure of Māori self-government at national, regional, and local community levels. The aspiration for Māori communities to police themselves and govern themselves at a local level was also reflected in the Act’s predecessor, the 1945 Māori Social and Economic Advancement Act. The 1945 Act, too, had given effect to an agreement between Crown and Māori leaders on certain matters, particularly as facilitated by Sir Eruera Tirikātene, covering (among other things) local committees and Māori Wardens.

In our view, the 1962 Act should not be changed significantly by the Crown party to these compacts, even after consultation, without the agreement of the Māori Treaty partner. In other words, this particular situation calls for negotiation, not consultation. And, as the parties in our inquiry now agree, changes should be discussed and agreed by Māori first with the eventual goal of discussion and agreement with the Crown.

Putting these two points together, we find that the Crown’s decision in 2013 to proceed with a standard consultation and review process was inconsistent with Treaty principles and UNDRIP.

6.7.5 What was the significance of the changed representational landscape?

As we set out in chapter 4, the Māori political and representational landscape has changed dramatically since 1962. When the Crown decided in 2013 to continue with its standard process of consultation and ministerial decision-making, one of its reasons for rejecting the NZMC’s alternative way forward was that the representational

227. ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 6)

228. Crown counsel, closing submissions (paper 3.3.3), p 2

landscape had changed so significantly that the council's origins and mandate were much less relevant:

In considering the process for further consultation, the Government was conscious of the history and importance of the Act's origins. However, it also agreed with the Select Committee view that the representational landscape had changed significantly since the 1962 Act was enacted, as evidenced by the emergence in particular of iwi representative entities over the last two decades, and the very direct engagement iwi are having with the Crown on behalf of their constituent members. In order to properly conduct the required consultation it needed to provide opportunities for input from a wide range of interested parties, including the New Zealand Māori Council, Māori Wardens (from which there had been a concerted voice from some quarters seeking autonomy from the Council structure for a number of years), other iwi and Māori representative entities, and importantly, Māori communities which the institutions established through the Act are designed to serve.²²⁹

As a result, the Crown decided that it needed to balance the 'multiple rangatira-tanga interests' itself, and to do so through applying the Treaty principle of options: the Crown would consult the multiple interests concerned by putting options to Māoridom, and seeking 'direction' from Māori as to which options should be adopted (via hui and written submissions).²³⁰

Three assumptions underlay this aspect of the Crown's decision:

- ▶ first, that an NZMC-led process would not balance the diverse Māori interests concerned;
- ▶ secondly, that a Crown-led process was preferable to a Māori-led process in a situation where there were 'multiple rangatiratanga interests'; and
- ▶ thirdly, that the Treaty principle of options could be met by a process of consultation followed by ministerial decisions.

As we have already found, the second assumption was not consistent with Treaty principles. For that reason alone, even if the Crown were correct that the NZMC as it was situated in 2013 could not have led a sound process, the Crown's decision was a breach of the principles of partnership and autonomy.

We understand why the Crown had concerns about the proposal for an NZMC-led process. The council structure had been partially dysfunctional and undemocratic for many years. As at 2013, the newly reformed council was working through those issues and had, in fact, asked the Crown to wait until its reforms were complete and 'bedded in'. This underlined the need to wait for this process of rejuvenation to be completed, since – as the claimants said – some of the problems requiring consultation were in the process of being fixed.

Dr Charters argued that, under the Declaration, the Crown would need to satisfy itself that there was 'adequate support by relevant Māori for the chosen organisational structure or change to that structure before moving to implement the

229. Kim Ngārimu, brief of evidence (doc B13), p 2

230. Kim Ngārimu, brief of evidence (doc B13), pp 2–3, 7–8

proposed change into legislation.’²³¹ We agree. This would accord with the Crown’s kāwanatanga responsibilities and its duty of active protection. In 2013, however, the Crown made the mistake of thinking that this required it to lead the review, consult Māori, and make ministerial decisions as to legislative change. In the particular case of the 1962 Act and its Māori institutions, our view is that the Crown’s responsibility to ensure that all rangatiratanga interests have been considered and provided for comes at the end, not the beginning, of the process. In other words, the Crown’s duty to satisfy itself that Māori support any proposed changes requires it to test that matter in negotiations with the Māori Treaty partner at the end of the Māori-led review, not to conduct the review itself and make decisions.

Thus, while the Crown was correct that the representational landscape has changed and that this was a matter of great significance, it was incorrect to conclude that a Crown-led review was the necessary response.

The claimants, for their part, accepted that the representational landscape had changed. In proposing a Māori-led review, to be led specifically by the NZMC, they acknowledged that intensive discussions would be needed with the NZMWA and Māori Wardens (inhouse, as they considered it), as well as discussions with the Kīngitanga, iwi leaders, the Māori Women’s Welfare League, and many others.²³² What was needed was for the Māori ‘people and leadership’ to develop and agree upon a vision for Māori self-determination.’²³³ In the claimants’ view, a council-led review would need to be able to show the Crown that it had been conducted with sensitivity to minority opinions, that all opinions had been fairly considered, that the review had been a good process, and that the resultant proposals were reasonable and well-supported.²³⁴

It remains for us to address the third proposition above: that a process of Crown consultation and ministerial decisions was applying the principle of options. We do this in the next sub-section.

6.7.6 How was the Treaty principle of options to be applied?

The Te Tau Ihu Tribunal described the principle of options as follows:

The Treaty envisaged a place in New Zealand for two peoples with their own laws and customs, in which the interface was governed by partnership and mutual respect. Inherent in the Treaty relationship was that Māori, whose laws and autonomy were guaranteed and protected, would have options when settlement and the new society developed. They could choose to continue their tikanga and way of life largely as it was, to assimilate to the new society and economy, or to combine elements of both and walk in two worlds. Their choices were to be free and unconstrained.²³⁵

231. Claire Charters, addendum to brief of evidence (doc A10(a)), p 4

232. Transcript 4.1.1(a), pp 270–273

233. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 9

234. Transcript 4.1.1(a), pp 270–275

235. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Māui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 4–5

Ms Ngārimu explained that TPK's decision to proceed in 2013 was based in part on this Treaty principle. The 'public consultation phase of the review', she told us, presented a number of options for Māori to consider. The Crown did not have a preferred option of its own but sought to stimulate Māori discussion of the range of options identified in the consultation material. The Crown also made clear during the consultation hui that the options were not exhaustive and that people could present other options, which would then be 'considered [by the Crown] in the analysis of feedback'.²³⁶ While stressing that the Crown sought 'direction' from Māori on these options, what is misplaced in this application of the options principle is the power of decision. As the Tribunal has noted, it was not intended by the Treaty that the Māori partner's choices could be forced.²³⁷ Yet the Crown-led process intended the Crown to consider Māori feedback and make unilateral, ministerial decisions as to what changes should be made. While the Crown wanted to be directed by Māori, if Māori wanted different or conflicting things then the plan was that the Crown would decide. We do not think that this is consistent with the principle of options, on a matter of such central importance to Māori as the 1962 Act, the compact to which it gave effect, the self-government institutions which it recognised, and the community policing arrangements that it provided.

The Wai 262 Tribunal offers further guidance as to when it is appropriate for the Crown to consult and decide, or for the Crown and Māori to consult each other and make decisions together, or for Māori alone to decide. The Tribunal found that there is a 'sliding scale', depending on the nature and strength of the rangatiratanga interest in the matter concerned. Dr Charters referred us to the Tribunal's analysis of partnership and Māori autonomy in respect of international instruments as dovetailing well with the principles in the Declaration.²³⁸ The Tribunal found:

There can be no 'one size fits all' approach. Rather, the Treaty standard for Crown engagement with Māori operates along a sliding scale. Sometimes, it may be sufficient to inform or seek opinion . . . But there will also be occasions in which the Māori Treaty interest is so central and compelling that engagement should go beyond consultation to negotiation aimed at achieving consensus, acquiescence or consent. . . . There may even be times when the Māori interest is so overwhelming, and other interests by comparison so narrow or limited, that the Crown should contemplate delegation of its role as New Zealand's 'one voice' in international affairs; negotiations over the repatriation of taonga might be an example.

The Treaty partners need to be open to all of these possibilities, not just some, and to decide which applies on the basis of the duties of good faith, cooperation, and reasonableness that each owes the other.²³⁹

236. Kim Ngārimu, brief of evidence (doc B13), p 8

237. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 195

238. Claire Charters, brief of evidence (doc A10), p 42

239. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 237

In our inquiry, early engagement or ‘pre-consultation’ did occur with key stakeholders (see section 6.5.4). But the Crown was insufficiently open to the NZMC’s view that engagement in this case required a Māori-led process to review Māori self-government institutions, followed by a negotiated agreement with the Crown as to legislation and funding. As a result, although TPK rightly put forward no preferred option as to the reform of the 1962 Act and sought Māori views as to what options should be chosen, its process for Crown consultation and decision-making misapplied the principle of options. The Māori interest was so central in this case that ‘engagement should [have gone] beyond consultation to negotiation aimed at achieving consensus, acquiescence or consent.’²⁴⁰ What was required, in effect, was collaborative agreement.

The Crown now accepts this point. TPK acknowledges that Māori should be free to consider for themselves and develop reforms to their own institutions, and then, in the spirit of partnership, to seek Crown agreement for legislative or funding changes.

Two further points need to be considered. The first is that the Crown must be equipped to gauge the strength of the Māori interest in the matter at hand – in this case, the 1962 Act and the self-government institutions provided for under that Act. In the Wai 262 report, the Tribunal recommended that the Government use partnership forums (such as the Advisory Group) to assist it in determining the relative strength of the Māori interest so that it could reach an informed view as to whether full collaboration and Māori consent was required. In addition, the Tribunal found, the Crown could rely on advice from TPK.²⁴¹ But these two mechanisms failed in 2009–13. First, the Advisory Group was discontinued without completing its work, and, secondly, TPK did not appreciate that the present case was one requiring collaborative agreement. In chapter 10, we make a recommendation to assist in preventing future prejudice to Māori in such situations.

The second point is that the Crown does not accept that a Māori-led review followed by a negotiated agreement is necessary for *all* Māori institutions, or required by the UNDRIP. For this issue, the Crown focused on article 19 of the Declaration. We turn next to consider the Crown’s arguments on this point.

6.7.7 Was the Crown’s argument correct that UNDRIP does not require a Māori-led review followed by a negotiated agreement in this or other cases?

The Crown’s argument was that the Tribunal (and Māori) should not put too much weight on its present agreement to a Māori-led review culminating in a Crown–Māori negotiation: the prior process was not wrong, we were told, and the new process is not necessarily applicable or exportable to other cases.

Crown counsel submitted:

240. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuatahi*, p 237

241. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 2, pp 575–586, 684–687, 689–691

6.7.7(1) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

UNDRIP is not entirely relevant except to assist with the interpretation of Treaty principles. However, since the Claimant has presented evidence and submissions on the application of UNDRIP to this claim, the Crown will discuss this briefly . . .²⁴²

According to the Crown, the UNDRIP provides for States and indigenous peoples to collaborate as partners on policy and legislation, as well as for indigenous peoples to decide the constitution of their own self-government institutions. In formally accepting the Declaration in 2010, the Crown ‘specifically relied on’ and ‘specifically preserved’ the ‘Treaty dialogue’. This dialogue between Treaty partners, argued the Crown, is ‘fundamental to the Treaty’ and ‘is also found in article 19 of the Declaration, which requires cooperation and consultation towards consent in legislative or administrative decisions concerning Māori’. According to Crown counsel, the ‘collaborative principle – expressed as partnership in the Treaty principles and as good faith cooperation towards consent under the Declaration – acknowledges that each partner has due rights in the adoption of legislation’. Thus far, the Crown said, there is no difference of opinion between the parties.²⁴³

But Crown counsel also submitted that nothing in the UNDRIP requires a sequence whereby indigenous peoples decide first on reforms to their autonomous institutions and then negotiate legislative change with the State. In principle, collaboration on legislation could allow for a variety of sequences and processes; no particular sequence or process is mandatory, and a Crown-led process is envisaged under article 19.²⁴⁴

(1) Māori do not seek a right of ‘autonomous decision’

The first relevant point is that the claimants do, as the Crown stated, want a negotiated agreement, not a ‘right of autonomous decision’. In other words, the parties in our inquiry concur that the need for legislation (and State funding) requires an agreement between the Crown and Māori.²⁴⁵

We think that this fits with article 19 of the Declaration, which provides that the State and indigenous peoples should cooperate on legislative change, and that both sides must agree before change occurs. Dr Charters, however, was uncertain about how far this gave the Crown a right to *negotiate* about proposed changes:

in my view, based on the Declaration, the state has *a* role, albeit very limited, to play in relation to the constitution/review of or change to Māori organisations where, as is the case here, the Māori organisation is supported by legislation (in addition to financial and technical assistance to enable Māori to enjoy their right to autonomy in internal matters). However, the state’s role should be confined to ensuring there is adequate support by relevant Māori for the chosen organisational structure or change

242. Crown counsel, closing submissions (paper 3.3.3), p 24

243. Crown counsel, closing submissions (paper 3.3.3), p 25

244. Crown counsel, closing submissions (paper 3.3.3), pp 25–29

245. Crown counsel, closing submissions (paper 3.3.3), p 27

to that structure before moving to implement the proposed change into legislation. [Emphasis in original.]²⁴⁶

Nonetheless, the claimants' evidence was that the NZMC, if it led the review, would need to show the Crown that it had consulted widely, heard all views fairly, and had developed considered, reasonable proposals for the Crown to implement. Otherwise the Crown would just say 'no'.²⁴⁷ The Crown is correct, therefore, to say that the parties must work together in the spirit of partnership; neither side can act unilaterally where it is legislation that gives effect to arrangements for Māori self-government.

(2) *Either party can initiate conversation about a need for review*

The second relevant point is that conversations between the relevant Māori groups, and between Māori and the Crown, can begin in a variety of legitimate ways. We do not consider it crucial as to which side begins the conversation. As we discussed in section 6.3, the advisory group was a useful partnership mechanism to *start* the necessary discussions between Māori leaders and experts from the NZMC and the NZMWA, and also between these Māori groups and the Crown. As we also noted, however, the advisory group could only ever have been a platform from which to launch further, more extensive consultation and discussions between the Treaty partners (see section 6.3.3). Also, it is our view that in a case like the present one, where Māori had sought Crown support and funding for Māori Wardens in the mid-2000s and problems were exposed, it was appropriate for the Crown to raise the question of whether the 1962 Act and its arrangements were still 'fit for purpose'. Ultimately, though, it is for Māori to decide what changes are necessary to their own institutions, and then (where legislation and funding are required) to agree those changes with the Crown.

(3) *The Māori institutions involved are self-government institutions*

The third relevant point is to stress that the Māori institutions involved are self-government institutions, created by Māori but accorded statutory recognition by agreement. The institutions do not arise from State action or initiative (the apparent starting point for article 19), even though they are statutory bodies. The Crown's argument is that the Declaration provides for (relatively) unfettered autonomy in the 'self-government of internal affairs', but not in State 'legislative or administrative matters'. If a piece of legislation is at issue, then the Crown says that it falls 'within article 19 and within the obligation of collaboration under that article'.²⁴⁸

As we set out in chapter 2, article 19 envisages States consulting and cooperating with indigenous peoples through their own representative institutions so as to obtain their consent to legislation that affects them. But article 18, for example, acknowledges the right of indigenous peoples to maintain and develop their own

246. Claire Charters, addendum to brief of evidence (doc A10(a)), p 4

247. Transcript 4.1.1(a), p 273

248. Crown counsel, closing submissions (paper 3.3.3), p 27

indigenous decision-making institutions, as well as to choose representatives through their own procedures to participate in wider decision-making. We grouped articles 18 and 19 under the principle of partnership, because they have particular application where the spheres of Crown and Māori authority overlap and require cooperative action (see chapter 2).

What is the meaning of the Declaration, therefore, when two seemingly different matters coincide, and the existence, constitution, and powers of indigenous decision-making institutions are the ones affected by a legislative measure proposed for adoption by a State?

Dr Charters did not point us to any international commentary or case law that addressed this specific question. She did, however, offer her opinion as a recognised expert on the Declaration. Dr Charters observed that the self-determination rights of indigenous peoples are categorised in two ways: the right to autonomously decide on some matters; and the right to participate in the State's decision-making on other matters. Of especial importance to both, she said, was article 33(2), which 'clarifies that the right to autonomy extends to Indigenous peoples' determination of the structures and membership of their institutions in accordance with their own procedures'.²⁴⁹

Applying the Declaration to the present case, Dr Charters considered that this was the key right: the right of indigenous peoples to 'determine the constitution and membership of Indigenous organisations'. This is a matter in which 'Indigenous peoples are entitled to exercise autonomy, free from outside government interference'.²⁵⁰

Dr Charters concluded:

Indigenous peoples, as a function of their right to self-determination, have a right to determine, autonomously, the constitution of their organisations, including their representative and governing structures at the national level. This right would extend, in my view, to determining and managing the processes by which the constitution of Indigenous peoples' organisations are considered and determined.

I believe this to be the case even where Indigenous peoples' organisations have been legislatively recognised and/or constituted in the past, such as the New Zealand Māori Council.²⁵¹

We agree that article 33(2) is particularly apt because of the role that indigenous decision-making institutions play as the mechanism for participating in State decision-making (articles 18 and 19). In our view, reading the Treaty principles as informed by the Declaration, we think it is correct that Māori should decide what changes they want to their self-government institutions, even where those institutions are provided for in legislation. Having decided what is wanted or needed, Māori must then discuss implementation with the Crown, because the Crown

249. Claire Charters, brief of evidence (doc A10), pp 41–42

250. Claire Charters, brief of evidence (doc A10), pp 50–51

251. Claire Charters, brief of evidence (doc A10), p 51

would need to arrange the necessary funding or legislation. Collaboration occurs because the Crown has a duty to satisfy itself that the requested funding or legislation is reasonable and can be met by Parliament and/or the public purse. Also, in Dr Charters' evidence, the Crown would need to satisfy itself that legislative changes are supported by the Māori groups who will be affected by them, before it promotes legislation to give effect to them.²⁵² The Crown also has a responsibility to provide financial and technical support to Māori while they work out what changes are needed (article 39).

As noted, article 19 provides for States to consult indigenous peoples through their representative institutions to obtain agreement to legislation which affects them. In our view, article 19 would need to be read against the grain of articles 4, 5, 18, 20, 33, and 34 (see sidebar) to imply that such a process would include State-initiated changes to the very institutions that were being consulted. The other article to deal with the Crown's obligation to legislate is article 38: 'States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.' When read in conjunction with the articles listed above, it seems clear that – to achieve the ends of the Declaration – indigenous peoples would take the lead in deciding what should happen to their self-government institutions, including their juridical systems. This would be followed by consultation and cooperation with the State to secure legislation that gives effect to the rights affirmed in the Declaration.

In sum, our view is that Treaty principles as informed by the Declaration favour the approach now agreed between the claimants and the Crown as appropriate in this case. We do not wish to be prescriptive but we see no reason why the Treaty and the Declaration would not favour the same approach in the future, in respect of other Māori self-government institutions which have been accorded recognition in statute by prior agreement between Māori and the Crown. Different approaches could, however, be Treaty-consistent if the Māori Treaty partner agreed to them.

On this point, we note section 3 of the Act, which states: 'This Act shall be administered by the Minister of Māori Affairs, and the powers conferred by this Act shall be under the general direction and control of the Minister.'

As will be recalled from chapter 3, this section has an ambivalent history. It was carried over verbatim from section 3 of the 1945 Act. During the negotiations that led to the 1961 and 1962 legislation, the Crown and Māori agreed that Māori self-government institutions should be fully independent of the Government. As a result, among other things, ex officio members were not put on the councils in 1961 and they were removed from the lower committees in 1962. The plan was also to change section 3 so that it stated merely that the Secretary for Māori Affairs would administer the Act. No power of ministerial direction or control was to be included. The NZMC approved the Bill in that form but the Minister's powers were reinserted by the Government before the Bill was brought into the House. The council did not

252. Claire Charters, addendum to brief of evidence (doc A10(a)), p 4

**ARTICLES 4, 5, 18, 19, 20(1), 33(2), AND 34 OF THE UNITED NATIONS
DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.

Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20(1): Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

Article 33(2): Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

try to remove this change when it sought other amendments and corrections in 1963, bringing the Act back into an agreed shape by the end of that year.

Be that as it may, a general right of direction over the powers exercised in the Act does not give the Minister any special authority to initiate changes to the Māori institutions accorded recognition in the Act. The wording of the Act does not imply it, and the historical context is against it. Nor did Crown counsel argue that it did.

(4) *The Crown can initiate other changes to the Act for discussion and agreement in partnership*

While the 1962 Act gives effect to a Crown–Māori agreement, not all of the institutions created under the Act are Māori self-government institutions. Māori community officers are the primary concern here. Originally called welfare officers, these Māori men and women were government officials who worked with whānau and local committees on a multitude of social development tasks, including navigating the government bureaucracy and obtaining access to housing, jobs, and social welfare assistance.

In his evidence for the claimants, the council's co-chair, Maanu Paul, stressed the historical importance of community officers for Māori. Mr Paul spoke of a need for their reinstatement:

Ko tā mātou e hiahia ana kei te hoki mai i ngā apiha a marea e mōhio nei mātou ko ngā 'community welfare officers.' Koinā kē tā mātou. Kei te pai te ture ki te taha o ngā wātene. Kei te pai te ture ki te whakahaere i ngā Kaunihera Māori. Engari koinā anakē ki au me whakahoutia nā te mea nā te kawana i tangohia wēnā. Anā kia maumahara koe i a māua e nuku ai mai i Kawarau ki Whakatane. Tau atu māua ko āku hoa rangatira me tō māua whānau i reira ngā apiha a marea i reira rātou. I whakakaohia mātou ngā Māori i Whakatane kia whakatauhia mātou i roto i tō mātou whare hou. Anō a muri atu i tēnā ka tonu au mō tētahi whare hou mōku me tāku whānau. Ko aua apiha a marea i awhinatia mātou kia mōhio mātou me pēhea te kuhu haere i Te Kooti Whenua Māori i te tonu ngā whenua. Ki te Tari o ngā whare ki te tonu whakatū whare. Koinā anakē o ngā apiha a marea. Koinā anakē ki au takahuri me whakahoki mai wēnā me tukuna mai wēnā mana ki te whakahaere i raro i Te Kaunihera Māori. Ehara ki raro i te kāwanatanga.

What we want is to see the community officers returned. We want them reinstated, that is what we wish to have. The legislation relating to wardens is actually good. The legislation relating to the administration of the Councils is good. To me, that really is the major point to be changed because the Government removed those welfare officers. Remember when we moved from Kawarau into Whakatane, my friend, and our family moved there. At that point the community welfare officers were there, they were there. They took all the Māori under their wing, those who had just moved to Whakatane. To settle us into our new homes in the cities and towns. At that point I applied for a new house for myself and my family and it was the community officers who helped us, assisted us moving into our house, showed us how to apply to the MLC for land, to the housing corporation, and to seek assistance with building a house. That was the kind of work those Māori community officers did, to me that is the only thing to be revised, to give us the authority and for them to work under the Māori Council and not the government.²⁵³

In 2010, TPK recommended the formal abolition of community officers, which the Government had long since stopped appointing. The select committee accepted this advice and recommended it to the Government (see section 6.4.2). In the

253. Transcript 4.1.1(a), pp 30–31

2013 consultation, the Crown sought feedback on a proposal to repeal the provisions relating to community officers, on the basis that their role was now filled elsewhere.²⁵⁴

The claimants argued that community officers were part of the ‘structure for Māori self-government in which office holders are chosen by and remain throughout accountable to their local Māori communities’²⁵⁵ We do not accept the claimants’ submissions on this point. While the Act did provide for honorary welfare or community officers to work within their local communities,²⁵⁶ the officers were otherwise government officials and accountable to the Māori Affairs Department. That was one reason for their removal from the elected committees in 1962.

We agree, therefore, that the Crown could seek to initiate changes to parts of the Act, such as the provisions relating to community officers. Article 19, on which the Crown relies, would require such changes to be worked out in consultation and cooperation with Māori, whose prior, free, and informed consent would be needed. Also, as we have already found, the Treaty principles of partnership and Māori autonomy would require a renegotiated agreement in the case of this particular historic Act, if the Crown and Māori agree that some of the 1962 provisions are no longer ‘fit for purpose’. Thus, neither the Treaty nor article 19 of the Declaration is consistent with a Crown-consults-and-decides approach, as was adopted in 2013.

We turn next to consider whether the claimants have been prejudiced by the Crown’s actions to date.

6.7.8 Has prejudice been or is it likely to be suffered by the claimants?

The parties in our inquiry agree that the time has come to review the 1962 Act and its arrangements for Māori Wardens. The parties also agree that the volunteer work of the wardens is of immense value to Māori communities and to the wider New Zealand society. They agree that action is required to ensure that the wardens receive the assistance, guidance, and leadership that they need to perform their important work. For its part, the NZMC has instituted a reform designed to revive District Māori Councils and has made efforts to improve matters through its Māori Wardens sub-committee. The Crown moved to assist wardens with a project designed to provide resources and training. It also started a review of the 1962 Act in 2009 in good faith but its actions in that respect have been inconsistent with Treaty principles.

We need to consider, however, the Crown’s point that the review is only part way through, that the Crown has now learned the correct way of proceeding as a result of consultation and the present inquiry, and that it is not too late for matters to be put right. Is it fair to judge the early parts of a process which is still evolving and unfinished? We would not judge a play merely on its prologue or first act.

254. Te Puni Kōkiri, ‘Discussion Paper on Proposed Changes to the Māori Community Development Act’, 2013 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 62)

255. Claimant counsel, closing submissions (paper 3.3.5), pp 4, 15

256. Section 5 of the Māori Community Development Act 1962 provided for honorary Community Officers but this section was repealed in 1996.

In our view, this point goes to the question of whether prejudice has been suffered, since there is now opportunity to correct a process that began in breach of Treaty principles. We address the question of prejudice further in section 6.8, because it turns on the steps that the Crown is about to take rather than the actions it has already taken. No prejudice has been suffered yet.

In part, this is because the ministerial decisions that came out of the standard consult-and-decide process have not been prejudicial to the claimants. As we discussed in section 6.4.4, Cabinet decided that no government-initiated changes would be made to the NZMC. Crown counsel specified that Māori would still be free to develop proposed reforms and bring those to the Crown for discussion and agreement if they wished.²⁵⁷ Although the Crown did not say so, we expect that it would consider its responsibilities in respect of funding and technical assistance in that case (see article 39 of the Declaration), as it is prepared to do for the ongoing review of the Act in respect of Māori Wardens. But, from the Crown's perspective, it did not believe that Māoridom wanted changes to the council's role and functions, and so it closed down that part of its review. With the way open for Māori to take the lead and develop an agreed position of their own on the matter, no prejudice arises to the claimants.

The second ministerial decision was that a review was still desirable in respect of the arrangements for Māori Wardens, and that further engagement was necessary with Māori stakeholders on that matter. Although Cabinet invited the Minister to return with proposed reforms by April 2014, a different approach than the standard consult-and-decide was now possible. As we have seen, the Chief Executive of TPK has now proposed just such an alternative approach. With the possibility open to bring the review into compliance with Treaty principles, we find that no prejudice has as yet arisen for the claimants.

In terms of prejudice arising from the overall Crown conduct of the review to date, the claimants submitted:

There has also been prejudice to the Claimants by the Crown's undermining of its 1962 Act mandate and its status through the Crown's conduct to date of the reform process . . . and through the Crown's commencement of a process for potentially significant reform of the NZMC structure at a time which was and is prejudicial to the NZMC's business, for the benefit of all Māori, including in relation to the Water Claim (Wai-2358).²⁵⁸

Leaving aside the Māori Wardens Project, which is the subject of chapters 7 and 8, we were presented with no specific evidence in support of this submission. As we noted in our decision granting urgency, the claimants' allegations about the effect of the review on their conduct of their business, including the Water claim, was

257. Crown counsel, closing submissions in the urgency application proceedings, 19 December 2013 (paper 3.1.13), p 3

258. Claimant counsel, closing submissions (paper 3.3.5), p 81

not a matter that could be sustained without clear and compelling evidence.²⁵⁹ In general terms, we think that the greatest problem for the council over the past two years has been the legacy of the previous dysfunction in the council system. During that time, the reformed council has been working hard across a number of fronts to correct the problems which it has inherited, including a significant number of still inactive District Māori Councils. Some of those problems contributed to the need for a review in the first place. The council is in the process of rebuilding confidence, renewing its democratic mandate, and restoring its mana. If the Crown's conduct of the review to date has added to the council's difficulties, then that is unfortunate but we have not detected any specific evidence of it.

Furthermore, and on the positive side, the Crown's review led to such an outpouring of support for the council that Ministers decided to take changes to the NZMC off the table in any continued, Crown-led reforms of the Act.

Accordingly, we find that no general prejudice has been demonstrated as an effect of the Crown's decision in 2013 to proceed with a Crown-led review of the 1962 Act. However, prejudice is likely if the recommendations we make in chapter 10 are not followed.

6.7.9 Specific allegations about the 2013 consultation process

As we outlined in section 6.2.2, the claimants had many specific allegations about the Crown's conduct of the 2013 consultation hui and submissions process. These include:

- ▶ inadequate time was allowed for written submissions;
- ▶ the consultation hui were poorly timed and difficult to get to, thus providing an inadequate opportunity for *kanohi ki te kanohi* (face-to-face) discussion of such an important matter;
- ▶ the problem of inadequate opportunities for input (both written and at consultation hui) was compounded by unfair, inaccurate, or misleading information disseminated by the Crown in the consultation process;
- ▶ the NZMC was not afforded an opportunity to prepare its own proposals or to seek a mandate for those proposals from the Māori community;
- ▶ the Minister of Māori Affairs did not attend the hui to consult Māori *kanohi ki te kanohi* on such a unique and important matter; and
- ▶ the Crown refused to allow the NZMC to co-chair the consultation hui.²⁶⁰

The Crown has denied these allegations (see section 6.2.1).

We received significant evidence about the consultation discussion materials, the hui, and related matters, from claimant and Crown witnesses.²⁶¹ Nonetheless, we do not need to determine these issues. We agree with the Taranaki Tribunal that it is not necessary to examine the individual transactions of a flawed process that

259. Waitangi Tribunal, decision on urgency application, 24 December 2013 (paper 2.5.8), p 17

260. Claimant counsel, closing submissions (paper 3.3.5), pp 57–63

261. See, for example, Karen Waterreus, brief of evidence (doc A1); Kim Ngārimu, brief of evidence (doc A2); Titewhai Harawira, brief of evidence (doc B10)

was conducted on a wrong principle.²⁶² Not even the most accurate and balanced of consultation documents, the most perfectly timed and well-conducted hui at the most convenient locations, or the most generous of timeframes for submissions, could have saved a Crown-led review of the Act. As Karen Waterreus put it in her evidence to the Tribunal:

the right to self-determination is fundamental to the reform of the 1962 Act, supporting Māori developing themselves the particular structure(s) that they want to govern Māori at a local, regional and national level, rather than the Crown doing this for Māori.²⁶³

Having found that a standard Crown-led process of consultation and decision-making was inconsistent with Treaty principles and the UNDRIP, we do not need to examine the particular elements of the consultation process further.

This is not to be taken as agreement or disagreement with the claimants' allegations about the conduct of the consultation process. We make no findings on these matters.

6.8 THE WAY FORWARD

In this section of our chapter, we deal with the Chief Executive's proposal for a way forward, and the claimants' response to that proposal. In our earlier discussion, we outlined the basic conceptual framework: Māori would design and develop any proposed changes to their own self-government institutions, and then bring proposed changes (with funding or legislative implications) to the Crown for discussion and agreement. In this section, we consider the detail of what is proposed, including TPK's view that it should suggest parameters for the way in which Māori go about their part of the process. The claimants, for their part, agree that they will need to be able to show that a robust and transparent process has been followed, if the Crown is to agree to legislative and funding changes. Complex questions of principle and practicality arise; it is by no means a straightforward matter to apply the principles of the Treaty (as illuminated by the Declaration) in this case.

6.8.1 The details of the Crown's proposal

The Crown's view, relying on the Chief Executive's evidence, is that the Crown will 'continue to be responsible' for funding the Māori-led review. Also, any reforms are likely to need changes to legislation. For these two reasons, the Crown considers it 'reasonable and appropriate that it put forward a process for facilitating the continuing review of the Act by Māori.'²⁶⁴

The Crown therefore proposes to 'put the following process in place for the continuing review of arrangements for Māori wardens':

262. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: Legislation Direct, 1996), p 193

263. Karen Waterreus, brief of evidence (doc A1), p 7

264. Crown counsel, closing submissions (paper 3.3.3), p 3

6.8.1 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

1. Establishment of two reference groups, one comprised of NZMC representatives and the other of Māori Warden representatives.
2. The reference groups to engage with other stakeholders such as iwi, the Iwi Chairs Forum, the Māori Women's Welfare League, Māori authorities, and Te Kōhanga Reo National Trust.
3. Reference group members and stakeholders will engage with their own constituencies as they see fit.
4. Reference group members and stakeholders will advise their views and proposals to the Crown.²⁶⁵

The Crown will 'merely facilitate' establishment of the two reference groups. These groups will be free to operate and engage with stakeholders and others as they see fit 'subject to agreement by the Crown as to Crown funding and timing matters'.²⁶⁶ The NZMC would choose the members of its reference group. For the Māori Wardens reference group, however, the Crown proposes to appoint it on the basis of nominations 'from a cross section of groups representing Māori Wardens including the New Zealand Māori Council and the Māori Wardens Association'.²⁶⁷

Thus, the review would be led by two Māori groups working in parallel, one appointed by the Crown and one by the NZMC. The Crown's suggestion is that these reference groups should seek advice from other stakeholders (as listed above), in order to recognise the multiple rangatiratanga interests involved. The Crown notes that it will independently seek its own advice from these stakeholders when it comes time to discuss and negotiate the proposals with the reference groups. The Crown's explanation for this is that, if the reform proposals involve legislative changes or have 'public funding implications', then the Crown 'too would be free to undertake its own research, receive its own advice and itself consult relevant stakeholders'.²⁶⁸

After doing so, the Crown 'will then engage in good faith as Treaty partner with the reference groups in relation to any proposals that require legislative change or for which public funding is sought'.²⁶⁹

Crown counsel told us that the Crown is putting these proposals to the test in our inquiry. But, in the Crown's view, 'the proposals are expressed as a balanced approach to the process of assessing the current legislative structure and arrangements associated with Māori Wardens, mindful of the Treaty partnership principle'. According to the Crown, the only 'critical difference' that now remains between the parties is the claimants' view that 'in this reform process the Māori engagement should be led by the New Zealand Māori Council', whereas the Crown considers that 'a broader range of Māori organisations have a stake in leading the Māori response'.²⁷⁰ The Crown considers that its view is the 'appropriate approach, and

265. Crown counsel, closing submissions (paper 3.3.3), p 3

266. Crown counsel, closing submissions (paper 3.3.3), p 3

267. Crown counsel, closing submissions (paper 3.3.3), p 4

268. Crown counsel, closing submissions (paper 3.3.3), p 4

269. Crown counsel, closing submissions (paper 3.3.3), p 4

270. Crown counsel, closing submissions (paper 3.3.3), pp 4-5

better aligned with Treaty requirements.’ The Crown is ‘keen to obtain the Tribunal’s views on this aspect.’²⁷¹

6.8.2 The claimants’ response to the Crown’s proposal

In the claimants’ view, decisions about the way forward must be put on hold until both the Crown and the NZMC are on all four squares with the 1962 Act. Relying on the evidence of Sir Edward Durie and Mrs Titewhai Harawira, claimant counsel argued that the Crown must revise its Māori Wardens Project immediately so as to work through the council structure, rather than pursuing reform on the basis that the structure is not working for Māori Wardens. Interim measures could be taken to allow this to happen in the short-term, before focusing on long-term needs and possible reforms. At the same time, the claimants recognise that they need to sort out the inoperative council districts by amalgamation with operative ones, and then to assist the inoperative districts to re-establish themselves at the next election. The Crown should encourage and assist the NZMC with this internal reform process, and take steps to ‘appropriately fund’ the council structure in the meantime.²⁷²

Once ‘legality is attained’, ‘Māori should be given the opportunity, and necessary resources, to determine the process, and timeframe, for Māori to consult amongst themselves on reform of the Act and to reach agreement on what, if any, reforms to the 1962 Act are needed.’²⁷³ This approach, counsel submitted, was appropriate in light of the way in which the 1962 Act itself was negotiated, and articles 4, 5, 18, 19, 20, and 33(2) of the Declaration. Relying on Dr Charters’ evidence, counsel argued that the Crown’s duty would then be to make sure that what was proposed was ‘a valid reflection of Māori views’ and that the Māori-led process had been a sound one, but not to review the substance of the proposals themselves.²⁷⁴

In the claimants’ view, the Māori-led process should be led specifically by the NZMC:

The starting point is that ordinarily the NZMC should assume responsibility to propose the reform of its own Act and so to lead the process. After all, restructuring should ordinarily come from the body itself based on its own experience and accumulated understandings of how it might be more effective.²⁷⁵

This simply means that in this particular case, the NZMC is more knowledgeable, not more important, than other Māori organisations which might have an interest. Furthermore, the council has reformed itself since 2012, dysfunction is being eliminated, and it is now able to lead such a process.²⁷⁶ Other ‘significant Māori leadership bodies’ would have to be involved in a process that aimed to develop consensus at local, regional, and national levels. Thus, the Crown’s concern about multiple

271. Crown counsel, closing submissions (paper 3.3.3), p 5

272. Claimant counsel, closing submissions (paper 3.3.5), pp 64–67

273. Claimant counsel, closing submissions (paper 3.3.5), p 67

274. Claimant counsel, closing submissions (paper 3.3.5), pp 67–69

275. Claimant counsel, closing submissions (paper 3.3.5), p 69

276. Claimant counsel, closing submissions (paper 3.3.5), pp 69–72

rangatiratanga interests would be fully accommodated in a NZMC-led review. On the other hand, the claimants reject Ms Hippolite's proposal for a second 'reference group' representing Māori Wardens to lead the review. The wardens are an 'arm of the New Zealand Māori Council' and are subject ultimately to the council's direction (via the district councils).²⁷⁷ A government 'decides how its Police are reformed, not the Police.'²⁷⁸

Quoting Sir Edward Taihakurei Durie, claimant counsel stated:

Having regard to their statutory relationship with the New Zealand Māori Council, they [wardens] cannot stand as an independent reference group. Of course they may make submissions, and some may collectivise for that purpose, but Ms Hippolite's proposal cannot give the Wardens a status or role which they do not have in terms of the legislation and which is inconsistent with the legislation.²⁷⁹

The claimants also stressed the 'policy/operational division' between the council's role and the wardens' role, and the reality that the wardens 'can consult within the 1962 Act'.²⁸⁰ That is, the council would be prepared to have intensive discussions with the wardens, including through their body, the NZMWA, accommodating both the wardens' operational autonomy and their acknowledged need to have a major say in what happens to them in the future. If, however, the Tribunal agrees with the Crown that the wardens should be 'accorded a separate and distinct status' in a Māori-led review, then the claimants say that the Tribunal would need to consider whether the NZMWA is currently representative enough or functional enough to bear that responsibility.²⁸¹ But the claimants accept that if changes are to be proposed to how the wardens operate, then the Crown would rightly expect 'consultation with Wardens and wish to be informed of the level of consensus'.²⁸² The claimants also accept that if agreement cannot be reached between the council and groups of wardens, then those wardens would be able to engage directly with the Crown at the later stage of the review, when the Crown came to consider the council's proposals.²⁸³

Interestingly, however, the claimants submitted that the amount of consultation with wardens and other Māori groups would depend on 'the nature of the proposed changes': 'If it is intended merely to modernise the 1962 Act while maintaining the basic kaupapa then a major engagement with others may be unnecessary'.²⁸⁴ The primary question would be whether the proposed changes impacted on other Māori bodies that 'contribute to the exercise of self-governing rights', such as the Iwi Leaders Forum. It appears that the council intends to develop definite proposals

277. Claimant counsel, closing submissions (paper 3.3.5), pp 72-73

278. Claimant counsel, closing submissions (paper 3.3.5), p 76

279. Claimant counsel, closing submissions (paper 3.3.5), p 73

280. Claimant counsel, closing submissions (paper 3.3.5), p 74

281. Claimant counsel, closing submissions (paper 3.3.5), pp 73-75

282. Claimant counsel, closing submissions (paper 3.3.5), p 75

283. Claimant counsel, closing submissions (paper 3.3.5), p 76

284. Claimant counsel, closing submissions (paper 3.3.5), p 75

and take those out for consultation, which is the Government's usual approach to consulting stakeholders.²⁸⁵

Finally, the claimants argue that the Crown should have no say in how Māori organise to develop 'proposals for possible reform of the 1962 Act'. The NZMC will lead a process that is sensitive to the roles of the respective Māori organisations, their relationships, the areas where they can cooperate or even merge, and the 'spaces where it would not be appropriate to compete'. TPK's attempt to have a say in 'the shape of the discussions at this time' wrongly interferes in 'the conduct of Māori business, and risks avoidable problems of fragmentation and division.'²⁸⁶ The claimants argued that the Māori Wardens Advisory Group, the Crown's last attempt at setting up stakeholder groups, failed because the Crown sought agreement to its own views, and the final decision was to be a unilateral one by Ministers. The new engagement mechanism (the proposed reference groups) risks failure if the Crown, not Māori, controls the process, and if the Crown, not Māori, decides what the future should be.²⁸⁷ 'That is not,' said claimant counsel, 'consistent with the history and intent of the 1962 Act, with Treaty principles or with UNDRIP, and the Claimants do not want to see a repeat.'²⁸⁸ If there are two reference groups, 'the Crown will have to "pick the winner" rather than Māori doing that for themselves.'²⁸⁹

According to the claimants, therefore, the Crown's role should be a 'back-end audit role'. In particular, the claimants relied on Dr Charter's evidence about the UNDRIP in support of this point. The claimants accept that legislative changes may be required, and that this means 'the Crown will need to be satisfied as to the reasonableness of the proposals'. The claimants also accept that the Crown will need to be satisfied with any funding proposals, and that it will need to satisfy itself of 'the extent of consultation and the level of Māori support' for the proposals. This 'audit' role is required by the Crown's article 1 kāwanatanga responsibilities. Lack of unanimity among Māori, however, should not be a deciding factor. The Crown often has to decide according to the majority wish and Māori cannot be held to 'a quite different standard to the Crown in this regard'.²⁹⁰

In sum, the claimants' position is:

- ▶ The Crown should have no say in how Māori organise themselves to review the 1962 Act, and the Chief Executive's proposal for two reference groups is rejected. The Crown's role in a Māori-led review is limited to the provision of funding and technical assistance where required.
- ▶ The proposal for two reference groups is unsound, because it transforms wardens from an operational role to an independent, policy-deciding role.
- ▶ The NZMC should lead the review, and it should consult extensively with Māori Wardens and with other Māori leadership organisations. The claimants accept

285. Claimant counsel, closing submissions (paper 3.3.5), pp 75–76

286. Claimant counsel, closing submissions (paper 3.3.5), p 77

287. Claimant counsel, closing submissions (paper 3.3.5), pp 78–79

288. Claimant counsel, closing submissions (paper 3.3.5), p 79

289. Claimant counsel, closing submissions (paper 3.3.5), pp 79–80

290. Claimant counsel, closing submissions (paper 3.3.5), pp 80–81

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that they will need to be able to show that they have conducted a fair, transparent, sound review process.

- › The Crown's kāwanatanga role is to audit the outcome and to satisfy itself that the process was fair, and that any Māori proposals for change are reasonable, fiscally appropriate, and supported by the Māori majority.

6.8.3 Points of agreement between the parties

The parties agree that:

- › Māori should be free to consider for themselves and develop reforms to their own institutions.
- › The Crown should provide technical and funding assistance if required.
- › Māori should bring any proposals for reform, which involve funding or legislative change, to the Crown for discussion and agreement.
- › Māori will need to be able to show (and the Crown will need to be able to satisfy itself) that they have conducted a fair process, that their proposals are sound, and that there is sufficient support for the proposals.

This is a very substantial degree of consensus among the parties, and we are very glad that they were able to arrive at these common views during our hearing.

We endorse these points of agreement, and find them to be consistent with the Treaty principles of partnership, Māori autonomy, collaborative agreement, and active protection.

6.8.4 Points of disagreement between the parties

Primarily, the parties disagree on two points about the *substance* of the review:

- › The Crown does not accept that the NZMC should lead the review (on its own).
- › The claimants do not accept that the Crown should have any say in how the Māori-led review is conducted until the end, when it has a role to audit the outcomes of the review and to agree on legislative or funding changes.

These points of disagreement focus on how Māori Wardens are to be involved in the review, although they have wider implications.

According to the Crown, the Māori review and proposals for change should be led and developed by two reference groups, one of which would be the NZMC and for the other of which (representing wardens) it proposes to receive nominations and then make its own appointments. According to the claimants, the Crown should have no say on these matters – it is usurping their tino rangatiratanga, their autonomy, and their right as an indigenous people to decide how they are to organise. In addition, the claimants consider that the Crown's proposal (even if the Crown had the right to make a proposal) is fundamentally flawed because it puts wardens in a position of leading and deciding policy, which is not their statutory role and goes beyond their operational autonomy.

In addition, the parties disagree about the *timing* of the review. The Crown's view is that urgent action is required to assist Māori Wardens, and that the review should proceed as soon as possible. The claimants, on the other hand, say that the review

must await two things: transfer of control of the Māori Wardens Project and its funding (and therefore of Māori Wardens) from TPK to the council; and the completion of the council's internal reform process.

We address points of timing in chapter 10, where we summarise our findings and make our recommendations. We discuss the points of substance in the next two sub-sections, and make our findings as to whether the Crown's proposed way forward is Treaty-compliant.

6.8.5 Why does the Crown believe that it should have a say in how a Māori-led review is organised and conducted?

The Crown's evidence on this point came from the Chief Executive, Michelle Hippolite. In her view, it is 'appropriate' for the Crown to 'put forward a process for facilitating the continuing review of the Act by Māori'. This is because the Crown will ultimately be responsible for any legislation arising from a Māori-led review, and because the Crown will have to pay for the process adopted in the Māori-led review.²⁹¹

We note, however, that no fiscal reasons whatsoever were advanced by Ms Hippolite in explanation of the Crown's proposed process.²⁹² This is a significant point. It means that, in reality, the Crown is not concerned about what the review might cost. After all, it plans to assist two reference groups instead of one, both consulting widely with stakeholders and developing proposals. Rather than fiscal reasons, it appears that the Crown's over-riding concern is to ensure that all Māori groups participate fully, and that Māori Wardens have the opportunity to take a role co-equal to that of the council in shaping their future arrangements.

Ms Hippolite went on to propose principles on which the Māori-led review should be conducted – again, she said, on the basis that the Crown would ultimately have to agree to any legislative changes, and it would have to pay for the process. On that basis, the Chief Executive considered that it was not merely reasonable for the Crown to suggest two reference groups (and who should be on those groups), but also the 'principles within which the reference groups should operate.'²⁹³ These were:

- ▶ participation 'by the full range of Māori interests';
- ▶ quality input on all issues affecting Māori Wardens;
- ▶ a timely and cost effective process;
- ▶ a process that delivers arrangements that remedy the 'long standing' issues facing wardens, meet the needs of Māori communities, are durable, and are 'fiscally responsible and provide value for money'.²⁹⁴

The claimants did not comment specifically on these principles, which in any case would serve as a useful guide as to what the Crown expects to see when it 'audits' the process and final proposals at the end of the review.

291. Michelle Hippolite, brief of evidence (doc B18), p 2

292. Michelle Hippolite, brief of evidence (doc B18)

293. Michelle Hippolite, brief of evidence (doc B18), p 3

294. Michelle Hippolite, brief of evidence (doc B18), pp 3–4

In response to the claimants' concerns, as revealed in evidence and in cross-examination, Crown counsel submitted:

1. The Crown acknowledges that the NZMC is central to discussions on the future of Māori Wardens, but 'says that Māori Wardens themselves and Māori Communities generally also have a central role'.²⁹⁵
2. Māori Wardens' participation in the review is not the exercise of a power conferred by the 1962 Act, so it is 'not subject to the express direction of the District Māori Councils'. Also, there is not a direct relationship between the NZMC and wardens – it is through the District Māori Councils, which are subject to directions given by the NZMC.
3. Further, and quite separately from how the Act is to be interpreted, 'it cannot be unreasonable to expect that Māori Wardens should have a central role in the review of the legislative provisions that govern their organisation and operation'.²⁹⁶

Also, the Crown stressed that its proposed process was designed to give effect to its Treaty obligations:

It seeks to actively protect the interests of Māori communities by creating an environment where the relevant Māori groups, and Māori communities generally have an opportunity to contribute to the reforms of Māori institutions.²⁹⁷

6.8.6 Is the Crown's proposal consistent with Treaty principles?

The primary question in Treaty terms is whether the Crown is correct to (a) propose the manner in which Māori should organise to review and develop proposals about their own institutions, and (b) propose who should lead or conduct that review.

On this question of principle, we agree with the claimants that it is not appropriate for the Crown to propose the number or composition of reference groups or the process for those groups to follow.

We accept the Crown's reasoning that it has a right to expect that the Māori-led review will be 'cost effective', since the Crown is paying for it, although it must also be a just and fair process. It follows that the Crown will have a view as to cost effectiveness and funding, once Māori have designed a review process and seek assistance with it. But we do not think that this is actually what is motivating the Crown at present, since it has proposed a process that appears to double the work that it will have to fund.

We also think that the Crown's 'principles' have been helpful in identifying the things it will test at the end of the review, such as the quality and coverage of input by Māori and the degree of Māori support for any proposed changes. It would be disastrous if the review failed because the Crown held it to some procedural standard that had not been disclosed at the beginning. Thus, it is right and necessary for the Crown to set out its expectations of the review, but not for the Crown to

295. Crown counsel, closing submissions (paper 3.3.3), pp 8–9

296. Crown counsel, closing submissions (paper 3.3.3), p 9

297. Crown counsel, closing submissions (paper 3.3.3), p 9

prescribe who should lead the review or the details of the process that it should follow. Rather, the Crown should set out the process that it will follow at the end of the review (as the Chief Executive has done in her evidence) for discussion with the Māori Treaty partner. Wherever possible, these things should be agreed in advance. In our view, therefore, the NZMC should likewise set out the process that it plans to follow for the information of (and comment from) the Crown. These are conversations which are yet to happen, and we appreciate that the Chief Executive's proposal was intended as a conversation starter, not as a take it or leave it offer. In chapter 10, we will return to the question of how the parties should interact from now on and how the process should be further developed, when we summarise our findings and make our recommendations.

Our finding here is that the Crown's article 1 kāwanatanga responsibilities do not include prescribing which Māori individuals or groups will lead the review or how the review is to be organised. That is for Māori to decide.

If the Crown insists on its 'proposal', for instance by making funding assistance contingent upon it, Māori will be significantly prejudiced.

In a practical sense, we think that the Crown has rightly identified that the NZMC and Māori Wardens must both be at the centre of any review of the Act in respect of its arrangements for Māori Wardens. We note, however, that the claimants have not accepted that the review is to be confined to Māori Wardens' issues. Other parts of the Act may be under consideration for reform.

In any case, as we concluded in chapter 5, it was clear to us from the evidence of Māori Wardens in our inquiry that the wardens want to have a large say in what happens to them. It seems essential that they should do so. They are volunteers whose energy, commitment, and time have made the Māori Wardens' movement a major contributor to Māori social development and community well-being today. The wardens have knowledge, expertise, and collective wisdom to offer. Their input will be vitally important. Although there was much talk of 'independence', we think that most wardens saw that they must remain accountable to the communities that they serve. Many wardens support the NZMC and the District Māori Councils, but many others see their future developing in a different direction, perhaps towards a new national body that will be accountable in some other way.

Be that as it may, we agree with the claimants that Māori Wardens cannot stand separately on their own to lead a process to reform the 1962 Act and their own roles, functions, accountabilities, and governance arrangements. In our view, wardens must have a say in these matters but it cannot be the lead or final say. Māori Wardens exist to serve their communities, not the other way around. It follows that Māori communities must be the ones to decide how their wardens are to be appointed and directed. As with the model of the police, which was proposed to us as a fitting analogy on this point, wardens have operational autonomy but they do not decide policy, or whether or how they are to be accountable. We discussed this point in chapter 2, where we found that Māori Wardens cannot claim to exercise tino rangatiratanga or to represent their local communities, other than as an operational arm of their local self-government.

Acting under article 2 of the Treaty, the NZMC has self-selected as the appropriate body to lead the Māori side of the review. We think that is correct. The NZMC is the only national Māori body directly and primarily involved in the arrangements established by the 1962 Act. Also, as we found in chapter 2, the NZMC exercises at a national level the tino rangatiratanga of the Māori communities who have elected representatives to its committees and district councils, and who have selected Māori Wardens. It would be Treaty-compliant for the council to lead this particular review.

Finally, as the parties agree, there will need to be a process by which the Crown ‘audits’ the Māori-led review and discusses implementation of any legislative or funding reforms, with a view to reaching agreement and renewing the compact that was negotiated between 1959 and 1963. That process should comply with the principles of partnership and active protection, and with all relevant articles of the Declaration.

SUMMARY OF FINDINGS

The Māori Wardens Project (mwp) Advisory Group

- ▶ We agree with the Wai 262 Tribunal that specialist advisory committees can serve as forums for partnership and engagement, although we note that only those with a reasonable interest should be involved in an advisory group.
- ▶ The Crown used the mwp Advisory Group to bring together the New Zealand Māori Council (NZMC) and the New Zealand Māori Wardens Association (NZMWA), which it saw as the two main stakeholders whose buy-in was essential for developing a Māori entity for managing the mwp and wardens. It is not clear whether the appointments to the Advisory Group were mutually agreed – if not, they should have been.
- ▶ The Advisory Group had some success in designing updated functions for wardens but had not reached agreement on the key issue – a Māori governance entity – by 2009.
- ▶ In our view, the Advisory Group was a promising partnership experiment, cut short when the Crown decided to proceed instead to a full review of the 1962 Act. But it could only ever have been a starting point for further consultation.

The select committee inquiry

- ▶ Te Puni Kōkiri’s advice to the select committee set the parameters for its analysis.

- ▶ Much of the information provided by Te Puni Kōkiri (TPK) was avowedly neutral in tone and content, but TPK explicitly discouraged retaining the NZMC in its current form or retaining council responsibility for the wardens.
- ▶ The select committee accepted TPK's advice on many points but it was also influenced by the submissions received from Māori.
- ▶ We agree with the claimants that TPK's advice to the committee casts doubt on the Ministry's later claim to neutrality.
- ▶ But, ultimately, the committee's primary recommendation (and impact) was further consultation with Māori.

The Crown's decision in 2013 to proceed with a Crown-led review of the 1962 Act

Points of agreement between the parties at our hearing

- ▶ The Māori institutions provided for by the 1962 Act must be reformed by a Māori-led, not Crown-led, process.
- ▶ Māori should lead a review (with funding and technical assistance from the Crown), and then come to the Crown Treaty partner to discuss and agree any requested funding or legislative changes.

Despite these points of agreement, the Crown argued that its prior approach (a Crown-led review) was still compliant with Treaty principles; the claimants disagreed.

The Tribunal's findings on points of disagreement between the parties

- ▶ We do not agree with the Crown's view in 2012–13 that the NZMC had a conflict of interest, preventing it from leading a review of the Act.
- ▶ We agree with the claimants that the Crown should have waited for the 2012 reform of the council system to be completed. It was vitally important that the review proceed on the correct principle. Interim arrangements could have been made for the administration of the MWP.
- ▶ The Crown should have known in 2012–13 that a Crown-led review, resulting in a standard Crown-consults-and-decides approach, was not appropriate. Its own argument was that this consultation was atypical: it said that it had no preferred option to put to Māori but simply wanted to find out what Māori wanted.
- ▶ The Crown's decision in 2013 to proceed with a Crown-led review, in which the Crown would consult Māori and then make decisions as to Māori self-government institutions, was inconsistent with the Treaty principles of partnership and options.
- ▶ In particular, the principle of collaborative agreement required that, where the matter was so central to Māori interests as their own self-government,

and the Crown interest was correspondingly weak, the Crown could not proceed (as in 2013) without collaboration and agreement.

- ▶ Also, the Crown did not properly take into account the significance of the 1962 Act, and the negotiated compact by which this Act gave statutory recognition to self-government institutions created by Māori prior to that Act, when it made its decision to proceed with a Crown-led review.
- ▶ While the Crown was correct in 2013 that the representational landscape had changed since 1962, the appropriate response in Treaty terms was not for the Crown to manage the 'multiple rangatiratanga interests' and lead the review instead of Māori.
- ▶ The Crown now accepts that the Māori self-government institutions provided for in the Act must be reviewed by Māori, to decide what reforms they want (if any). We do not accept the logic of the Crown's argument that it was nonetheless Treaty-compliant for it to have done the opposite in 2013.

Prejudice

- ▶ No prejudice has been suffered yet because the Crown's review is only part-way through, and the ministerial decisions that came out of the Crown-led 2013 consultation were not prejudicial to the claimants.
- ▶ However, prejudice is likely to ensue if the recommendations we make in chapter 10 are not followed.

The Crown's proposed way forward in 2014

Points of agreement between the parties

- ▶ Māori should be free to consider and develop for themselves reforms to their own institutions.
- ▶ The Crown should provide technical and funding assistance for that process if required.
- ▶ Māori should bring any proposals for reform, which involve funding or legislative change, to the Crown for discussion and agreement.
- ▶ Māori will need to be able to show (and the Crown will need to be able to satisfy itself) that they have conducted a fair process, that their proposals are sound, and that there is sufficient support for the proposals.

We endorse these points of agreement.

Points of disagreement between the parties

- ▶ The Crown does not accept that the NZMC should lead the review (on its own), preferring two separate reference groups (one for wardens) which would report their recommendations to the Crown.

- ▶ The claimants do not accept that the Crown should have any say in how the Māori-led review is conducted until the end, when it has a role to audit the outcomes of the review and to agree on legislative or funding changes.

The Tribunal's findings on points of disagreement

- ▶ We agree with the claimants. The Crown's article 1 kāwanatanga responsibilities do not include prescribing which Māori individuals or groups will lead the review or how the review is to be organised. That is for Māori to decide.
- ▶ We also agree with the claimants that Māori Wardens cannot stand on their own to lead a process to reform the 1962 Act – they must have a major say but it cannot be the lead or final say. Our view is that the NZMC is the appropriate body to lead the Māori side of the review.
- ▶ If the Crown insists on its 'proposal', for instance by making funding assistance contingent upon it, Māori will be prejudiced.

Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples

- ▶ The Crown argued that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) does not require a Māori-led review culminating in a Crown–Māori negotiation; rather, the Crown's view is that UNDRIP requires States and indigenous peoples to collaborate (allowing a variety of sequences and processes), and that a Crown-led process is envisaged under article 19.
- ▶ In our view, the Crown's decision in 2013 to proceed with a Crown-led review, leading to unilateral Crown decisions about Māori self-government institutions, was not consistent with the rights affirmed in the Declaration.
- ▶ Article 19 requires that, where legislation is concerned, both sides must agree (which Māori accept). Either the Crown or Māori could initiate conversation reviewing a piece of legislation that is central to Māori interests, but in which the Crown also has an interest.
- ▶ The Māori institutions involved in the present case are self-government institutions, established by Māori and then accorded statutory recognition after negotiation with the Crown. These institutions do not arise from State action or initiative (the apparent starting point for article 19). Article 18 affirms the right of indigenous peoples to maintain and develop their own indigenous decision-making institutions and to choose their own representatives through their own procedures. Where articles 18 and 19 overlap – State legislation which relates to indigenous self-government institutions – our view is that indigenous peoples must decide what changes they want to these institutions. Collaboration follows because, as in the present case,

the Crown has a duty to satisfy itself that the requested funding or legislation can be financed or enacted.

- ▶ In our view, informed by the Declaration, the Treaty favours the Māori-led approach now agreed between the claimants and the Crown, and we expect that this would also be so in future for the reform of Māori self-government institutions accorded recognition in statute by prior agreement between Māori and the Crown.
- ▶ Different approaches could nonetheless be Treaty-consistent if the Treaty partners agreed to them.

CHAPTER 7

TE KAUPAPA A TE PUNI KŌKIRI /
THE MĀORI WARDENS PROJECT

7.1 INTRODUCTION

In 2007, Te Puni Kōkiri (TPK) and the Police launched the Māori Wardens Project (MWP). The MWP is administered through a project team, located in TPK's head office in Wellington, and Regional Coordinators working out of TPK's regional offices. The stated aim of the MWP is to build 'capacity and capability' among Māori Wardens through an integrated funding and support package. Assistance available to wardens through the MWP includes the provision of training, uniforms, vehicles, and other equipment. Māori Wardens' groups may also apply for grants from a contestable funding pool (currently \$1 million annually) to fund local or regional projects. The MWP funding package was introduced by TPK as an interim measure concurrently with the measures – discussed in chapter 6 of this report – to identify viable options for the future governance of Māori Wardens. The lack of progress in the second area has meant that, today, seven years after the MWP was first introduced, operational responsibility for the MWP still remains with the Crown and has not yet been handed back to Māori.

The claimants argue that, in developing and administering the MWP, the Crown has breached the principles of the Treaty 'by diminishing or excluding the authority of the New Zealand Māori Council and District Māori Councils to administer Māori Wardens in terms of the 1962 Act compact'.¹ The claimants believe that the Crown's partnership obligations under the Treaty, and the Treaty guarantee of 'the right to govern in exchange for the protection of rangatiratanga', oblige the Crown to 'scrupulously observe the compact reflected in the 1962 Act'.² As covered in chapter 3 of this report, the claimants believe that the 1962 Act was in the nature of a 'special agreement' between the Crown and Māori. The special nature of the 1962 Act, the claimants argue, binds both the Crown (and Māori) to at all times act in accordance with the 1962 Act.³ Any breach of the requirements of the 1962 Act, the claimants believe, thus equates 'with a breach of the partnership principle'.⁴ Rather

1. Claimant counsel, amended statement of claim, 17 January 2014 (paper 1.1.1(a)), p 16

2. Claimant counsel, amended statement of claim (paper 1.1.1(a)), p 16

3. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p 24

4. Claimant counsel, closing submissions (paper 3.3.5), pp 23–24

than upholding this special agreement signified by the Act, the claimants believe that the Crown, in establishing and administering the MWP, has acted inconsistently with ‘the 1962 Act compact’ and has undermined the NZMC and DMCS by interfering with their statutory authority to control and supervise Māori Wardens.⁵

In addition to their central claim – that TPK has, in its instigation and administration of the MWP, usurped the role of the DMCS and NZMC to control and supervise Māori Wardens – the claimants also make a range of secondary allegations relating to the project. These relate to the manner in which MWP resources have been managed and allocated by TPK, and the claimants’ belief that the MWP has distorted the kaupapa of Māori Wardens and encouraged an inappropriate view of what wardens should be and do.

Specific MWP funding allegations are addressed in chapter 8. In this chapter, we address the questions of whether the MWP was established as a temporary arrangement with Māori (specifically NZMC) consent, whether this temporary arrangement included adequate Māori community oversight, and whether the training and other aspects of the project threatened – as the claimants argued – to distort the kaupapa of Māori Wardens and make them too close to the police.

7.2 THE PARTIES’ ARGUMENTS

7.2.1 The Crown’s case

As in the previous chapters, we begin with the Crown’s case as this was presented first in closing submissions.

The Crown submits that TPK and the Police established the MWP as a direct response to appeals from Māori Wardens’ groups for better resourcing and support. In the Crown’s view, the MWP ‘should be considered as an example of partnership under the Treaty’, in that it was introduced in response to ‘calls from Wardens for funding for uniforms, transport and training’.⁶ The decision that the funds available for Māori Wardens should initially be administered by TPK stemmed from the fact that, at the time of the MWP’s establishment back in 2007, Ministers and TPK officials believed that no ‘suitable structure’ then existed through which funds targeted at Māori Wardens could be responsibly administered.⁷ This was because, in 2007, the NZMC structure was itself highly dysfunctional, with many DMCS having ‘ceased to function while others were only partially functioning’.⁸ TPK’s decision to channel funding through TPK as an interim arrangement was therefore, according to the Crown, a reasonable and responsible measure given the internal issues within the NZMC structure at that time.

The Crown believes that, in establishing and operating its MWP, TPK has at all times acted in accordance with Treaty principles. TPK has, for instance, conducted itself in accordance with the principle of good faith by ensuring ‘that a structure

5. Claimant counsel, amended statement of claim (paper 1.1.1(a)), p 16

6. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3), p 17

7. Crown counsel, closing submissions (paper 3.3.3), p 14

8. Crown counsel, closing submissions (paper 3.3.3), pp 15, 18–19

was provided through which the Project funds could be distributed.⁹ The Crown states that the MWP has delivered much needed funds for Māori Wardens in a manner that upheld rather than breached Treaty principles. According to the Crown, TPK has complied with the principle of active protection by ‘the provision of funding in a way that ensures it reaches the intended recipient.’¹⁰ Further, TPK’s management of the MWP was intended only as an interim measure, until such time as a viable alternative governance arrangement for Māori Wardens could be identified.¹¹ Thus, the Crown argues, in establishing the MWP as a temporary structure to manage the distribution of resources to Māori Wardens, the Crown was complying with its duties of *kāwanatanga* under the Treaty of Waitangi, as well as meeting its responsibilities as Treaty partner to Māori by responding to requests from Māori Wardens for funding and support. While TPK has acknowledged the recent efforts of the NZMC to renew the District Māori Councils, the Crown believes that the districts have ‘still some way to go’ in their efforts to regenerate themselves and, thus, that TPK’s administration of the MWP remains appropriate at the present time.¹²

7.2.2 The claimants’ case

By contrast, the claimants believe that TPK’s establishment of the MWP and its employment of its own officials – neither elected by nor accountable to Māori – to deliver a funding programme for Māori Wardens, has created a parallel system for managing Māori Wardens which ‘has undermined the focus on representativeness and accountability to local Māori communities which is central to the 1962 Act.’¹³

The thrust of the claimants’ argument is that, prior to the MWP, the NZMC and the individual DMCS received no direct funding for Māori Wardens’ operations or organisations. That is unchallenged by the Crown. The only funding made available to the NZMC was its annual funding allocation (currently \$196,000) from which it had to try to meet its operating costs.¹⁴ As that funding has remained static for years the claimants say that it has been barely sufficient to cover the NZMC’s administration costs, let alone provide any surplus for wardens.¹⁵ As a consequence, provision of vans, uniforms, or health and safety equipment for wardens, or funding for training to assist with their own activities and developments in their own areas, has not been able to be provided by the NZMC.

In essence, prior to 2007, the Māori Wardens operated purely on a voluntary basis and the evidence was that over time lack of funding had impinged significantly on the ability of the council structure – and of wardens themselves – to properly fulfil their roles.

9. Crown counsel, closing submissions (paper 3.3.3), p17

10. Crown counsel, closing submissions (paper 3.3.3), p5

11. Crown counsel, closing submissions (paper 3.3.3), pp 18–19

12. Crown counsel, closing submissions (paper 3.3.3), pp 10, 18–19

13. Claimant counsel, closing submissions (paper 3.3.5), pp 36–37

14. Karen Annette Waterreus, brief of evidence, 15 November 2013 (doc A3), p7; Diane Rachel Black, brief of evidence, 21 February 2014 (doc B5), pp 11–12

15. Karen Waterreus, brief of evidence (doc A3), p7; Diane Black, brief of evidence (doc B5), p11; claimant counsel, closing submissions (paper 3.3.5), pp 37–38

The NZMC's complaint is not in relation to the provision of funding for Māori Wardens, which it welcomes as helpful to wardens, but about the mechanism by which it is being applied. Rather than channelling funding for Māori Wardens through the DMCS, the bodies with statutory authority to administer and control Māori Wardens, the claimants say, TPK has itself controlled the purse strings and has received 'significant annual appropriations' from the Government to support the voluntary work of Māori Wardens.¹⁶

The claimants believe that TPK's involvement in the MWP amounts to the 'exercise of de facto powers of supervision and control of Wardens', thus contravening the 1962 Act itself, as well as various Treaty principles and UNDRIP.¹⁷ In so doing, the claimants believe, the Crown's actions threaten the status of Māori Wardens as a 'Māori institution' and undermine the 'integrated structure' of Māori self-government set up under the 1962 Act.¹⁸

To achieve a funding process for wardens that is compliant with the Treaty and the 1962 Act, the claimants assert, TPK should have gone through the NZMC and DMCS to determine 'how MWP funding can most efficiently and effectively be spent'.¹⁹ Claimant witness Diane Black has stated in this regard:

At present we have a government department that gets paid hundreds of thousands of dollars to administer the Māori Wardens, and a legislated body that gets paid nothing. I fail to see recognition of any Treaty partnership in this scenario.²⁰

In this chapter, we are particularly concerned with the claimants' view that the Crown-controlled MWP threatens the kaupapa of Māori Wardens. The claimants based this allegation on two specific points: first, that centrally delivered police training has been designed without the necessary input and control of the Māori institutions which understand wardens' needs and direct their activities; and, secondly, that the MWP has used its funding to privilege 'young and fit' wardens and to de-emphasise the need for 'aunt and uncle' wardens. As a result of the MWP, the claimants believe that wardens are learning police-type skills, are distanced from the original kaupapa for wardens, and are perceived by their communities as too close to the police.²¹ Claimant counsel submitted:

the Crown's (at the least) passive support for these developments breaches the partnership, active protection and utmost good faith principles. It is also contrary to Arts 4, 5, 18 and 20(1) of UNDRIP.²²

16. Claimant counsel, amended statement of claim (paper 1.1.1(a)), p 7

17. Claimant counsel, closing submissions (paper 3.3.5), pp 33–36

18. Claimant counsel, closing submissions (paper 3.3.5), p 35

19. Claimant counsel, closing submissions (paper 3.3.5), pp 34–35

20. Diane Black, brief of evidence (doc B5), pp 12–13

21. Claimant counsel, closing submissions (paper 3.3.5), pp 34–35, 49–51

22. Claimant counsel, closing submissions (paper 3.3.5), p 51

7.3 THE ESTABLISHMENT AND DESIGN OF THE MĀORI WARDENS PROJECT

7.3.1 How was the project designed and established?

The MWP is a joint initiative between TPK and the New Zealand Police, centrally administered by TPK. It is funded through Vote Māori Affairs and Vote Police. TPK's involvement in the project originated from a 2005 'confidence and supply' agreement reached between Labour and New Zealand First, which included funding to support the voluntary work of Māori Wardens in their communities.²³ According to Crown witness Wallace Haumaha, of the New Zealand Police, a national tour of Māori communities conducted by soon-to-be Police Commissioner Howard Broad was decisive in the New Zealand Police's decision to co-sponsor the project with TPK.²⁴ At these hui, there was a 'resounding call' for Māori Wardens to have access to 'consistent and formalised training, a warm coat and transport that would allow them to undertake their duties'.²⁵ This echoed similar calls to Ministers for more funding and support which were being made by Māori Wardens at this time.²⁶

In the lead up to the 2007–08 budget, TPK sought parliamentary approval for a funding allocation of \$2.53 million out of its existing budget for a project aimed at 'Building Capacity and Capability within the New Zealand Māori Wardens'.²⁷ Cabinet approved this request on 19 April 2007.²⁸ Prior to securing Cabinet approval, a Ministerial group made up of the Ministers of Māori Affairs (Parekura Horomia), Police (Annette King), and Foreign Affairs (Winston Peters) had already met on several occasions. Their purpose was to advance plans for a joint TPK–Police project to improve resourcing and training for Māori Wardens.²⁹ In early April, the Ministers met to discuss TPK's 23 March 2007 proposals for how the project should proceed. At this meeting, Ministers expressed general support for the objectives of the funding scheme. But they also asked officials for more detail on how the proposed funding would be implemented at the operational and executive levels.³⁰ This required consultation with Māori 'stakeholders', which appears to have happened for the first time after this April 2007 meeting.³¹

23. New Zealand Labour and New Zealand First, 'Confidence and Supply Agreement with New Zealand First', 17 October 2005 (Crown counsel, comp, TPK document collection (doc C15), p 450)

24. Wallace Patrick Haumaha, brief of evidence, 28 February 2014 (doc B17), p 1

25. Te Rauhuia Clarke, brief of evidence, 28 February 2014 (doc B14), p 2

26. Te Rauhuia Clarke, brief of evidence (doc B14), p 1

27. 'Vote Māori Affairs', Estimates of Appropriations Māori, 2007–08 Budget, p 815, <http://www.treasury.govt.nz/budget/2007/estimates/esto7maoaff.pdf>, last modified 7 May 2007

28. Minute of Cabinet decision, 19 April 2007 (Crown counsel, TPK document collection (doc C15), pp 462–463)

29. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), pp 451–452)

30. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity' – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document bank (doc C15), p 451). We did not receive a copy of the earlier briefing paper dated 23 March 2007.

31. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential' briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), p 456)

At this point in the planning and design of the project, Ministers and officials were concerned about the ‘current capacity of the various Wardens’ representative groups to effectively manage this programme of investments in a manner which would satisfy the Government’s requirements in respect of public monies.’³² Ministers did not want to invest until there was a ‘proposed process to identify shortcomings in relation to the governance and management of Māori Wardens, and to provide sustainable solutions to these going forward.’³³ This would enable an investigation of appropriate options for the ‘longer term management of these investments’ before the Government’s ‘ongoing support was confirmed.’³⁴

On the issue of ‘stakeholder support’ of the project, Ministers asked officials to investigate and report back on:

- ▶ the extent to which this proposed initiative would be favourably received or find support among the Māori Wardens and their representative bodies; and
- ▶ options to ensure a sustainable model of governance and management of these moneys going forward.³⁵

TPK officials responded to the Ministers’ request for further detail a little over a month later, on 11 May 2007, in a paper entitled ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’.³⁶ This paper outlined lack of resources as a serious issue facing Māori Wardens. It stated that, while wardens had played a ‘meaningful role in this country’s social history since the 1940s’, they had struggled for resources since their inception. Consequently, their ability to respond to the needs of modern communities had been ‘eroded.’³⁷ Officials recommended that the Government invest in an ‘integrated package’ of support for Māori Wardens, modelled on other initiatives for the local delivery of government funding through community-based programmes.³⁸ The Māori Wardens Project would include the employment of local coordinators and the introduction of centralised and

32. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 452)

33. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 451)

34. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 455)

35. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 456)

36. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 451–461)

37. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 451–452)

38. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing Paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 452). Other examples included road safety coordination through the Land Transport Safety Authority, victims’ support through Vote Police, and contestable funding for local crime prevention projects through Vote Justice.

community-based training schemes. At this early point, TPK envisaged training to cover areas such as personal safety, crowd control, first aid, patrolling techniques, mediation, conflict resolution, and advocacy.³⁹ In addition, the proposed funding package would include the purchase of equipment such as portable radios and uniforms, and access to vehicles ‘to support the Wardens in their day to day responsibilities’. A contestable fund would be set up for community-based projects, with a particular emphasis on projects targeting youth at risk or addressing drug and alcohol dependency.⁴⁰ Finally, the projected funding included a budget for the marketing and promotion of Māori Wardens’ activities, with the goal of attracting further recruits, particularly among younger Māori.⁴¹

In the expanded proposals of May 2007, officials recommended that the proposed funding be introduced in two phases. The first, beginning on 1 July 2007, would see the scheme trialled in six ‘high performing’ Māori Warden regions during 2007 and the first half of 2008, followed by a full roll-out of the scheme to the remaining areas of the country from mid-2008.⁴² In the first year, the cost of running the project would be covered within TPK’s existing operating budget, but new money would be sought from Parliament to fund the project’s expansion in 2008–09.⁴³ As well as enabling TPK to cover the costs of the scheme within its existing budget, officials hoped that the phased introduction of the scheme would enable the Government to iron out any issues arising from the trial phase prior to its full implementation in 2008.⁴⁴

In presenting this expanded plan, TPK claimed that its proposals had been agreed to after discussions with Māori Wardens, the NZMC, and the New Zealand Māori Wardens Association (NZMWA), and that it had secured their agreement to ‘work closely’ with officials to implement its proposed investment in Māori Wardens.⁴⁵ This is particularly important because the claimants have asked us to make a finding that ‘the Māori Wardens Project as administered by Te Puni Kōkiri is an

39. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 454–455)

40. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 452, 454–455)

41. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 455)

42. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 452, 458)

43. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 455)

44. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 455)

45. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 456–459)

example of an unauthorised engagement with the wardens by a state agency'.⁴⁶ The Chief Executive of TPK, Leith Comer, reported that he had held a series of meetings with 'selected Māori Wardens' and representatives of the NZMC and NZMWA.⁴⁷ Our evidence about these meetings is limited. The claimants did not provide evidence or submissions about this 2007 consultation in respect of the establishment of the MWP. We also have no minutes or other records of the meetings; we only have TPK's summary in its May 2007 report to rely upon, in relation to what took place at these important hui.

In the May 2007 paper, TPK stated that the purpose of the meetings had been to discuss the Government's proposals to offer 'enhanced support' to Māori Wardens. According to officials, the NZMC (and other stakeholders) welcomed their proposals and considered them timely. TPK representatives, however, informed the NZMC and NZMWA of the Government's reservations about investing in Māori Wardens 'on any longer-term basis' while the issues surrounding their governance remained unresolved.⁴⁸ Specifically, officials told the council and the association that 'neither of these groups is adequately equipped to administer this programme on the Government's behalf'. Both the NZMC and NZMWA disagreed, each expressing confidence in its own ability to manage the funds. Nevertheless, the two organisations were said to have acknowledged that 'relationships with their counterpart could be improved to the benefit of the Māori Wardens as a whole'. Both were also 'firm' that 'issues at this level' should not be allowed to stand in the way of an initiative 'intended to provide support to wardens generally, and that would ultimately result in an enhanced level of capability and service delivery among them'.⁴⁹ TPK officials were reportedly 'pleased' with the response of the NZMC and NZMWA to the Government's proposals to improve resources for Māori Wardens. Mr Comer believed that he had secured the agreement of both organisations to 'work closely with officials' to ensure the 'effective implementation' of the Government's planned investment.⁵⁰

Ultimately, therefore, TPK's view was that the NZMC (and the NZMWA) had agreed in principle to a project to be administered by the Government for the time being. Both organisations would work with TPK and the Police to 'develop a model of management, representation and governance that would satisfy the Government's need to ensure that these public moneys would be satisfactorily managed'. Officials also

46. Sir Edward Taihakurei Durie, brief of evidence, 21 February 2014 (doc B9), p 13

47. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), p 456)

48. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), p 456)

49. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), p 456)

50. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), p 456)

believed that they had secured agreement to a ‘collaborative programme’ to carry out this particular work over the next two years. The NZMC had said that it would ‘be pleased to play a role’ alongside the NZMWA in a proposed advisory or steering group. This group would have a dual role of steering the project and establishing the options for managing and governing the funding (and Māori Wardens) in the future. Officials welcomed the agreement because they saw the necessity of both of these ‘stakeholders’ being fully involved in designing the longer-term model for managing wardens and the project. Without such involvement, any new model was unlikely to prove ‘sustainable’ in the long run. Changes to Māori Wardens at the operational level could hardly be introduced in the absence of agreement.⁵¹

Input from the NZMC and the NZMWA had also led TPK officials to amend the proposed training package to include locally based training opportunities for Māori Wardens on top of the suggested national training programmes:

Our original proposal envisaged a two week programme being delivered to all Wardens through the Royal New Zealand Police College, with the assistance of key professionals from other sectors as appropriate.

Our subsequent discussions with representatives from the New Zealand Māori Council and the Māori Wardens Association however, have highlighted a number of community-based training interventions designed to support the Wardens in their role, and which could also be the subject of these proposed investments. To incorporate these initiatives into the proposed training and development opportunities, would result in a potential continuum of training and development support, ensuring that Wardens were equipped with the full range of skills they needed to individually support their communities at all levels in which they operate.⁵²

After this somewhat belated consultation in April and May 2007, therefore, TPK finalised the design of the MWP. In particular, officials recommended to Ministers that the funding be administered by local coordinators and a TPK project team, while a Crown–Māori advisory group had oversight and designed the future governance model for both wardens and the project. TPK envisaged that, by the third year of the scheme’s operation, the advisory group’s work would be complete and the implementation of its proposals would be under way. The ultimate goal was to hand control of resources, training (and wardens) to a Māori entity within three years.⁵³

After ministerial approval was secured in mid-2007, the details of the proposed support package for Māori Wardens (as outlined in TPK’s May paper) were repeated

51. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 456–458)

52. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), p 454)

53. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc c15), pp 458–459)

without substantive modification in the project's July 2007 charter. This charter was a formal agreement between the project's sponsors, the heads of TPK and the Police, and the project's manager, TPK official Te Rauhuia Clarke. Approval for its contents was sought from Mr Comer, Commissioner Broad, and various TPK and Police officials.⁵⁴ As far as we are aware, the NZMC and other 'stakeholders' were not consulted about the charter, nor invited to agree to its contents.

The charter listed the project's five main objectives:

- ▶ to provide resources to improve the effectiveness of Māori Wardens;
- ▶ to provide training for Māori Wardens;
- ▶ to promote the community work of Māori Wardens and boost recruitment;
- ▶ to improve the national coordination of Māori wardens; and
- ▶ to improve outcomes for Māori youth.⁵⁵

In outlining the rationale and intended outcomes of its funding package for Māori Wardens, TPK listed a range of tangible and intangible outcomes that it hoped would arise from project funding. Tangible outcomes included increasing the time that Māori Wardens were able to spend engaged in their community work, increasing the number of Māori Wardens, and providing them with enhanced training. Intangible outcomes included improving Māori Wardens' morale, boosting their mana and prestige in their communities, improving connections between Māori Wardens and other organisations as well as government agencies, and improved safety for Māori Wardens.⁵⁶ These were all laudable goals. It is not surprising that both the NZMC and NZMWA agreed to set aside other issues for the meantime and to support a project focused on such outcomes.

According to its charter, one of the project's three key risks was that 'various stakeholders and key interest groups do not support policy development towards a nationally coordinated Māori Wardens body'. TPK's mitigation strategy was the '[a]ctive engagement of key stakeholders' in the process, early identification of issues, and obtaining 'support from relevant Ministers'.⁵⁷ A communication plan was developed to convey key messages, which included emphasis on the NZMC's agreement to help set up the project, to work with TPK 'to make sure we've got it right', and to work out how the funding should be delivered in the future.⁵⁸

Also, conscious of a need to avoid the perception that the MWP might be regarded as a take-over of Māori Wardens on the part of TPK or the Police, the project charter specifically excluded the development of:

54. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', Māori, July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 40)

55. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 43–44)

56. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 45–46)

57. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 49–50)

58. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', June 2008, appendix G, 'Communications Plan', p 8 (Wallace Haumaha, comp, papers in support of brief of evidence (doc C17(a)), unpaginated)

MĀORI WARDENS PROJECT COMMUNICATION PLAN: KEY MESSAGES

The following is an extract from the 'key messages' section of TPK's MWP communication plan:

Why can't the New Zealand Māori Council manage the funding directly? Isn't that what they are there for?

The Māori Council definitely has statutory responsibility for Māori Wardens and for this reason, they will be involved in helping to set up this programme. What we need to be mindful of however is that this first year [2007–08] is one of assessment and adjustment on a smaller scale to make sure we've got it right, before looking to provide even greater support across each of the currently active Wardens' regions.

Executive members within the Council have confirmed that they are happy to work with us to get it right, and to look at ways in which the funding can be delivered in the future.

What about the Māori Wardens' Association. Where do they fit in?

It is intended to keep the investment in-house for the first few years. We are going to be taking advice from the Wardens' Association and the New Zealand Māori Council as to how the funding should be managed in the future if we agree to extend this programme, we will be looking forward to working with these organisations to examine this issue.

I think each of these groups does a great job in terms of representing their various members, and we need to build on those successes to come up with a model that meets everyone's needs.

Does this mean there will be new legislation?

It's too soon to say. Will need to await policy development work which will involve the Advisory Group. In the meantime, the funds can be managed by the team at Te Puni Kōkiri, who will make sure that they keep in close contact with the Advisory Group, and their two organisations to bring it all together.

any policy or processes that imply direct control of Māori Wardens by Te Puni Kōkiri or the Police. Māori Wardens are community volunteers and will continue to operate under localised arrangements as at present.⁵⁹

59. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 47)

The project charter included a ‘sub-project plan’ for policy development, which set out the proposed role and functions of the Advisory Group. Ministers had agreed that the group would have a role in ‘informing’ the project team’s implementation of the scheme. It would also ‘work with project officials to identify options for the future management and governance of the Māori Wardens and their current and proposed new resources.’ This would include defining a vision, strategic goals, and key functions for Māori Wardens as well as a governance and management structure, and any changes to the Act necessary to facilitate the ‘rejuvenated Warden’s Service envisaged by these investments.’⁶⁰ The Advisory Group’s task had progressed, therefore, from designing options for a national entity to also redesigning the role and functions of Māori Wardens and the Act which governed them. The NZMC and NZMWA were both to be represented on the Advisory Group.

7.3.2 Adjustment of the project’s design: the initial roll-out

The finalisation of the project’s design in July 2007 was followed by introductory hui in the six target regions. Te Tai Tokerau, Auckland, Hamilton, Tākitimu, Rotorua, and Gisborne were selected by TPK to take part in the pilot funding scheme. In the early months following the scheme’s introduction – in July and August 2007 – TPK conducted hui in each of these regions to promote the Government’s new package of resources and support for Māori Wardens, to advise Māori Wardens on its planned implementation, and ‘to obtain the views of Māori Wardens to inform future planning’.⁶¹ According to TPK’s records, the hui were attended by an estimated 200 Māori Wardens in total.⁶² An update provided by Mr Comer to his Minister in August 2007 indicated that the hui had covered subjects such as the draft training programme, resources available under the project, the role of Regional Coordinators, and representation on the recruitment panel for the Regional Coordinators.⁶³ Again, it should be noted that we only have TPK’s description of what took place at these hui. It is unclear whether DMC or NZMC representatives were invited to attend, or whether either of these bodies participated in the hui. Leith Comer’s report to the Minister suggested that feedback from Māori Wardens had been ‘largely positive’ and that ‘many Māori Wardens have appreciated the opportunity to meet with the project team.’⁶⁴ TPK timed a further hui in Auckland to coincide with the NZMWA’s 2007 national conference. TPK staff conducted a survey at this conference which confirmed the widespread view among

60. Te Puni Kōkiri, ‘Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project’, July 2007, appendix A, ‘Sub-Project plan (Policy Development)’ (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 70–72)

61. Leith Comer to Minister of Māori Affairs, ‘Progress Report: Māori Wardens Project’, 21 August 2007 (Crown counsel, TPK document collection (doc C15), p 482)

62. Leith Comer to Minister of Māori Affairs, ‘Progress Report: Māori Wardens Project’, 21 August 2007 (Crown counsel, TPK document collection (doc C15), p 482)

63. Leith Comer to Minister of Māori Affairs, ‘Progress Report: Māori Wardens Project’, 21 August 2007 (Crown counsel, TPK document collection (doc C15), p 482)

64. Leith Comer to Minister of Māori Affairs, ‘Progress Report: Māori Wardens Project’, 21 August 2007 (Crown counsel, TPK document collection (doc C15), p 482)

wardens that ‘improved training and resources are critical to improving the effectiveness of their activity’.⁶⁵

The roll-out of the pilot project continued in the final four months of 2007. During these months, the team within TPK charged with administering the MWP hired Regional Coordinators for each of the six pilot regions. According to a TPK position description, the role of the Regional Coordinators was:

- ▶ to build positive relationships and networks, including with local government, schools, local businesses, government agencies, and Iwi Liaison Officers,
- ▶ to work to increase the profile of Māori Wardens and to seek out opportunities for community involvement for Māori Wardens,
- ▶ to support and advise Māori Wardens,
- ▶ to support wardens’ attendance at regional or national training programmes,
- ▶ to ‘administer and coordinate’ resources for use by Māori Wardens, and to ‘[a]ssist with Māori Warden warranting by assisting Māori Wardens with processing warrant applications when required’.⁶⁶

There is no suggestion in the evidence that the Advisory Group or ‘stakeholders’ had a role in developing the scope or details of the coordinators’ role. According to Te Rauhuia Clarke, manager of the project team since the MWP’s 2007 launch, the interview panels for these six Regional Coordinators included himself, a member of TPK’s human resources team, a local kaumātua, and, in at least one instance (that of Tāmaki Makaurau), a member of the relevant DMC.⁶⁷ The Regional Coordinators hired through this initial round of recruitment began work between late 2007 and early 2008. As each of the Regional Coordinators started work, access to the contestable fund available through the MWP (then \$300,000) was opened up to Māori Wardens’ groups in their area. By a year into the project’s implementation, the Police had supplied each region with a van fitted with radio equipment.⁶⁸ The first year of the MWP also saw the roll-out of the planned national training programme for Māori Wardens.⁶⁹

As the pilot scheme was progressively rolled out during 2007 and early 2008, officials from TPK worked with the Police on a joint budget proposal to seek expanded government funding for the MWP in the 2008 budget round. This budget bid sought new money of \$4,410,000 to operate the scheme in the 2008–09 financial year, as well as \$1,148,000 in capital investments.⁷⁰ This increased funding, if granted, was to cover the costs of employing an additional eight Regional Coordinators (bringing the total up to 14 by the end of 2008–09), the purchase and fitting out of 16

65. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’ (Crown counsel, TPK document collection (doc C15), p 606)

66. Te Puni Kōkiri, position description for Regional Coordinator (Te Rauhuia Clarke, papers in support of brief of evidence (doc B14(a)), p 34)

67. Transcript 4.1.1(a), pp 370–372

68. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’ (Crown counsel, TPK document collection (doc C15), pp 606, 611)

69. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’ (Crown counsel, TPK document collection (doc C15), p 606)

70. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’ (Crown counsel, TPK document collection (doc C15), pp 611–612)

additional police vans, an expansion of the existing training programmes, and an increase to the contestable fund available to Māori Wardens' groups to \$1 million per annum.⁷¹ This would represent a major government investment in Māori Wardens and their vital community work. Officials assumed in the budget proposal that the costs of running the MWP would decrease over time once the initial costs of implementing the scheme had been covered.⁷² The budget proposal also assumed that, by the 2009–10 financial year, ongoing financial responsibility for the project would have been transferred from TPK to 'the proposed new Māori Warden governing body'.⁷³

However, as Kim Ngārimu informed us at our hearing, while TPK had sought a boost to its operating budget of approximately \$13 million of new money over the four years from 2008–09 to 2011–12, it received only \$6.6 million in new money, and the remaining \$6.7 million to cover the costs of the scheme had to come out of its existing budget allocation.⁷⁴ Either way, this represented a substantial investment of government money in the resourcing and training of Māori Wardens, and – as some witnesses told us – was greatly appreciated by many wardens and their communities.⁷⁵

The following year, in the 2009–10 budget, Māori Wardens funds were restructured along with several other existing departmental programmes into a new funding package named 'Whānau Social Assistance Services'. The budget allocation for this initiative was \$8,334,000 for 2009–10, \$8,078,000 for 2010–11, and \$7,802,000 for 2011–2012 and 2012–13.⁷⁶ Aside from the \$1 million contestable fund for wardens' groups, which is listed as a separate item of expenditure in the budget documentation,⁷⁷ it is not possible for us to determine, on the evidence available to us, what proportion of this funding was allocated to the MWP. We are also unable, on the evidence currently before us, to offer details of overall project expenditure by TPK and the Police (as opposed to the parliamentary appropriations).

Evidence tabled before us on the record of inquiry suggests that the expanded scheme introduced from mid-2008 was significantly scaled back from that envisaged in the 2008 budget bid. In the 2008–09 financial year, TPK was employing 11

71. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential' (Crown counsel, TPK document collection (doc C15), pp 611–612)

72. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential' (Crown counsel, TPK document collection (doc C15), p 612)

73. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential' (Crown counsel, TPK document collection (doc C15), p 605)

74. Transcript 4.1.1(a), pp 322–323

75. Paiharehare Maria Whitehead, brief of evidence, undated (doc B15), p 1; Ngaire Schmidt, brief of evidence, undated (doc B16), p 2; Jordan Winiata Haines, brief of evidence, 13 March 2014 (doc B28), paras 6–9; Clare Matthews, brief of evidence, undated (doc B29), p 2; Haki Wihongi, brief of evidence, undated (doc B30), p 1; Tangihaere Gloria Hughes, brief of evidence, undated (doc B31), p 2

76. Cabinet Office, Cabinet minute: Budget 2009 – Vote Māori Affairs (09) 13/8/(38), pp 14–15, <http://www.treasury.govt.nz/publications/informationreleases/budget/2009/pdfs/b09-cabmin09-13-838.pdf>

77. Cabinet Office, Cabinet minute: Budget 2009 – Vote Māori Affairs (09) 13/8/(38), p 14, <http://www.treasury.govt.nz/publications/informationreleases/budget/2009/pdfs/b09-cabmin09-13-838.pdf>

Regional Coordinators operating out of 14 regional centres.⁷⁸ However, after 2010–11 resourcing for MWP staff was significantly reduced. According to information available on the TPK website (current as of October 2014) TPK currently employs seven Regional Coordinators based out of nine regional centres. These cover the regions of Tai Tokerau (based out of Whāngārei); Tāmaki Makaurau (covering Auckland district); Waikato, Hauraki, Wairariki, Bay of Plenty (works from Rotorua and Hamilton); Manawatū, Horowhenua, Kapiti, and Wellington (based in Palmerston North); Whanganui, Taranaki, Rangitikei, and Ruapehu (based out of Whanganui); Tairāwhiti, Heretaunga, and Wairarapa (working from centres out of Gisborne and Hastings); and Te Waipounamu (based in Christchurch and Nelson).⁷⁹ While early project planning anticipated that the Regional Coordinators would occupy their own office spaces, they now operate out of TPK's existing regional offices. All TPK staff employed on the project team (with the exception of manager Te Rauhuia Clarke) are fixed-term employees, employed with the expectation that responsibility for administering the project will, eventually, be handed over to Māori.⁸⁰

By any measure, however, the expanded MWP is a significant investment of government resources in Māori Wardens and the communities that they serve. We note that by October 2007, before the pilot scheme was expanded in this way, the Advisory Group and TPK had already developed principles for how any Māori national entity – whether a new or existing body – must govern and manage the project. These included the principle of accountability (to the Government for taxpayer funding and to Māori stakeholders and communities), the principle of ‘independence [from the Government] in decision-making’ so that decisions reflected the wishes and needs of Māori communities and Māori Wardens, and the principle of ‘transparency in decision-making and in policies and processes’.⁸¹ In our view, the temporary governance and management structure, which has now been administering the project for seven years (with no immediate end in sight), also needed to meet these principles. Its ability to do so depended at first on the Advisory Group (2007 to 2009) and then on the Māori Wardens Governance Board (2009 to 2011), which we discuss in section 7.5.

We turn next to consider whether the Māori Wardens Project was established and designed in compliance with Treaty principles.

78. Te Puni Kōkiri, ‘Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010’, p 15 (Crown counsel, TPK document collection (doc C15), p 835). The evaluators’ report was originally filed as document A8 on the Tribunal’s record of inquiry, however we are referencing document C15, which is more legible.

79. Te Puni Kōkiri, ‘Māori Wardens Project: Regional Coordinators’, <http://www.tpk.govt.nz/en/in-focus/wardens/regions>, last modified 17 April 2012

80. Transcript 4.1.1(a), p 372

81. Donna Thomson to Claire Mason, ‘Handover Brief – Māori Wardens Project’, 7 April 2009 (Te Rauhuia Clarke, papers in support of brief of evidence (doc B14(a)), pp 27–79)

7.3.3 Was it reasonable for the Crown to retain the direct administration and control of the MWP's resources?

In brief, the claimants believe that the Crown breached Treaty principles in its decision to establish an alternative structure to channel funding to Māori Wardens, rather than using the existing structures of the DMCS and NZMC. The Crown believes that TPK's actions were justified in light of the significant dysfunction among DMCS at that time.

We now consider the evidence relating to the state of DMCS at the time the MWP was introduced in 2007 and leading up to the most recent round of NZMC elections in 2012.

The documentary evidence before the Tribunal shows that both Ministers and officials were convinced in 2007 that it would be inadvisable to channel government funds for Māori Wardens through the council system (see section 7.3.1). Te Rauhuia Clarke confirmed for us that the extent of 'dysfunction' among the DMCS meant that Ministers were 'not confident that investing significant funds for Māori Wardens through the DMCS would be appropriate.'⁸² Similarly, Kim Ngārimu stated that, in 2007, TPK and the Ministers were concerned 'about where the right place to place this funding was', and were guided in their decision by TPK's responsibilities 'as a custodian of taxpayer funds . . . to ensure that we meet the expectations of accountability for those taxpayer funds.'⁸³ These concerns were not limited to the council structure; the Crown was concerned about the representativeness and functionality of the NZMWA as well, and would not contemplate using the association to administer the project's resources.⁸⁴

Most of the direct evidence about the state of DMCS at the time comes from 2009, when the Select Committee conducted its inquiry into the 1962 Act. The committee found that the break-down of the DMCS in some areas was 'severely affecting the ability of many wardens to do their job.'⁸⁵ An internal TPK briefing paper suggested that the effectiveness of DMCS in relation to their oversight of Māori Wardens was highly uneven between districts. Some DMCS were 'actively engaged in coordinating the work of local Wardens' whereas others functioned 'ineffectively' or not at all. The paper also noted that most DMCS 'do not appear to be involved in the day-to-day management of Māori Wardens' activities' and that 'in many areas' this operational role was instead being carried out by local Māori Wardens Associations.⁸⁶

As noted in chapter 6, TPK's assessment of the DMCS was largely repeated in the 2010 report of the Māori Affairs Select Committee. The committee concluded that

82. Te Rauhuia Clarke, brief of evidence, 28 February 2014 (doc B14), p 3

83. Transcript 4.1.1(a), p 345

84. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), p 452)

85. 'Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee', November 2010 (Mereana Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 10)

86. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 4)

many DMCS were failing to fulfil their statutory responsibilities under the 1962 Act, ‘particularly in regards to supporting Māori Wardens.’⁸⁷ The committee found:

The number and activity of Māori Associations of the two lowest levels – Māori Committees and Māori Executive Committees – is unknown, and many submitters told us that such committees are predominately dysfunctional and non-existent. We received only one submission from a Māori Committee, and none from Māori Executive Committees. . . .

We were advised that of the 16 Councils, four are inactive, six meet very irregularly, four meet regularly, and two have not provided information about their meetings for some time.⁸⁸

As also noted in the previous chapter, the committee recommended that the DMCS be ‘removed, or, if viable, revitalised to provide a functional link between Māori communities and the New Zealand Māori Council.’⁸⁹ In reaching its view, the committee had drawn on information supplied by TPK regional staff, which had provided the statistics of DMC activity.⁹⁰ TPK officials also provided evidence to the committee that few district councils were providing audited financial accounts – with most DMCS either stating that they had no money to account for or being ‘silent.’⁹¹ As noted in chapter 6, it is our view that while the committee was undoubtedly influenced by this official assessment of the current state of the DMCS, they were also influenced by the content of the 86 public submissions. The submission of Hauraki District Māori Wardens, for instance, stated that while in ‘places where the Māori District council was strong the relationship with their wardens was also strong’, in regions such as Kirikiriroa, Tākitimu, and Waiariki, wardens supported the NZMWA ‘because [DMC] structures [are] lacking in [the] region.’⁹² Similarly, a

87. Māori Affairs Select Committee, ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 15)

88. Māori Affairs Select Committee, ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 15)

89. Māori Affairs Select Committee, ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues’, November 2010 (Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 15)

90. Te Puni Kōkiri, ‘Māori Affairs Select Committee inquiry into the Māori Community Development Act 1962: 5 May [2010] Hearing, Questions for Te Puni Kōkiri Officials’, http://www.parliament.nz/resource/mi-nz/49SCMA_ADV_OODBSCH_INQ_9297_1_A48994, last modified 26 May 2010

91. Te Puni Kōkiri, ‘Māori Affairs Select Committee inquiry into the Māori Community Development Act 1962: 5 May [2010] Hearing, Questions for Te Puni Kōkiri Officials’, http://www.parliament.nz/resource/mi-nz/49SCMA_ADV_OODBSCH_INQ_9297_1_A48994, last modified 26 May 2010

92. Hauraki District Māori Wardens, submission to Māori Affairs Committee, supplementary presentation 2, p 1, http://www.parliament.nz/resource/en-nz/49SCMA_EVI_OODBSCH_INQ_9297_1_A60017, last modified 22 July 2010

submission on behalf of Rotorua Māori Wardens described the lower levels of the NZMC structure as ‘either dysfunctional[,] non functioning or non existent’.⁹³

As far as we can tell from the evidence placed before us, TPK’s assessment of the state of DMCS in 2007–2010 was a fair one. It can hardly have come as a surprise, mirroring results from the review of the 1962 Act conducted some 10 years earlier in 1998. What was different this time was that the 1998–99 review had disappeared without trace, whereas the 2009 review galvanised Māori leaders and communities to rescue and re-establish the council structure as a democratic and functional Māori organisation. Beginning with proper elections in some districts in 2012, this was an important task – as yet unfinished.

While the claimants believe that TPK’s course of action in establishing the MWP was inappropriate in Treaty and UNDRIP terms, they have nevertheless acknowledged that a degree of dysfunction existed among the DMCS back in 2007 – although they remind the Tribunal that the Crown’s wider failure to fund DMCS and the NZMC to administer Māori Wardens is part of the essential context. Thus, in their closing submissions, the claimants state:

The absence of Crown funding for the NZMC/DMCS despite their statutory responsibilities, coupled with the NZMWA’s Crown-sponsored and supported actions and the failure of some DMCS to conduct elections and disputes as to who was validly in office, led to difficulties in the administration of Wardens, including in the control and supervision exercised by DMCS and the NZMC in accordance with the 1962 Act and its mechanisms.⁹⁴

Sir Edward Taihakurei Durie told us:

Prior to 2012, the New Zealand Māori Council was experiencing difficulty with the democratic structure as set out in the 1962 Act due mainly to the failure of some districts to conduct elections in accordance with the Act and to disputes then running about who was validly in office.

It became apparent that some Districts had not held elections in accordance with the Act in quite some time . . .⁹⁵

We stress that dysfunction among the DMCS was not universal. The evidence placed before us in this inquiry indicates that some DMCS have always been effective in exercising their governance and oversight of Māori Wardens. The minutes of the Tai Tokerau DMC from 1959 to 1987, made available to us by Lady Emily Latimer, demonstrate that the far northern council has been consistently active and engaged with the district’s wardens, and has routinely provided for warden representation at

93. Rotorua Māori Wardens Association, submission to Māori Affairs Committee, 11 February 2010, p 4, http://www.parliament.nz/en-nz/pb/sc/documents/evidence/49SCMA_EVI_OODBSCH_INQ_9297_1_A33653, last modified 21 April 2010

94. Claimant counsel, closing submissions (paper 3.3.5), p 18

95. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 4

DMC meetings.⁹⁶ Titewhai Harawira has told us how her Auckland DMC's approach of creating sub-associations of wardens in different areas of the city is 'designed to ensure that the issues and concerns of particular local communities can be identified and addressed by us at the District Māori Council level, consistently with the kaupapa of the 1962 Act'.⁹⁷

These successes of DMCs were, in our view, a considerable achievement, given the funding constraints that they have always operated under (see also chapter 4).

The NZMC is attempting to renew its governance structure in those areas where the DMCs have, in the past, functioned less effectively. From throughout the motu, there are signs both of increased activity on the part of District Māori Councils and of the desire of DMCs to build their relationships with Māori Wardens.⁹⁸ In Aotea, for instance, the DMC has, in recent years, sought to improve relationships with the district's wardens by inviting wardens to sit at the DMC table. According to Aotea DMC member Diane Ratahi, this has meant that 'when decisions are made the Wardens are sitting there and they are taking part in the decision making of the District Māori Council'.⁹⁹ Wilma 'Billie' Mills, a Whanganui warden who sits on the Aotea DMC, told us:

It has been hard for me being a newbie with the district council because I have been sitting here pushing in their ear about wardens about what's been happening but it has just come to light now that our council is actually hearing what is happening and it is true what Di said, before you used to go towards the council you only had enough time to say who you are, receive your warrant and go.

Now, our Wardens, being myself on the Board, we actually got more time so we could actually sit there and hear what is happening and experiencing it myself, it is not nice.¹⁰⁰

We accept, however, the assessment of TPK officials that, between 2007 and 2010, many DMCs were either inactive or non-existent, and that non-compliance with the electoral and financial reporting requirements under the 1962 Act was widespread among DMCs before mid-2012. The NZMC's recent efforts at renewing the DMC structure cannot alter the fact that prior to mid-2012, many DMCs were in a dysfunctional state and failing to meet their statutory responsibilities to their Māori communities.

It seems to us very difficult for the NZMC to sustain a case that, in 2007 – when it had a considerable number of inoperative DMCs, serious representational difficulties, and questions surrounding DMCs' compliance with the financial accountability requirements of the 1962 Act – TPK funding for such a project could be responsibly

96. See first Waitangi Tribunal document bank, vols 18–20 (docs B26(r)–(u))

97. Titewhai Harawira, brief of evidence, 21 February 2014 (doc B10), p 10

98. See transcript 4.1.1(a), pp 64–67; Sir Edward Taihakurei Durie, brief of evidence (doc B9); Angelia Ria, brief of evidence, 21 February 2014 (doc B7); Melanie Mark-Shadbolt, brief of evidence, 21 February 2014 (doc B8); Owen Rutherford Lloyd, brief of evidence, 28 February 2014 (doc B12)

99. Transcript 4.1.1(a), pp 128–129

100. Transcript 4.1.1(a), p 132

allocated to either the NZMC or directly to DMCS. It is particularly problematic to see how TPK at that time, and in those circumstances, could be sure that the funding could be applied by the NZMC in an accountable or equitable manner throughout the various Māori Wardens in the country. That was simply not feasible when in the case of many DMC areas there was in fact no administering body elected or in place to even receive, let alone properly supervise the application of, the funding. We agree with the Crown that, faced with that level of dysfunction both at NZMC and DMC level in 2007, and for some years thereafter, once the decision was made by the Government to assist the wardens with funding, some system like the MWP – regional centres serviced by Regional Coordinators and managed by a national project team – had to be set up, at least as a temporary measure.

7.3.4 The Tribunal's findings about the establishment and design of the MWP

In this section, we make our findings as to whether TPK and Ministers complied with Treaty principles in their decision to establish the MWP as the mechanism to distribute government funding to Māori Wardens.

We first commend the Government's initiative in introducing enhanced resources to support the valuable community work performed by Māori Wardens. Any measure aimed at providing better resourcing for Māori Wardens, if effectively implemented, can only be of wider benefit to Māori communities. We agree with Crown counsel that it was in keeping with the Treaty partnership for the Crown to respond positively to repeated calls from Māori Wardens for funding and training assistance. Since 2007, the Crown has provided major financial resources, and significant administrative resources, to deliver this assistance. This level of support has been maintained for the past seven years, despite the difficulty in transferring the project from direct government control to an appropriate Māori body.

Secondly, the Crown's evidence is that the NZMC at the time (and the NZMWA) agreed in principle to the establishment of the project, and to its temporary administration by the Government until a responsible Māori entity could be found. The Māori Council also agreed to work closely with the Government as part of the proposed advisory group to 'steer' the project in the meantime and to clarify the options for a governance and management mechanism for Māori Wardens. We have no claimant evidence on this 2007 consultation, which came at a relatively late stage in the project's establishment and design (April–May 2007). From the evidence available to us, which seems sufficiently clear on this point, the MWP did not begin (as the claimants have argued) as an 'unauthorised engagement' between the Crown and Māori Wardens. There may be issues about the quality of consultation and engagement by which consent was obtained. We have no information on that point. The period of engagement was certainly brief. But we see no reason to doubt the Crown's evidence that the NZMC – and, indeed, the NZMWA and wardens more generally – welcomed the project's resources in 2007 and agreed to set aside other issues and to work with the Crown in the meantime towards a Māori-controlled wardens' project. It was not until 2009 that the relationship soured and

the Advisory Group was set aside in favour of a review of the Act. At that point, it was necessary to revisit the ‘temporary’ arrangements agreed to in 2007, but that did not happen.

Thirdly, we do not accept the claimants’ position that administration of the project and its resources should have been entrusted to the NZMC and DMCS when the project was established. It was clearly correct in terms of the Crown’s kāwanatanga responsibilities for the Government to retain administration of the public moneys in the meantime, and to work with the NZMC to develop options for transferring control of the project to Māori.

It follows that there have also been no breaches of the rights affirmed by the United Nations Declaration in the design and establishment of the MWP.

7.4 POLICY AND ‘BIGGER PICTURE’ ISSUES

7.4.1 Redesigning the roles and functions of Māori Wardens

As we discussed in chapter 6, the MWP was established with ‘two separate work streams’:

- ▶ the first workstream is operational in nature, it involves the delivery of a capacity and capability building programme for Māori Wardens; and
- ▶ the second workstream involves policy development on the functions and governance of Māori Wardens, initially through advice to the Minister of Māori Affairs by an Advisory Group comprising key stakeholders.¹⁰¹

In this section, we consider the relevance of the ‘second workstream’ to the claim that the MWP diminished or excluded the statutory authority of DMCS and the NZMC to administer Māori Wardens.

The claimants accepted that the role and functions of Māori Wardens have ‘widen[ed] and deepen[ed]’ since 1962.¹⁰² Titewhai Harawira explained, quoting the Advisory Group’s draft report:

In response to the needs of the communities they serve, Māori Wardens have moved away from their paternalistic functions to a role centred on community involvement and development. As a result, Māori Wardens have taken on a wider range of roles and functions than those directly set out in statute and regulations.¹⁰³

The claimants stressed that this adaptation was a result of the democratic self-government of Māori communities through the structures provided by the 1962 Act. Māori Wardens’ roles changed in association with the changing needs of their communities, but their guiding philosophy did not change, and was distinctively Māori. The wardens remain a Māori institution, provided for under an Act which

¹⁰¹ Donna Thomson to Claire Mason, ‘Handover Brief – Māori Wardens Project’, 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 11)

¹⁰² Claimant counsel, closing submissions (paper 3.3.5), p 21

¹⁰³ Titewhai Harawira, brief of evidence (doc B10), p 6

represents a compact giving effect to (a degree of) Māori self-government. As such, it is for Māori to say what changes should be made to the wardens' roles, functions, and governance.¹⁰⁴

The Crown now agrees that Māori Wardens are a Māori institution, and that this means Māori should canvass and design any changes to their own institutions before engaging with the Crown (if funding or legislative change is sought). In the Crown's submission, the MWP Advisory Group was purely 'advisory'. It was never intended that the project would be the mechanism to actually develop or implement any changes proposed by the group, which failed to reach agreement in any case. Thus, the policy issues considered by the group were diverted in 2009 to the Select Committee inquiry and wider review of the Act. That review, the Crown submits, is unfinished: no changes have been made to the institution of Māori Wardens as a result of the MWP or the work of the Advisory Group.¹⁰⁵

From July 2007 to April 2008, the Advisory Group and its TPK secretariat drafted a report to the Minister of Māori Affairs. It set out:

- ▶ a vision and strategic goals for Māori Wardens;
- ▶ revised key functions of Māori Wardens; and
- ▶ the revisions to the 1962 Act necessary to implement these changes.¹⁰⁶

On 21 May 2008, the Advisory Group formally adopted parts one and two of its report, which stated the vision, mission, strategic goals, and key functions of Māori Wardens. Part three, concerning governance and management arrangements, remained a draft and was never finished.¹⁰⁷

As will be recalled from chapter 6, the Advisory Group was nominated by the Chief Executive of TPK after consultation with the Minister.¹⁰⁸ It was conceived by the Government as a mechanism to bring the two 'key' Māori stakeholders together to design changes that otherwise would not gain broad acceptance from Māori.¹⁰⁹ In 2007, the group consisted of:

- ▶ Titewhai Harawira, Diane Black, and Noel Jory (NZMC);
- ▶ Bill Blake, Peter Walden, and Ruka Hughes (NZMWA);
- ▶ Jacqui Te Kani (Māori Womens Welfare League);
- ▶ Dame Iritana Tawhiwhirangi (Te Kōhanga Reo National Trust); and
- ▶ Joe Tuahine Northover (kaumātua and Advisory Group spokesperson).¹¹⁰

104. Claimant counsel, closing submissions (paper 3.3.5), pp 20–21, 26

105. Crown counsel, closing submissions (paper 3.3.3), pp 14–17

106. 'Report of the Māori Wardens Advisory Group', draft, April 2008 (Titewhai Harawira, comp, papers in support of brief of evidence (doc B10(a)), pp 20–28)

107. Te Puni Kōkiri, 'Governance Entity for Māori Wardens: Summary of Progress', December 2008 (Crown counsel, TPK document collection (doc C15), p 671)

108. Leith Comer to Minister of Māori Affairs, 'Progress Report: Māori Wardens Project', 21 August 2007 (Crown counsel, TPK document collection (doc C15), p 481)

109. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 12–13)

110. Leith Comer to Minister of Māori Affairs, 'Progress Report: Māori Wardens Project', 21 August 2007 (Crown counsel, TPK document collection (doc C15), p 482)

Gloria Hughes and Matiu King joined the Advisory Group later (both of them representing the NZMWA).¹¹¹

For the Crown, Leith Comer (TPK) chaired the group and Wallace Haumaha (Police) represented Commissioner Broad.¹¹² TPK provided secretarial services and drafted discussion papers as well as the Advisory Group's report.

Parts one and two of the Advisory Group's report (as adopted in May 2008) reflected the fact that 'Māori Wardens have taken on a wider range of roles and functions than those directly set out in statute and regulations'.¹¹³ As a result, the group proposed additional, formal functions for wardens which were not precluded by the 1962 Act but not specified by it either, and which had already become priorities for Māori Wardens and the communities that they served.¹¹⁴ TPK, however, was also worried that some of the wardens' statutory powers were inconsistent with more recent legislation (including the New Zealand Bill of Rights Act 1990) and would need to be changed.¹¹⁵ In any case, the Advisory Group agreed to a set of Māori values that would govern the philosophy, approach, and tasks of wardens, as well as a series of specific functions that they would (continue to) perform in future.¹¹⁶ The group was also said to have agreed to a general statement that, if its recommendations about wardens' roles and functions were accepted, then sections 30 to 35 of the 1962 Act would need to be replaced by 'new, updated, statutory provisions'.¹¹⁷ On that point, the NZMC members of the group later denied that they had agreed that any changes to the Act were required.¹¹⁸ TPK's concerns were reflected in a separate statement that the new statutory provisions *could* be designed to 'set appropriate limits on Māori Wardens in carrying out their public powers' and protect the wardens from 'any undue legal liability which may arise'.¹¹⁹

As will be recalled from chapter 6, the Advisory Group had not reached agreement as to a governance and management structure for Māori Wardens (and the project) by early 2009. TPK and the NZMC intended to persevere with the advisory group process, although the NZMWA was considering pulling out. The new Minister, Dr Pita Sharples, decided to try a different approach. The policy-making functions

111. Māori Wardens Advisory Group, minutes, 13 June 2008 (Crown counsel, TPK document collection (doc c15), p 651)

112. Māori Wardens Advisory Group, minutes, 13 June 2008 (Crown counsel, TPK document collection (doc c15), p 651)

113. 'Report of the Māori Wardens Advisory Group', draft, April 2008 (Titewhai Harawira, comp, papers in support of brief of evidence (doc B10(a)), p 25)

114. 'Report of the Māori Wardens Advisory Group', draft, April 2008 (Titewhai Harawira, comp, papers in support of brief of evidence (doc B10(a)), pp 23–28)

115. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 7–8, 16–17, 21)

116. 'Report of the Māori Wardens Advisory Group', draft, April 2008 (Titewhai Harawira, comp, papers in support of brief of evidence (doc B10(a)), pp 20–28)

117. 'Report of the Māori Wardens Advisory Group', draft, April 2008 (Titewhai Harawira, comp, papers in support of brief of evidence (doc B10(a)), p 29)

118. Titewhai Harawira, Diane Black, and Noel Jory, 'Report to Leith Comer re Draft Report on Māori Wardens for comment by the Māori Wardens Advisory Group Members', 1 March 2009 (Crown counsel, TPK document collection (doc c15), pp 756–757)

119. 'Report of the Māori Wardens Advisory Group', draft, April 2008 (Titewhai Harawira, papers in support of brief of evidence (doc B10(a)), p 29)

of the MWP, concentrated in ‘workstream 2’, were diverted from the project to the 2009 select committee inquiry and subsequent review of the Act, and the Advisory Group was discontinued. From mid-2009, the MWP was confined to ‘workstream 1’, and became solely a funding and training mechanism in support of Māori Wardens.

In our inquiry, the claimants were concerned that the Government, through the MWP, was proposing the establishment of an independent body to administer wardens without properly investigating the proposal or informing the NZMC and wardens of the issues, let alone seeking NZMC consent to any changes to the Act. Although seven years have elapsed since the launch of the MWP, the claimants said that Māori Wardens were no better informed of the issues than they had been at the beginning. The MWP, it was felt, has lost sight of the ‘bigger picture’ issues. Hence, some wardens spoke of ‘independence’ without fully understanding its implications.

According to the claimants, the issues which have been lost sight of in the MWP were:

- ▶ Was ‘independence’ for Māori Wardens’ to encompass ‘total autonomy’, or ‘operational autonomy’ along the lines of the New Zealand Police (with the NZMC and DMCS retaining ‘policy oversight’)?
- ▶ What form of accountability was necessary for Māori Wardens to their communities in the exercise of their ‘constabulary powers’?
- ▶ What impact would any proposed changes have on (a) the kaupapa of Māori Wardens, with its ‘focus on a close relationship between the Wardens and their Māori communities’, and (b) on the kind of wardens needed to meet that kaupapa?
- ▶ What role can or should wardens play as contributors to the ‘modern concepts of community policing and restorative justice’?
- ▶ How will proposed changes affect or reduce Māori crime rates, particularly child abuse?¹²⁰

These are ‘difficult but very important questions for Wardens’. The claimants’ view is that these questions ‘need to be asked and answered before any large reform process is undertaken’, and that this has not happened so far.¹²¹ The MWP and the Crown have ‘lost sight of these bigger picture questions’:

To date Wardens have been called upon to make decisions on their prospective restructuring and future direction without the necessary material and advice on which to make an informed decision with reference to the questions noted above – and without the engagement of the NZMC. It is submitted that the Wardens have suffered from division and uncertainty as a result.¹²²

According to the evidence of the NZMC’s co-chair, Sir Edward Taihakurei Durie, this kind of policy-making is the province of the Māori Councils under the 1962 Act; it is for the councils to develop a vision for the future of Māori communities,

120. Claimant counsel, closing submissions (paper 3.3.5), pp 53–54

121. Claimant counsel, closing submissions (paper 3.3.5), p 54

122. Claimant counsel, closing submissions (paper 3.3.5), pp 54–55

and the reforms which reflect that vision. Community justice and ‘law and order initiatives’ could become a positive way of ‘improving Māori law observance’ and community responsibility. In Sir Edward’s view, the councils would already have carried out this task were it not for a chronic shortage of both funding and political (that is, government) support. Whereas ‘criminologists, human rights advocates and many Māori have been promoting community justice systems for indigenous communities’, TPK’s administration of the MWP is seen as taking matters in a state-oriented direction and as ‘threatening to corrode the structure which could support those systems.’¹²³ In a practical sense, the claimants argued that there could have been ‘wānanga with the Council’ to ‘have allowed these possibilities to be explored’ during the time of the MWP, especially once a full review of the Act was underway.¹²⁴

7.4.2 De facto policy-making?

In theory, policy-making ceased to be part of the MWP in 2009 when the issues covered in ‘workstream 2’ were diverted to the formal review of the Act. The project then became simply a mechanism by which funding was administered and training delivered (‘workstream 1’). In reality, however, the NZMC says that ‘major policy changes have been introduced without the approval of the New Zealand Māori Council which bears the statutory responsibility for the Wardens.’¹²⁵

In essence, we need to address whether the Crown, through its administration of the MWP, has assumed the right to decide what wardens should do and even what wardens should *be*, usurping a key role of the Māori self-governing structure provided for in the 1962 Act. According to Crown counsel, the project was not ‘designed to give direction to Wardens on how to carry out their role.’¹²⁶ But in choosing which wardens and what kinds of activities to fund, and also what skills to impart by training, the administrators of the MWP had the potential to modify or even transform wardens in a de facto sense, without ever having intended to do so.

We also address the claimants’ specific allegations that TPK has, through the MWP, damaged the kaupapa of Māori Wardens by encouraging an inappropriate view of what a Māori Warden is. The claimants make this allegation in relation to three matters: training, the relationship between Māori Wardens and police, and TPK’s alleged promotion of the view that a person must be young and fit to be a Māori Warden. We have addressed these broad points by posing the following questions:

- ▶ Has the provision of training programmes through the MWP damaged the kaupapa of the Māori Wardens, including by encouraging an overly close relationship between wardens and the Police?
- ▶ Has TPK promoted a view, through its Māori Wardens Project, that only persons who are young and fit can be Māori Wardens?

123. Sir Edward Taihakurei Durie, brief of evidence (doc B9), pp 9–13

124. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 13

125. Sir Edward Taihakurei Durie, brief of evidence, 7 March 2014 (doc B24), p 8

126. Crown counsel, closing submissions (paper 3.3.3), p 15

(1) Has the provision of training programmes through the MWP damaged the kaupapa of the Māori Wardens, including by encouraging an overly close relationship between wardens and the Police?

In this section, we address two allegations by the claimants in relation to the training programmes offered under the MWP:

- ▶ that the police training programme has damaged the non-adversarial kaupapa of the Māori Wardens and encouraged an overly close relationship with the Police; and
- ▶ that the training offered under the Māori Wardens Project has failed to incorporate information on the kaupapa of the 1962 Act, while the Crown has failed to adequately resource the DMCs and NZMC to provide their own training (more consistent with the wardens' kaupapa) for Māori Wardens.

The Crown's position on training is that the MWP came about as a result of the calls of Māori Wardens 'for funding for uniforms, transport and training', and that the Crown's provision of training in response should be viewed as an example of partnership.¹²⁷ In respect of the relationship between wardens and the police, the Crown points out that this relationship is provided for in the Māori Community Development Regulations 1963. The regulations state that 'Māori Wardens shall also maintain close association with the Police and traffic officers having jurisdiction in their areas so as to ensure the maximum cooperation with all such officers.'¹²⁸ Crown counsel also observes that the Māori Wardens who presented at hearings gave 'mixed' evidence on their relationship with police. While some Māori Wardens were concerned that they might be seen as too close to the Police and even 'labelled as "narks"', other wardens stressed the positive results that had resulted from cooperation between Māori Wardens and Police.¹²⁹ The Crown also points out that a 'resounding call' for more Police support for wardens was one of the key messages to incoming Police Commissioner Howard Broad during his tour of Māori communities.¹³⁰

The claimants believe that the training offered through the MWP has endangered the kaupapa of Māori Wardens by undermining their traditional, non-adversarial and tikanga-based approach. Further, the claimants say that the MWP has encouraged an overly close relationship between Māori Wardens and the Police. TPK, through the MWP, is seen as 'disconnecting the wardens from their communities and aligning them with police.'¹³¹ This is against the kaupapa of the Māori Wardens who, according to the claimants 'work with but not within the Police'. Too close an alignment with the Police, the claimants state, has created confusion among Māori Wardens as well as damaging the reputation of Māori Wardens in their communities. The Crown, the claimants say, has given 'at the least . . . passive support for

127. Crown counsel, closing submissions (paper 3.3.3), p 17

128. Crown counsel, closing submissions (paper 3.3.3), pp 17–18

129. Crown counsel, closing submissions (paper 3.3.3), p 18

130. Crown counsel, closing submissions (paper 3.3.3), p 18

131. Sir Edward Taihakurei Durie, brief of evidence (doc B9), p 10

these developments', and in doing so has breached the partnership, active protection, good faith principles, and UNDRIP.¹³²

Further, the claimants argue that, while TPK has itself assumed control of training for Māori Wardens, it has at the same time refused to support the NZMC's own efforts to assist wardens through their own training programmes. In support of this point, the claimants cite an instance when the Crown refused to support a wardens' training programme developed by a DMC.¹³³

On the subject of the relationships between Māori and the Police, the claimants also submit that independence for the Māori Wardens from the Police was necessary, otherwise issues may emerge under the New Zealand Bill of Rights Act 1990 where wardens may be deemed to be exercising constabulary powers.¹³⁴ Issues may also be raised by potential conflicts under the Private Security Personnel and Private Investigators Act 2011, if wardens are paid as security guards.¹³⁵

In order to address these issues, we first outline the training available to Māori Wardens under the MWP and summarise some of the feedback that Māori Wardens have provided on the training programmes. We also address the question of what input the DMCS and NZMC have had into training under the MWP. We then turn to consider how the MWP has affected the relationship between Māori Wardens and the Police.

The training received by Māori Wardens falls into one of two categories. The first includes locally based training on the kaupapa of Māori Wardens, te reo and tikanga, usually provided through marae or local wānanga, and on-the-job training provided by other Māori Wardens, and frequently drawing upon knowledge handed down through generations of Māori Wardens. These forms of training are delivered independently from the MWP, although wardens' groups such as District Wardens' Associations may apply for contributions from MWP contestable funds to cover the costs of running some locally based training.¹³⁶

At the national level, Māori Wardens are able to access approved Māori Warden training programmes through the MWP. The costs of offering this training accounted for roughly 16 per cent of TPK's expenditure on the MWP in the years from 2007 to 2011.¹³⁷ The most commonly attended course is a three-day foundation course, Ngā Akoranga Pirihimana, which is run by police trainers funded through Vote Māori Affairs. This course offers units from the New Zealand Police training programme considered relevant for Māori Wardens. According to Wallace Haumaha of the Police, the police training covers 'use of radios, recognising substance abuse, road safety, and family violence' as well as instruction on relevant legislation such as the 1962 Act and the Summary Offences Act 1981.¹³⁸ This foundation course accounted

132. Claimant counsel, closing submissions (paper 3.3.5), pp 50–51

133. Claimant counsel, closing submissions (paper 3.3.5), p 39

134. Claimant counsel, closing submissions (paper 3.3.5), p 53

135. Claimant counsel, closing submissions (paper 3.3.5), p 50

136. Te Rauhuia Clarke, brief of evidence (doc B14), p 8

137. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 45 (Crown counsel, TPK document collection (doc C15), p 865)

138. Wallace Haumaha, brief of evidence (doc B17), p 1

for approximately half of the MWP training attended by Māori Wardens between 2007 and 2011.¹³⁹

Completion of this course was, originally, a prerequisite for receiving a warden's uniform through the MWP. This was still the case in 2011 when an independent evaluation team reviewed the MWP.¹⁴⁰ However, evidence presented to us in TPK's document bundle suggests that this training requirement may have since been replaced by the requirement that Māori Wardens must complete a 200-hour log book before becoming eligible to receive a uniform. We are unable to verify this from the evidence available to us.¹⁴¹

In addition to the Police foundation programme, a range of other training programmes have, in the past, been offered through the MWP. These have included first aid, ETITO (the Electrotechnology and Telecommunications Industry Training Organisation), conflict management, advocacy, Hauora (Visual Sobriety measurement), literacy and numeracy, and defensive driving.¹⁴²

Many of the wardens who presented oral or written evidence to us expressed the view that Māori Wardens' training should be developed by Māori communities to suit community needs. Many objected, on principle, to the idea that the Government should dictate the training requirements of Māori Wardens. In many areas, training in the tikanga of the marae and the kaupapa of wardenship remains an important aspect of the training of Māori Wardens. South Auckland warden Anne Kendall received her training from the kaumātua and kuia of Papakura Marae: 'that kaumātua and kuia taught us the kawa of the marae, the tikanga of that marae, the wairua, how to keep yourself safe and how to keep yourself connected with your people.'¹⁴³ Some District Wardens' Associations have accessed MWP funding to support their internal training programmes. The Raukawa District Māori Wardens Association, for instance, has received MWP funding to support its internal training programme, which covers areas such as the wardens' mahi on the marae, the wardens' role within the hapū, and training in te reo and tikanga.¹⁴⁴

Learning on the job alongside more experienced Māori Wardens is also important, and provides a way for the knowledge and experience accumulated by Māori Wardens over generations to be handed down. In the view of Richard Noble, what Māori Wardens are today 'stems from a lot of training that we pick up along the way from our tūpuna, from those who have experienced careers and decided to join up with the Māori Wardens.'¹⁴⁵ Diane Black described the training delivered to

139. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 38 (Crown counsel, TPK document collection (doc C15), p 858)

140. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 38 (Crown counsel, TPK document collection (doc C15), p 858)

141. Submission of the Taitokerau District Māori Wardens Association to the 2013 review of the 1962 MCDA Act (Crown counsel, TPK document collection (doc C15), p 1048); Diane Black, brief of evidence (doc B5), pp 14–15; transcript 4.1.1(a), p 163

142. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', pp 38–39 (Crown counsel, TPK document collection (doc C15), pp 858–859)

143. Transcript 4.1.1(a), pp 174–175

144. Transcript 4.1.1(a), pp 311–312

145. Transcript 4.1.1(a), p 176

Tāmaki ki Te Tonga wardens as ‘created “by Māori for Māori”’, developed by ‘other Māori Wardens over the years,’ and therefore highly successful for Māori communities and their specific issues.¹⁴⁶

We also received a large volume of evidence on wardens’ experiences of the training programmes offered through the MWP. Some Māori Wardens reported having found the police training helpful in educating them on the legal aspects of their duties and how they relate to those of the Police. Wilma Tumanako (Billie) Mills, a warden of the Aotea DMC, stated that Aotea Māori Wardens have found the police training ‘useful’ as ‘we come away from it with an understanding of the functions of Wardens under the Māori Community Development Act, and what our roles are in relation to the police.’¹⁴⁷ Crown witness Ngaire Schmidt, of the Tāmaki ki Te Tonga District Māori Wardens’ Association, has found the training offered through the MWP extremely beneficial in improving the service provided by Māori Wardens in the district, ‘build[ing] strong relationships between subs and districts that train together,’ and in building the skills and confidence particularly of younger wardens.¹⁴⁸ The range of MWP training courses attended by Tāmaki ki Te Tonga wardens (via the District Wardens Association) include ‘Induction Training, First Aid, Emergency Management, Security and Coordinated Incident Management Systems.’¹⁴⁹ Jordan Haines, of the Raukawa District Māori Wardens Association, told us that the training offered through the MWP ‘has made a huge impact for Māori Wardens working on the frontline’:

This includes working in situations that need immediate assistance and advice, which at times, entails life or death consequences. This training and knowledge continues to fill our Māori Warden kete mātauranga. While some of the learning may be common sense, the training has given us the empowerment and confidence to be able to make sound judgements.¹⁵⁰

However, while a significant amount of the feedback that we received from Māori Wardens on their experiences with training under the MWP was positive, many wardens also expressed their reservations at some of the content of its training programmes. Most of these concerns related to the police training. In this regard, some witnesses feared that the police training may cause wardens to confuse their own roles with those of the Police, and to forget that they are accountable to their communities and not to Police. While Billie Mills found some aspects of the police training positive, she believes that the police training course sometimes ‘changes the way we work as Wātene’. Some wardens, she told us, leave the training ‘thinking that they are the police, and they can forget the important specific role they play in the community.’¹⁵¹ Jordan Haines agreed that one of the ‘downsides’ of the police

146. Diane Black, brief of evidence (doc B5), p 4

147. Wilma Tumanako Mills, brief of evidence, 21 February 2014 (doc B3), para 18

148. Ngaire Schmidt, brief of evidence (doc B16), p 2

149. Ngaire Schmidt, brief of evidence (doc B16), p 2

150. Jordan Winiata Haines, brief of evidence (doc B28), para 7

151. Wilma Mills, brief of evidence (doc B3), para 18

training programmes has been the ‘impact that it’s had on some of the wardens’, in causing ‘one or two’ of his district’s wardens to ‘los[e] track of who was actually the ones to be listening to.’¹⁵²

One of the particular objections to the police training expressed by Māori Wardens and their representatives has been the previous requirement that wardens must complete the police training before being able to receive a uniform through the MWP. Aotea warden Te Reo Hemi stated in this regard: ‘Some of the training we got, there was a carrot attached to it and that was the uniforms.’¹⁵³ Diane Black, of Tāmaki ki Te Tonga DMC, told us that some Māori Wardens have been unable to take time off work to attend the training, which is held during the week, and have been unable to receive a uniform as a result.¹⁵⁴

Other wardens believe that police training is not necessary for most wardens, as their primary relationship is with their communities. Wellington warden Millie Hawiki stated in her evidence: ‘In most cases, Wardens already have strong backgrounds in working with their communities, so Police training is not necessary.’¹⁵⁵ When the opportunity arose to attend TPK’s training programme, South Auckland warden Anne Kendall refused because:

our kaumātua and kuia were the backbone of the Māori Wardens on Papakura Marae. They set a standard under the New Zealand Māori council. That is what I will stick with and that is what I will work with.¹⁵⁶

Ms Mills, while supportive of aspects of the training, felt that training in areas such as traffic control was inappropriate for many wardens. In her view, DMCs should be left to determine the training needs of the wardens in their own particular communities. ‘Give us the training tool so we can run with it,’ she told us, ‘don’t give us the training to get out there on the road, our koros and our nanas can’t do that.’¹⁵⁷ Aotea Warden Te Reo Hemi expressed a similar view. He stated at our hearing: ‘us Wardens aren’t determining our own destiny. . . . we weren’t asked if this is the training you want, we were told this is the training you are going to get.’¹⁵⁸

There will, of course, always be differences of opinion about what should be included in training programmes, what skills should be prioritised or developed, and what the end result of training should look like. We should not be surprised that the many wardens who gave evidence in our inquiry had contrasting views, depending in part on the needs of their particular communities. What is crucial, however, for an institution like the Māori Wardens is *who decides* the content and purpose of their training.

152. Transcript 4.1.1(a), pp 311–312

153. Transcript 4.1.1(a), pp 134–135

154. Diane Black, brief of evidence (doc B5), p 17

155. Millie Hawiki, brief of evidence, 21 February 2014 (doc B1), p 6

156. Transcript 4.1.1(a), pp 174–175

157. Transcript 4.1.1(a), p 132

158. Transcript 4.1.1(a), pp 134–135

There has been an independent evaluation of the training (among other things) offered by the MWP, which was commissioned by TPK in 2011. The external evaluators assessed the MWP's performance against the following measure:

Training was provided in a strategic and targeted approach that identified and prioritised training needs, identified relevant training of appropriate quality and value for Māori Wardens, and provided an appropriate balance between national consistency and local flexibility.¹⁵⁹

The evaluators found that the project team had 'Mostly achieved' this objective. There had been 'mixed feedback' from Māori Wardens on the training offered through the MWP: 'some considered it was great while others felt that some training was not tailored to their needs'. Some Māori Wardens even considered aspects of the training (such as the security and traffic management training) as irrelevant or inappropriate for Māori Wardens, and 'too focused on Police needs and not on those of the community'. One unnamed Māori Warden was cited by the authors of the report as stating:

I totally disagree with Police training and security training. Wardens are not security guards. Wardens abide by 'Aroha ki te tangata' – patience and compassion.¹⁶⁰

Nonetheless, eight regional hui (attended by about 130 wardens in total) identified a 'high degree of satisfaction' with the police training, and 'in particular with the Trainers and their ability to engage with Wardens and make the information relevant and understandable'.¹⁶¹ Overall, the evaluation report's authors concluded that 'the training has increased the confidence and competence of Māori Wardens in carrying out their roles'.¹⁶²

The evaluators identified several areas for improvement in relation to training. One such area was the collection of data to determine the effectiveness of training – in particular, it was time to review the police training's 'approach, data systems, analysis and reporting methods' so as to better monitor its effectiveness. Partly in light of the criticisms cited above, the evaluators also thought it would be timely to review and update the initial training needs analysis carried out in 2007, and perhaps to reconvene the Training Advisory Group which had advised on the content of the training (and as a forum for wardens' input on training).¹⁶³ This was a crucial recommendation. As we said above, the critical question was who decided the con-

159. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 38 (Crown counsel, TPK document collection (doc C15), p 858)

160. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 39 (Crown counsel, TPK document collection (doc C15), p 859)

161. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', pp 28, 48 (Crown counsel, TPK document collection (doc C15), pp 848, 868)

162. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 39 (Crown counsel, TPK document collection (doc C15), p 859)

163. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', pp 39–40 (Crown counsel, TPK document collection (doc C15), pp 859–860)

tent and purpose of the training. We now turn to discuss the role of the Training Advisory Group and the opportunities that the DMCS and NZMC have had to contribute to decisions about the training offered under the MWP.

As we have noted previously, while TPK's decision to establish a temporary structure to channel Māori Warden funds was reasonable given the issues being experienced by DMCS at the time, this did not absolve TPK of its partnership obligations towards the DMCS and NZMC and the Māori communities that they represented. As we discussed in section 7.3.1, feedback on training from the NZMC and NZMWA changed its scope and nature in the early stages of the MWP's development. TPK officials had initially envisaged that the training would be delivered through a two-week course at the Police College. Discussions with the NZMC and NZMWA in April and May 2007 persuaded them that funding for community-based training opportunities would also be appropriate.¹⁶⁴

In the initial stages of its development of the project, TPK also established a Training Advisory Group (TAG) to guide its decisions around training for wardens.¹⁶⁵ The TAG was made up of Diane Black and Titewhai Harawira from the NZMC and Gloria Hughes and Matiu King from the NZMWA, and was chaired by a representative of the Police.¹⁶⁶ The TAG's objective, as set out in the 2007 Project Charter, was to provide a forum by which the project team could consult the NZMC and NZMWA on the training needs of Māori Wardens. According to the charter, these training needs would include 'a combination of community based training, which includes Māori Warden Kaupapa and community policing training.'¹⁶⁷ Wallace Haumaha of the New Zealand Police has confirmed that the TAG was intended to provide an opportunity for the NZMC to contribute to the design of training under the MWP. Mr Haumaha informs us that the group 'met regularly'.¹⁶⁸

The most detailed evidence we received on the activities of the TAG was in the written brief of Diane Black. Ms Black's views of the TAG are similar to those described later for the Māori Wardens Advisory Group. Ms Black told us that she found the experience of participating in the TAG frustrating, as both the NZMC and NZMWA members felt that their input was not valued by the Police.¹⁶⁹ It was during the meetings of the TAG that Ms Black tabled a copy of a training programme which had been developed by the Tāmaki ki Te Tonga DMC, working with the training provider Ideal Success earlier that year. This training programme was likely the programme which had been adopted by the NZMC in 2007 and was, at the time of the meeting, in the process of being trialled in South Auckland. Gloria

164. Te Puni Kōkiri, 'Strengthening Māori Wardens: Enhancing Capacity – Realising Potential', briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), pp 451–461)

165. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 40 (Crown counsel, TPK document collection (doc C15), p 860)

166. Diane Black, brief of evidence (doc B5), pp 9–10

167. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 54)

168. Wallace Haumaha, answers to written questions (doc B17(a)), pp 2–3

169. Diane Black, brief of evidence (doc B5), pp 9–10

Hughes also tabled a training programme on behalf of the NZMWA; this was probably the training programme that the NZMWA had developed in conjunction with Te Wānanga o Aotearoa.¹⁷⁰ However, both the NZMC and NZMWA members subsequently resigned from the TAG, believing that their suggestions were being ignored by the Police. According to Ms Black, the three-day police foundation training was eventually designed by Police without input from the NZMC.¹⁷¹ This seems highly likely to have been the case given that, as we have seen, the Police foundation course is comprised of units selected from the existing New Zealand Police training courses. Therefore, what started out as a promising initiative that demonstrated TPK's awareness of its ongoing obligations towards its Māori Treaty partner, faltered due to the lack of definition surrounding the group's role and the frustration of group members that their voices were not being heard. This is despite the fact that both the NZMC and NZMWA members of the group came to the table with considerable experience on the subject of Māori Wardens' training and with a willingness to share the training programmes that they had already prepared.

The Māori Wardens Advisory Group was another potential forum through which the NZMC could have provided input into the training programmes offered under the MWP. The subject of training arose at several of the Advisory Group's meetings. For instance, in the Advisory Group's May 2008 hui, Gloria Hughes raised her concern that the training programme under the MWP duplicated the course that the NZMWA had developed with Te Wānanga o Aotearoa, while Diane Black provided feedback that some Tāmaki ki Te Tonga wardens had not understood the Police College training. The Advisory Group duly recorded a minute stating the importance that 'the project team consult with key people involved in existing training for wardens'.¹⁷² Similarly, at the Advisory Group's August 2008 hui, Te Rauhuia Clarke presented the training offered to wardens under the MWP and was questioned by the group on 'what training opportunities are available and what processes the project team is using to select new training activities'.¹⁷³ As previously stated, the Advisory Group was dissolved in early 2009, to be replaced by the Governance Board, which held its last meeting at the beginning of 2011.¹⁷⁴

When the independent evaluation team examined the project in 2011, they recommended possibly reconvening the TAG to advise on training content.¹⁷⁵ They also recommended that improvement could come from bringing all the training under the stakeholder purview of the Governance Board, 'with the proviso that this Board

170. 'NZMC Draft Structure for Māori Wardens' paper supplied to Māori Wardens Advisory Group, c October 2007 (Crown counsel, TPK document collection (doc c15), p 579); Diane Black, brief of evidence (doc B5), p 10

171. Diane Black, brief of evidence (doc B5), p 10

172. Māori Wardens Advisory Group, minutes, 21 May 2008 (Crown counsel, TPK document collection (doc c15), p 649)

173. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc c15), p 657)

174. Crown counsel, memorandum, 17 October 2014 (paper 3.4.10)

175. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007-2010', pp 39-40 (Crown counsel, TPK document collection (doc c15), pp 859-860)

functions effectively'.¹⁷⁶ The team appears to have been aware that the board had ceased to operate and that this had left a significant gap in the ability of the NZMC (accepted by the Crown as one of two 'key stakeholders') to have a governance role in the project. The issue of the board's status and effectiveness was largely ignored, however, in the 2011 review.

In our view, the establishment of the TAG represented a genuine attempt by TPK to provide a forum in which the NZMC and NZMWA could provide ongoing input into the training offered under the project. However, like the Advisory Group and Governance Board, the TAG proved short-lived. While the immediate cause of the TAG's demise was the decision of the NZMC and NZMWA members to resign from the group, we consider that their decision came about in large part because of their frustration that their input was not being taken on board by the Police. Whatever the reasons for its dissolution, the demise of the TAG left the NZMC (and NZMWA) with no effective forum for participating in the decision-making about the training offered under the MWP. Further, no equivalent group has since been formed by the Crown, in spite of a recommendation by the team of independent evaluators back in 2012 that TPK move to reconvene it.¹⁷⁷

The risk that this poses to the kaupapa of Māori Wardens becomes clear if we consider the recent, post-hearing exchange of evidence between Karen Waterreus and Te Rauhuia Clarke. As of October 2014, the MWP administrators have begun consulting wardens and 'interested parties' as to whether the MWP's centrally delivered training should become the basis of a 'Māori Wardens' qualification certificate'. Mr Clarke explained: 'This has become part of the Project work programme due to requests from Māori Wardens that in order for training to be useful it ought to be accredited.' The MWP team had intended to hold a hui with wardens, NZMC representatives, and other 'interested parties', but this was cancelled due to potential conflict among participants. Mr Clarke indicated that the MWP team will now 'approach . . . the gathering of information differently'.¹⁷⁸

What this means is that Crown administrators entrusted with the temporary administration of training and funding, acting with the best of intentions but without oversight from the TAG or its equivalent, will decide whether Māori Wardens should be certified and – if so – the training and qualifications that are appropriate. While 'gathering of information' is planned, Mr Clarke did not deny Ms Waterreus' contention that the NZMC will have no role in the decision-making.¹⁷⁹

The centralised training (into which the TAG should have had vital input) was not the only form of training offered under the MWP. As we have noted, training of

176. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 29 (Crown counsel, TPK document collection (doc C15), p 849)

177. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010', p 40 (Crown counsel, TPK document collection (doc C15), p 860)

178. Te Rauhuia Clarke, brief of evidence, 28 October 2014 (doc C25), pp 1–2

179. Karen Waterreus, brief of evidence, 17 October 2014 (doc C22); Te Rauhuia Clarke, brief of evidence (doc C25). See also the email exchanges between Te Rauhuia Clarke and NZMC representatives in October 2014 and other supporting information (Karen Waterreus, comp. papers in support of brief of evidence (doc C22(a)), pp 1–9).

Māori Wardens combines elements of local and community-based and on-the-job training with the national-level training programmes offered under the MWP.

As outlined to us by a number of claimant witnesses, locally based training is viewed as an essential part of Māori Wardens' training. This can include accompanying a warranted Māori Warden on the job, or marae-based training on tikanga. These forms of training draw heavily on the knowledge of the wardens' kaupapa which has been handed down through generations of Māori Wardens. This type of training occurs independently of the MWP, and based on the evidence provided to us, there is nothing in the MWP which would have prevented local Māori Committees, wardens' sub-associations or DMCS from continuing to organise this form of training.

We also note that grants are available through the MWP's contestable funding pool for Māori Wardens' groups who wish to run their own locally or regionally based training programmes, and that in the past Māori Wardens' groups have used this funding to offer courses in areas such as te reo and the tikanga of the marae. However, we received little evidence on this funding for community-based training. We do not know to what extent wardens' groups have chosen to avail themselves of this funding opportunity. We also note that the claimants do not specifically claim that there has been any favouritism in the allocation of funding for community-based training, although grants for training might reasonably be seen as part of the claimants' wider claim that Māori Wardens' Associations have been favoured in the allocation of funding under the MWP. We will address that issue in chapter 8.

Instead, the claimants' case in relation to training centres mainly upon the foundation course for Māori Wardens offered by the Police, and the elimination of their part in decision-making by the failure of the TAG to allow them an appropriate degree of influence. As we have discussed, feedback from Māori Wardens who attended this training course was mixed: while some Māori Wardens have found the course highly informative and useful to them in their work, others feel that police training is inappropriate for Māori Wardens and that it has led some Māori Wardens to confuse their roles with that of police. In this respect, while many Māori Wardens see benefits in having a good working relationship with police, there seems to be a broad consensus among wardens that there is a need for them to maintain a distance from police; too close a relationship with the Police can lead to community mistrust of wardens and compromise the non-adversarial kaupapa of the Māori Wardens.

We need to pause here to consider the broader question of how the MWP has affected the warden-police relationship, which was partly a training issue but also had much broader aspects.

Most Māori Wardens who gave evidence to us on this subject believe that it is essential for Māori Wardens to have some level of working relationship with Police, particularly where wardens are operating in urban areas. Wellington warden Millie Hawiki sees Māori Wardens as 'primarily iwi-based volunteers' but states that, on occasion, wardens' mahi requires them to work with police. Mrs Hawiki sees some

positive opportunities arising from wardens working with police, particularly in relation to Māori youth, as ‘it presents opportunities to develop solutions that are owned by the community’.¹⁸⁰ However, in Millie Hawiki’s view it is paramount that Māori Wardens’ primary relationship is with their communities rather than with police.¹⁸¹ This view is shared by many other Māori Wardens. According to Billie Mills, wardens need to be recognised as ‘Māori Wātene’ rather than ‘police helpers’.¹⁸² Diane Black states that Tāmaki ki Te Tonga wardens have little problem in their relationship with police as each know their respective spheres of influence and keep to them:

They don’t interfere in Wardens functions and Wardens are prepared to have a functional relationship with the police. Māori Wardens and police respect each other in the performance of their respective functions but don’t try to change them. It is a pity that Te Puni Kōkiri could not do the same.¹⁸³

As Titewhai Harawira told us, the separation and independence of Māori Wardens from the Police is ‘critical to the effectiveness of Māori Wardens in our communities’. Mrs Harawira provided us with a concrete example of this in relation to wardens’ role in the courts:

Māori Wardens in Auckland help families to understand court processes; the expectations, the formalities, and the outcomes that are likely. Wardens would find giving this support very difficult if they were seen by the community to be working closely with Police – who in the criminal courts will be the ones bringing the charges.¹⁸⁴

A number of Māori Wardens expressed concern that the MWP has encouraged a perception among some that Māori Wardens are too close to police. Billie Mills attributes the ‘kōrero of Wātene being “narks”’ to the closer relationship with police that came about as a result of the MWP and the police training offered under the project.¹⁸⁵ According to Lady Latimer, the MWP has encouraged a perception that Māori Wardens are too close to police: ‘I am very concerned that under the Māori Wardens Project, they may be seen to be state and police adjuncts and that the people will lose confidence in them.’¹⁸⁶

The weakness of the claimants’ argument in respect of wardens’ relationship with police, as pointed out by the Crown, is that the 1962 Act envisages a high level of cooperation between Māori Wardens and the Police.¹⁸⁷ It does so through section 18(1)(d)(v), under which the functions of the NZMC, DMCS, and Māori Committees

180. Millie Hawiki, brief of evidence (doc B1), pp 5–6

181. Millie Hawiki, brief of evidence (doc B1), p 6

182. Wilma Mills, brief of evidence (doc B3), para 31

183. Diane Black, brief of evidence (doc B5), p 19

184. Titewhai Harawira, brief of evidence (doc B10), p 8

185. Wilma Mills, brief of evidence (doc B3), para 32

186. Lady Emily Latimer, brief of evidence (doc B27), para 36

187. Crown counsel, closing submissions (paper 3.3.3), p 17

include collaboration with State departments in '[t]he fostering of respect for the law and law-observance amongst the Māori people'. It also does so through regulations 11(3) and (4) of the Māori Community Development Regulations 1963, which read as follows:

(3) Māori Wardens shall also maintain close association with the Police and traffic officers having jurisdiction in their areas so as to ensure the maximum cooperation with all such officers.

(4) Māori Wardens shall endeavour to promote respect amongst Māori people for the standards of the community and to take appropriate steps where possible to prevent any threatened breach of law and order.

As the claimants have argued, altering the compact effected by the 1962 Act is a matter to be agreed by both sides. Nonetheless, Crown counsel accepts that the independence of wardens from the Police is a vital matter, and one which the Crown believes that police co-sponsorship of the MWP does not affect.¹⁸⁸ The MWP, we were told, was specifically designed to prevent '[t]he development of policies or processes that might imply direct control of Wardens by TPK or the Police'.¹⁸⁹

How was this achieved? At its inception, the MWP had three key safeguards to prevent government-based, nationally organised training programmes (such as the police training) from unintentionally distorting or changing the kaupapa of Māori Wardens. These were:

- ▶ nationally based training was voluntary – wardens' groups would choose what training opportunities to take up;
- ▶ nationally based training was balanced by locally organised training, in which wardens' groups decided their specific training needs and could apply for funding to meet those needs; and
- ▶ nationally based training was to be subject to Māori community oversight and joint Crown–Māori decision-making via the Training Advisory Group and the MWP Advisory Group, on both of which the Crown accepted the the NZMC as one of two key Māori stakeholders.

We have already discussed two of these safeguards. The TAG failed to provide a meaningful share of decision-making for either the NZMC or the NZMWA, both of which pulled out, leaving decisions about the content and purpose of training to the Government alone. The second – community-based training – remained a strong safeguard. Wardens' marae-based and on-the-job training has continued on an unfunded basis (as before) and wardens' groups have been able to apply for funding to meet locally designed and specific training needs. Although we do not have comprehensive evidence, we were given examples of successful, local training schemes.

One question remains: how truly voluntary were the nationally based schemes if wardens wished to participate in (and benefit from) the MWP?

188. Crown counsel, closing submissions (paper 3.3.3), pp 16–18

189. Crown counsel, closing submissions (paper 3.3.3), p 16

Given the wide variety of tasks and activities performed by Māori Wardens – ranging from assisting on the marae to providing advocacy for youth or whānau dealing with the courts or government agencies – it seems highly unlikely that there could be a ‘one size fits all’ training programme that meets the needs of all Māori Wardens. We see no issue with the Government offering police training in areas such as security or traffic management, if there is demand among Māori Wardens for this type of training. However, any such training should be on a strictly ‘opt in’ basis, and we are therefore concerned that completion of police training has, at least in the past, been tied to the ability of Māori Wardens to receive uniforms under the MWP. While Māori Wardens could, of course, choose to go without the uniforms, we have also heard evidence that uniforms are essential to the mana of the Māori Wardens. For instance, Jordan Winiata Haines told us:

The Māori Wardens are acknowledged as a uniformed movement and this enhanced the mana to do our mahi within the eyes of the Māori community, the community at large and with the Crown law enforcement agencies such as the Police, Child Youth and Family Services and Local Body Regulators.¹⁹⁰

In our view, linking the completion of the police training course to the receipt of uniforms under the MWP inappropriately elevates the police training to a semi-compulsory level. However, we are unable to confirm, based upon the evidence available to us, whether the completion of the police training course is still a prerequisite for receiving a uniform under the MWP.

Having considered the effects of MWP training on the kaupapa of Māori Wardens and their relationship with the Police, we turn next to discuss the claimants’ final allegation about de facto changes which the project has wrought upon Māori Wardens: its alleged policy to replace ‘aunt and uncle wardens’ with younger, fitter, more constabulary-style wardens.

(2) Has TRK promoted a view, through its Māori Wardens Project, that only persons who are young and fit can be Māori Wardens?

In their closing submissions, the claimants argue that it is ‘important to the kaupapa of Wardens that barriers are not erected to prevent individuals from becoming Wardens or from participating as Wardens on the grounds of age, level of health or fitness.’¹⁹¹ According to the claimants, it is the ‘apparent view’ of the Crown ‘that Wardens need to be young and fit to be effective.’¹⁹² The Crown has, in the claimants’ view, encouraged this trend through linking funding to ‘fitness and related requirements’.¹⁹³

In support of their claim that the Crown has encouraged the view that Māori Wardens must be young and fit, the claimants point us to the evidence of Diane

190. Jordan Haines, brief of evidence (doc B28), para 8

191. Claimant counsel, closing submissions (paper 3.3.5), p 49

192. Claimant counsel, closing submissions (paper 3.3.5), p 49

193. Claimant counsel, closing submissions (paper 3.3.5), p 49

Black, in which she recalls a conversation with Te Rauhuia Clarke early in the project. According to Ms Black, Mr Clarke is said to have remarked:

that we needed to ‘get rid’ of the older Māori Wardens as they were too slow to perform Wardens duties, that we needed younger, more fit Wardens who could perform their duties more effectively . . .¹⁹⁴

Ms Black further stated: ‘I have been informed by Māori Wardens that this train of thought is still being pushed within the Project team’, and that

I have also been informed that the Te Puni Kōkiri Māori Wardens Project team is recommending that Wardens train for a period of up to 200 hours with an emphasis on subjects like First Aid and safety and security . . .¹⁹⁵

However, we have not been provided with sufficient evidence on the 200-hour training requirements to judge whether they would disadvantage wardens who were not young and fit.

It is clear that some of the content of the training on offer under the MWP – such as traffic management and security training – could encourage the view that TRK believes that Māori Wardens should be young and fit. It is undoubtedly true that training in areas like security or traffic control is of little use or relevance to some of the older wardens – as described by Sir Edward Taihakurei Durie – who act as ‘aunts and uncles’ on the marae and are available to help and advise young people in need or in trouble.¹⁹⁶ However, Māori Wardens who have participated in training in areas such as traffic management or security have also told us that they found such training helpful and see it as essential to the ability of Māori Wardens to act safely and within the law in carrying out their public functions.¹⁹⁷ Further, based on the evidence claimant counsel have placed before us, we are not convinced that what appears to have been a passing remark by Mr Clarke is proof that the view that wardens must be young and fit is embedded within the intent of the project itself.

Essentially, it is too soon to know whether the MWP is having the effect of changing the kaupapa, the philosophy or ethos, of what it is to be a Māori Warden. What we can be sure of is that Māori community oversight of the MWP was the necessary corrective for – or safeguard against – any distortions or unwanted changes to the kaupapa of Māori Wardens.

(3) *The Tribunal's findings*

Through ‘workstream 2’ of the MWP, the Government set out to redesign the nature, roles, and functions of Māori Wardens. This was potentially a usurpation of Māori communities’ self-government, as provided for in the 1962 Act. If such a redesign

194. Diane Black, brief of evidence (doc B5), p 14

195. Diane Black, brief of evidence (doc B5), p 14

196. Claimant counsel, closing submissions (paper 3.3.5), p 49

197. Wilma Mills, brief of evidence (doc B3), para 18; Ngaire Schmidt, brief of evidence (doc B16), p 2; Jordan Winiata Haines, brief of evidence (doc B28), paras 6–9

was necessary, it was the province of the Māori councils and the communities that they represented. But the Government sought to carry out its redesign in collaboration with the NZMC, NZMWA, and other Māori community experts through the MWP Advisory Group. Significant progress was made, and this part of the Advisory Group's report was signed off in May 2008. Since the group's role was purely advisory, and it was acknowledged from the beginning that further consultation with Māori would be needed, we see this work as a worthwhile partnership project which, sadly, was lost along with the Advisory Group itself in 2009. In our view, no Treaty breaches arise from this aspect of the MWP.

Once the 'bigger picture' policy issues had been diverted from the MWP to the select committee inquiry and review of the 1962 Act, the MWP was confined to 'workstream 1', by which it provided funding and training for Māori Wardens. In reality, this purely administrative role carried with it unintended risks that the Māori Wardens' kaupapa would be distorted or harmed – in particular by a training programme designed by the Government rather than by the Māori institutions with responsibility for the wardens. Here, too, the Crown sought to work in collaboration with its Treaty partner. But the Training Advisory Group failed and the advice of its Māori members was ignored. When they resigned in protest, this partnership mechanism was not replaced and the content and purpose of centrally provided training was decided by the Government alone. The MWP Advisory Group tried to exercise some influence over training decisions but was itself discontinued in 2009.

As a result, one of three crucial safeguards was removed from the project. We find that the Crown's unilateral training decisions were in breach of the principles of partnership and Māori autonomy. Māori communities have been prejudiced by the loss of this safeguard, which – at the very least – ought to have ensured that the project had no adverse or distorting effects on the kaupapa of Māori Wardens, and was administered in keeping with the wishes, aspirations, and self-government of the Māori communities it was supposed to serve. The Crown's failure to heed the warnings of the independent evaluators in 2012 has compounded the breach. MWP training remains without effective (or any) Māori community oversight, and Māori communities have no say as to its content or purpose. This is clearly inconsistent with Treaty principles. As a result, the prejudice to Māori communities continues.

We agree with the claimants that this example of 'the Crown de facto supervising and controlling Wardens' is inconsistent with the rights affirmed in the United Nations Declaration of the Rights of Indigenous Peoples.¹⁹⁸ The claimants describe the Declaration as 'affirming indigenous peoples' autonomy over their internal and local affairs or their institutions'.¹⁹⁹ We agree. The Crown's decision to persist with its own training despite the disagreement of the Māori experts and community leaders on the TAG, and in the absence of any Māori community oversight and control – carrying with it the risk of changing or distorting the kaupapa of a unique Māori institution – was not consistent with the rights affirmed in the Declaration.

198. Claimant counsel, closing submissions (paper 3.3.5), pp 34–35, 49–51

199. Claimant counsel, closing submissions (paper 3.3.5), p 30

We turn next to the broader question of Māori community oversight of the MWP as a whole: how much, if at all, did the Advisory Group and its successor, the Governance Board, enable community oversight of the capacity and capability-building programme provided for by ‘workstream 1’?

7.5 MĀORI COMMUNITY OVERSIGHT OF THE MWP

7.5.1 Introduction

As outlined in section 7.3, it is our view that the state of dysfunction in the council structure as at 2007 justified the Crown’s actions in establishing the MWP as an interim measure to deliver funding and training to Māori Wardens. The decision, however, that the councils were not – at that time – an appropriate vehicle for the delivery of Government funding for Māori Wardens did not absolve the Crown of its Treaty obligations towards its Māori Treaty partner. In particular, Māori community oversight of the MWP was still both possible and necessary, even if the project was to be delivered by a Government department. As we have discussed earlier, this was a necessary minimum safeguard during the time it would take to develop a Māori entity to assume direct control of the funding and training resources. It was no accident, in our view, that the NZMC’s proposed entity, which would have worked as part of the council structure, was to be called the ‘Community Overseer’.

7.5.2 Māori community oversight: the MWP Advisory Group and Governance Board

In the initial planning stages of the MWP, Ministers recognised the importance of engaging ‘key Māori Warden stakeholders’ in the establishment of the project and obtaining their support for it. That there was an ongoing need to consult with and include the NZMC (as well as the NZMWA) in decision-making over Māori Wardens was also acknowledged by TPK in its establishment of the Māori Wardens Advisory Group, and later the Māori Wardens Governance Board. In this section we consider whether this mechanism was sufficient to meet the standards of conduct required of the Crown under its Treaty obligations.

As we noted above, the MWP was formed in June 2007 and was assigned two parallel workstreams. The Advisory Group’s role in respect of each of these two workstreams was spelt out in July 2007. The earliest draft of its report, prepared by TPK, noted that Ministers had approved funding for a group to work with officials in developing future proposals for the governance of Māori Wardens, and that the same group would also ‘have a role in informing the ongoing work of the project team including officials from Te Puni Kōkiri, and the Police tasked with implementing the proposed investments in the short to medium term.’²⁰⁰ The Advisory Group’s role in respect of ‘workstream 2’ – discussed more fully in the previous chapter – was to develop future governance options for both Māori Wardens and the project’s resources. Its task in relation to ‘workstream 1’ was to provide an ongoing

²⁰⁰ Māori Wardens Advisory Group, ‘Draft Report on Future Governance and Management of the Māori Wardens Service’, 7 July 2007 (Crown counsel, TPK document collection (doc c15), pp 467–468)

ing ‘advisory’ role in the development and implementation of the Māori Wardens funding programme. It is this ongoing advisory role over operational aspects of the MWP that concerns us here. The wording that the group would ‘inform’ the project team’s work was taken directly from TPK’s May 2007 proposal to Ministers,²⁰¹ and it was somewhat ambiguous – what kind of power or influence would it entail in practice? The answer was never specified in the group’s terms of reference, which did not mention this role at all, even though the role had been included in early project documentation (including the plan accompanying the project charter in July 2007). Instead, the group’s formal terms of reference only covered ‘workstream 2’.

While the task of developing future governance arrangements for Māori Wardens was thus seen as the primary objective of the Advisory Group, much of its meeting time during 2008 was absorbed by discussions of operational matters arising from the MWP. Meetings of the group tended to follow a standard format: the meeting would open with a presentation by Te Rauhuia Clarke on the work completed by the project team in the period since the group’s last meeting. This would be followed by feedback and questions from Advisory Group members, followed by discussion of any set agenda items. This format, at least in theory, offered an opportunity for Advisory Group members to stay abreast of progress with the project, and provide advice and suggestions on its planning and ongoing operations.

It is possible to gain a sense of the Advisory Group’s meetings from minutes tabled as evidence before this inquiry. These minutes suggest that – while both the NZMC and NZMWA remained engaged with the work of the Advisory Group during 2008 – representatives of both organisations expressed frustration at a very early stage in the group’s meetings at what they viewed as the lack of accountability of the TPK project team back to the Advisory Group. For instance, at a meeting of 21 May 2008, at which the subject of the regional boundaries was discussed, members of the group recorded a minute stating that it was ‘Imperative that the project team consult with Advisory Group first before making decisions.’²⁰² Similarly, in relation to training, the same meeting of the Advisory Group requested that a minute be recorded noting that it was ‘Important the project team consult with key people involved [in] existing training for wardens.’²⁰³ Later in the meeting they stated: ‘The AG group are being told what is happening and not inputting into decisions, which causes frustration for the members,’ and group members again requested that they be ‘included in further decisions on the project.’²⁰⁴

201. Te Puni Kōkiri, ‘Strengthening Māori Wardens: Enhancing Capacity – Realising Potential’, briefing paper to Ministers of Māori Affairs, Police and Foreign Affairs, 11 May 2007 (Crown counsel, TPK document collection (doc C15), p 457)

202. Māori Wardens Advisory Group, minutes, 21 May 2008 (Crown counsel, TPK document collection (doc C15), p 649)

203. Māori Wardens Advisory Group, minutes, 21 May 2008 (Crown counsel, TPK document collection (doc C15), p 649)

204. Māori Wardens Advisory Group, minutes, 21 May 2008 (Crown counsel, TPK document collection (doc C15), p 650)

On other occasions, Advisory Group members objected to the project team making decisions on matters that they believed were rightfully the place of the NZMC or other groups. For instance, at its June 2008 meeting, Te Rauhuia Clarke invited the Advisory Group's feedback on proposed regional boundaries for the project. On this point NZMWA representative Gloria Hughes responded that 'it wasn't up to the Advisory Group to decide upon the boundaries for the project' as this should be decided by the iwi and people of each respective region. NZMC representative Diane Black, on the other hand, stated that the right to set Māori Warden boundaries resided with the NZMC in the 1962 Act, and that TPK therefore 'should contact the NZMC to see where these boundaries are'.²⁰⁵

Another recurring issue raised by members of the Advisory Group was the fact that the group was not, as a matter of routine, provided with key documentation and financial records relating to the MWP. We have already noted that the Advisory Group members were not supplied with a copy of the MWP charter, the key document describing the project's objectives, scope, governance, and implementation plan. In the group's May 2008 meeting, group members noted that, to date, they had not seen a financial report on project spending, and also requested further documentation on the performance of the project, such as updates from Regional Coordinators or wardens' groups.²⁰⁶ Financial records of the project were supplied by Te Rauhuia Clarke at the following meeting of the group, but no specific resolutions were passed to request other evidence on the project's performance.²⁰⁷

By the time of the group's August 2008 meeting, its members' frustration at the project itself and their lack of input into it had reached a peak. Gloria Hughes provided feedback that Māori Wardens she had spoken to were 'displeased' at the progress of the MWP so far and threatened that she may 'walk away from the Advisory Group' if she was unable to give them a clear answer on 'what the project team is doing to improve their situation'.²⁰⁸ After Mrs Hughes' statement, Leith Comer asked the remainder of the group as to whether it should continue. In response, NZMWA representative Bill Blake stated that while he believed 'that the project team was only benefiting a few Wardens at the expense of others' he did not advocate walking away from the group.²⁰⁹ Diane Black of the NZMC felt that the Advisory Group had made a significant step in bringing together the NZMWA and NZMC and that 'the people around the table need to sort out differences and move forward together'.²¹⁰ Following this discussion, Mr Comer asked the Advisory Group to vote

205. Māori Wardens Advisory Group, minutes, 13 June 2008 (Crown counsel, TPK document collection (doc c15), pp 652–653)

206. Māori Wardens Advisory Group, minutes, 21 May 2008 (Crown counsel, TPK document collection (doc c15), pp 649–650)

207. Māori Wardens Advisory Group, minutes, 13 June 2008 (Crown counsel, TPK document collection (doc c15), pp 651–652)

208. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc c15), p 655)

209. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc c15), p 656)

210. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc c15), p 656)

on a series of propositions: ‘Do the Māori Wardens need legislation?’; ‘Should we be funding the Māori Wardens Project?’; ‘Does everybody here want to be part of this Advisory Group?’²¹¹ All group members were reported to have agreed in the affirmative to these proposals. Mr Comer informed the group that while the project was ‘not perfect’ it was ‘working in many respects’ and that ‘[i]f there are aspects of the project that members of the Advisory Group are unhappy with, then we can modify the project.’²¹²

After this, the group moved on to discuss the current training package available for wardens, as well as the role of the Regional Coordinators. On this topic, Noel Jory of the NZMC raised his concerns that:

the regional coordinators are having very little to do with the already established entity in their respective regions. In many instances they are seen as cutting across the authority of the District Māori Council in certain areas.²¹³

Titewhai Harawira expressed her objections to the Regional Coordinator for Auckland and the fact that her contract had been rolled over by the project team without consultation with the District Māori Council.²¹⁴ The group concluded by discussing ‘the need for regional coordinators to discuss their activities more with the DMCS in each area’ and by noting that ‘there continued to be a lack of communications from the project team and as a result divisions amongst Wardens were occurring.’²¹⁵

The last Advisory Group meeting for which we have the minutes took place on 17 November 2008. At this meeting, the group made plans to hold a workshop on governance models (which took place in December), revisited the issue of the Regional Coordinators’ positions in Tāmaki, and discussed the progress made by the Māori Wardens Warranting Committee (discussed later in chapter 9, where we deal with claims about warranting).²¹⁶ Shortly afterwards, in early 2009, the Advisory Group was disestablished after it did not reach consensus on the shape of future governance arrangements for Māori Wardens.²¹⁷ After its demise, the NZMC issued several critical statements on the Advisory Group, which it described as dominated by TPK and the Police and largely ineffectual, stating that while the group’s members

211. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc C15), pp 656–657)

212. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc C15), p 657)

213. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc C15), p 657)

214. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc C15), p 657)

215. Māori Wardens Advisory Group, minutes, 14 August 2008 (Crown counsel, TPK document collection (doc C15), p 658)

216. Māori Wardens Advisory Group, minutes, 17 November 2008 (Crown counsel, TPK document collection (doc C15), pp 662–664)

217. Transcript 4.1.1(a), p 320

‘questioned much of what was being reported, the Project Team had its agenda and was seldom moved to make changes.’²¹⁸

Following the Advisory Group’s disestablishment, a Māori Wardens Governance Board was formed, made up (on the ‘Māori community’ side) of:

- ▶ Jim Nicholls and Brian Joyce of the NZMC;
- ▶ Gloria Hughes and Rawiri Te Whare of the NZMWA;
- ▶ Jacqui Te Kani of the Māori Women’s Welfare League;
- ▶ Dame Iritana Tawhiwhirangi of Te Kohanga Reo Trust; and
- ▶ kaumātua member Joe Tuahine Northover.

The project’s new Governance Board also included representatives of the Police and the TPK project team.²¹⁹

The aim of the Governance Board, as described by member Gloria Hughes, was ‘to keep the key stakeholder groups engaged with the Project while the Minister of Māori Affairs considered options for moving forward’ in the review of the Act.²²⁰ We received no evidence on what took place at the meetings of the Governance Board, its relationship to the TPK project team, or what kind of role it played in the project. According to Mrs Hughes, the Governance Board made considerable progress towards a reconciliation of the relationships between the NZMC and NZMWA during its short period of existence. The board folded following the death of the NZMC member Jim Nicholls in September 2010.²²¹ Technically, it was still considered to be in existence at the time of the independent review in 2011, and Crown counsel advised that its final meeting took place in February of that year.²²² In reality, since the Governance Board’s demise in early 2011, no equivalent advisory group containing NZMC and wardens’ representatives has been established by TPK. As a result, since the beginning of 2011, there has been no formal mechanism by which the NZMC (or NZMWA) can request information, offer input into the MWP or the work of TPK’s project team, or exercise leadership and oversight of the project.

Documentation from the early phases of policy work relating to the MWP’s introduction suggests that TPK officials – complying with a request by Ministers to gauge the support of NZMC and Māori Wardens for the Government’s proposed funding programme – did meet with and seek out the views of the NZMC and Māori Wardens. While the NZMC and NZMWA both expressed their view that any funds for Māori Wardens should be channelled through their own organisation, after TPK’s position was made plain that it was not willing to fund either group at present, both organisations expressed their willingness to work with TPK in an advisory capacity in relation to the implementation of the Government’s funding scheme. Evidence

218. NZMC, ‘Discussion Paper on Māori Wardens Presented to Minister of Māori Affairs’, 13 March 2009 (Crown counsel, TPK document collection (doc C15), pp 763–775)

219. Māori community members of the Māori Wardens Governance Board, ‘Review of the Māori Community Development Act 1962 (MCDA)’ submission to Māori Affairs Select Committee, 14 August 2010, <http://www.parliament.nz/resource/0000123382>, last modified 18 August 2010, p 1; Tangihaere Gloria Hughes, brief of evidence (doc B31), pp 4–5

220. Tangihaere Gloria Hughes, brief of evidence (doc B31), p 4

221. Tangihaere Gloria Hughes, brief of evidence (doc B31), pp 4–5

222. Crown counsel, memorandum, 17 October 2014 (paper 3.4.10), p 1

tabled by TPK suggests that the NZMC and NZMWA were successful, in this interim stage of planning the MWP, in having some changes made to the proposed support package, most notably the inclusion of funding opportunities for locally based training alongside the national training programme offered under the MWP (see section 7.3.1).

The establishment of the Māori Wardens Advisory Group and, later, the Māori Wardens Governance Board, likewise indicate a recognition on the part of TPK of a need to include its Māori Treaty partner, in this case the NZMC, in the ongoing planning and operations of the MWP. Minutes of the group's meetings suggest that Advisory Group members were able to suggest a number of adjustments to the MWP.

In our view, the Advisory Group represented a genuine attempt by TPK to engage the NZMC and Māori Wardens in the ongoing operation of the MWP. However, it is also our view that the group was flawed in some fundamental respects from its outset. First, the role of the Advisory Group in relation to the MWP project team was never clearly defined. While the NZMC (and NZMWA) clearly saw themselves as continuing to exercise their statutory (or in the case of the NZMWA operational) responsibilities over Māori Wardens through the Advisory Group, it is doubtful that TPK saw the group as functioning in this way. While the Advisory Group features in the MWP's Project Charter, the formal role of the Advisory Group was limited to its terms of reference, which only covered 'workstream 2'. While the charter indicated that both TPK and the Police would have a 'relationship' with the Advisory Group, the lines of accountability between TPK's project team, the Police, and the Advisory Group were never clearly defined. By contrast, the lines of accountability within TPK and the Police (from the TPK project manager to senior officials in TPK and the Police, to the Chief Executive of TPK and the Commissioner of Police, and then on to the Ministers) are clearly spelt out in the Project Charter.²²³ The Project Charter includes a template for a formal monthly report to be completed by the MWP project manager and supplied to the TPK Chief Executive, accounting for activities undertaken in that month, providing an assessment of the project's performance against key milestones, and accounting for project spending. This monthly report was to be submitted to the Chief Executive and the Police Commissioner, but was never required to be handed to the Advisory Group.²²⁴ Further, and as previously mentioned, evidence presented to the Tribunal by Kim Ngārimu suggests that the Advisory Group was never supplied with a copy of the Project Charter, which was viewed as an internal document between TPK and the Police.²²⁵

It is apparent that the respective parties (NZMC and NZMWA on the one hand and TPK and the Police on the other) entered into the Advisory Group with fundamentally different expectations about what the function of the Advisory Group was in relation to the MWP. The NZMC and NZMWA members clearly believed that

223. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 63–64)

224. Te Puni Kōkiri, 'Project Charter: Te Puni Kōkiri and New Zealand Police – Māori Warden Project', July 2007 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 65–67)

225. Transcript 4.1.1(a), p 324

the project team should consult with the Advisory Group first before making any important planning decisions relating to the MWP, and regularly complained that decisions were being made by the project team without the prior consent or input of the Advisory Group. But this level of accountability was never specified in the governance structure of the project. This mismatch between TPK's views of the group and that of the Advisory Group members explains why the members were not, as a matter of routine, supplied with documentation relating to the overall scope of and ongoing operations of the MWP, which would have been necessary to exercise the effective oversight of the MWP – and through it, the Māori Wardens – that the group members believed that they should have retained.

A final and obvious flaw of the Advisory Group in terms of its role in the ongoing operational oversight of the MWP was that it was shortlived, and ceased to meet after December 2008. Following its formal dissolution in 2009, a Māori Wardens Governance Board was established to involve the NZMC as well as the NZMWA and other Māori organisations in the operations of the MWP. While this board, according to NZMWA member Gloria Hughes, made considerable progress during its short life, unfortunately it also proved shortlived. After February 2011, there has been no mechanism within the governance structure of the MWP for wardens' groups or the NZMC to provide input into the decision-making or day-to-day operations of the MWP's project team.

In post-hearing evidence to the Tribunal, NZMC Secretary Karen Waterreus advised:

One of the positive outcomes of the hearing is that regular meetings have been arranged between the Wardens subcommittee of the NZMC and Te Rau Clarke as the manager of the Māori Wardens Project.

The 'intention of these meetings is to open a dialogue between the NZMC and Te Puni Kōkiri'.²²⁶ According to Te Rauhuia Clarke's email of 10 October 2014: 'The hui are an opportunity for the NZMC and TPK to discuss operational issues. This forum is where we can share the information and hopefully resolve issues together.'²²⁷

While there is now opportunity for an exchange of information and views, and possibly for resolving issues, these recent, post-hearing meetings are not a mechanism for Māori community oversight or decision-making in respect of the project. This was confirmed by the evidence of both Karen Waterreus and Te Rauhuia Clarke.²²⁸

7.5.3 The Tribunal's findings

In Treaty terms, Māori community oversight of the MWP was essential, not optional. This was recognised from the beginning by the inclusion of an advisory group in

226. Karen Waterreus, brief of evidence (doc c22), p 3

227. Te Rauhuia Clarke, email to Des Ratima, 10 October 2014 (Karen Waterreus, comp, papers in support of brief of evidence (doc c22(a)), p 2)

228. Karen Waterreus, brief of evidence (doc c22); Te Rauhuia Clarke, brief of evidence (doc c25)

the design of the project, with the dual role of (a) developing an entity to take over management of the project's resources (and of Māori Wardens), and (b) 'informing' the Government's administration of the project in the meantime. There are significant doubts as to whether the Advisory Group was enabled to carry out the second role successfully, and we have no information at all about whether its successor – the Governance Board – exercised effective oversight or even influenced the project. But there is no doubt at all that the continuance of the project after the beginning of 2011 was, in the absence of any partnership mechanism or Māori community oversight, a breach of Treaty principles.

Māori communities have been prejudiced by the loss of this safeguard, which – at the very least – ought to have ensured that the project had no adverse or distorting effects on the kaupapa of Māori Wardens, and was administered in keeping with the wishes, aspirations, and self-government of the Māori communities it was supposed to serve. We were provided with a recent example in the post-hearing exchange of evidence between Karen Waterreus and Te Rauhuia Clarke. The administrators of the MWP are currently proceeding to consult wardens and 'interested parties' with a view to developing a Māori Wardens' qualification certificate so that their training can be 'accredited'.²²⁹ The question of whether wardens should be certificated, and – if so – what the qualification should cover, could alter the kaupapa of Māori Wardens and is not an appropriate matter for a temporary administrative mechanism.

We note, too, that the exclusion of Māori communities – as organised and represented under the 1962 Act or otherwise – from any role in guiding, leading, or overseeing a project involving such an important Māori institution is not consistent with the rights affirmed in the UNDRIP. The claimants are surely correct that their exclusion from the project's decision-making has resulted in a degree of 'de facto' Crown control of Māori Wardens. And we are surprised to find that the total exclusion of Māori from decisions relating to one of their own institutions could happen in the second decade of the twenty-first century. An advisory group or governance board of some kind is now standard. The rights of indigenous peoples to the autonomous management of their own affairs and institutions, through their own chosen representatives, are affirmed in the Declaration. The MWP, as it has been governed since early 2011, is inconsistent with those rights. And, with the 2009 review still not concluded, this inappropriate situation looks set to continue for some time unless the Crown acts on our recommendations, as set out in chapter 10.

7.6 OUR OVERALL VIEW OF THE MWP

We do not wish to be overly critical of the Māori Wardens Project. In our view, it is an important and useful means by which the Crown has provided much needed training and funding assistance to Māori Wardens. Its successes cannot be denied.

229. Te Rauhuia Clarke, brief of evidence (doc C25), pp1–2

Independent evaluators in 2012 found it to be a well-managed, efficient project with room to improve in certain respects.

The key area where there is ‘room to improve’, in our view, has been the removal of safeguards for Māori communities from the project. Māori community oversight via a partnership mechanism such as the Advisory Group was absolutely essential – yet it has been dispensed with since 2009, when the Advisory Group was discontinued. The replacement governance board appears to have folded after the death of senior NZMC member Jim Nicholls and had stopped meeting by early 2011, leaving the project without Māori community oversight. That is a serious Treaty breach. Further, the content and purpose of centrally delivered training was decided unilaterally by the Government, which disregarded the Māori members of the Training Advisory Group and then dispensed with the group altogether when they resigned in protest. This, too, was a significant Treaty breach. Also, as we will find in the next chapter (and mention here for the sake of completeness), funding decisions (both as to policy and individual applications) are made without any DMC or NZMC involvement. This is inconsistent with Treaty principles and has prejudiced the ability of Māori communities to exercise the limited self-government that the law allows.

The result is that a project which could have been entirely beneficial carries with it significant risks for Māori. There is a risk that training and funding decisions, made unilaterally by the Government, may distort or harm the kaupapa of Māori Wardens. There is a risk to communities when they have no control over how a community service such as the Māori Wardens is trained and funded. There is a serious risk to the Māori Wardens themselves if they become accountable to the Government instead of (or more than) their own communities. In particular, there is a risk that Māori Wardens might become – or be perceived by their communities as having become – too close to the Police. These risks could have been minimised or removed altogether by the provision of a mechanism for Māori community oversight of the project’s parameters and policy, and for Māori community input into its decisions, while a Māori entity was developed to take over the project. Instead, the Government has chosen to go it alone since February 2011 while awaiting the outcomes of a review which is still of uncertain duration or effect.

We agree with the Crown that its introduction of the project in 2007 was a temporary measure designed to deliver funding directly to wardens, because the council structure at that time was incapable of administering such funding. There was no Treaty breach in the MWP’s introduction. The NZMC agreed to work with the Crown to oversee the project until a Māori entity capable of administering it could be found.

Seven years on, the temporary arrangements of 2007 are less able to stand the test of Treaty compliance. In particular, the project has been managed inconsistently with Treaty principles since the abandonment of the TAG and of the advisory group–governance mechanism, to the prejudice of the Māori communities it is supposed to serve.

SUMMARY OF FINDINGS

Aspects of the claim that are not upheld

- ▶ The Crown's provision of much-needed financial resources for Māori Wardens, in response to requests from wardens and Māori communities, was in keeping with its partnership obligations under the Treaty.
- ▶ We do not accept the claimants' position that the Māori Wardens Project (MWP) was established without consent.
- ▶ From the evidence available to us, Te Puni Kōkiri (TPK) obtained the agreement of the New Zealand Māori Council (NZMC) and of the New Zealand Māori Wardens Association (NZMWA) that a funding and training programme should be established, while a partnership mechanism – the Advisory Group – guided its administration in the meantime and developed a national Māori entity to manage the project (and Māori Wardens).
- ▶ We agree with the Crown that the council system was not capable of administering the project in 2007, and that a temporary alternative was necessary.
- ▶ We do not accept the claimants' evidence that the MWP has attempted to change the kaupapa of Māori Wardens by requiring wardens to be young and physically fit as a condition of funding.

The claim is well-founded in the following respects

Māori community oversight of the MWP

- ▶ In Treaty terms, Māori community oversight of the MWP was essential, not optional.
- ▶ This role was originally played by the Advisory Group (and its successor, the Governance Board).
- ▶ There are significant doubts as to whether the Advisory Group was enabled to carry out this role successfully, and we have no information as to whether the Governance Board exercised effective oversight or even influenced the project.
- ▶ But there is no doubt at all that the continuance of the project after February 2011, in the absence of any partnership mechanism or Māori community oversight, was a breach of the Treaty principles of partnership and Māori autonomy. The temporary nature of the MWP was based on an agreement that there would be some mechanism for Māori community oversight in the meantime, while a new national entity was developed.
- ▶ Māori communities have been prejudiced by the loss of this safeguard, which – at the very least – ought to have ensured that the project had no adverse or distorting effects on the kaupapa of Māori Wardens, and was administered in keeping with the wishes, aspirations, and self-government of the Māori communities it was supposed to serve.

Centrally delivered training

- ▶ In particular, centrally delivered training through the MWP has posed a risk to the kaupapa of Māori Wardens.
- ▶ The Crown's initial attempt to design this training in collaboration with Māori experts (through the Training Advisory Group (TAG) failed because the Government refused to heed the advice and input of the NZMC and NZMWA experts, who resigned from the group in protest.
- ▶ The purpose and content of the centrally delivered training was decided by the Government alone. The Advisory Group tried to influence training decisions but was discontinued in 2009.
- ▶ The Crown's unilateral training decisions were in breach of the principles of partnership and Māori autonomy. The Crown's failure in 2012 to heed the suggestion of its independent evaluators that the TAG (or an equivalent) should be revived compounds the breach.
- ▶ The discontinuance of the TAG and the Advisory Group removed a crucial safeguard from the design and delivery of the MWP training programme.
- ▶ Māori communities have been prejudiced by the loss of this safeguard, which – at the very least – ought to have ensured that the project had no adverse or distorting effects on the kaupapa of Māori Wardens. There is a particular risk here that wardens will become too close to the Police, or will be perceived by their communities as more accountable to Government and the Police than to the community.

Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples

Māori community experts and representatives, including from the NZMC and from the NZMWA, have been excluded from the design and implementation of the project's training, and then from all oversight of the project itself. In our view, this is not consistent with the rights affirmed in the UNDRIP. We are surprised that this kind of situation could arise in the twenty-first century, when advisory-governance mechanisms have become standard. It is not consistent with the Treaty, as we have set out above, and we trust that the Crown will heed our recommendations to put it right (see chapter 10).

CHAPTER 8

MĀ TE HURUHURU TE MANU KA RERE /
FEATHERS ENABLE BIRDS TO FLY

Claims about MWP Funding Decisions

8.1 INTRODUCTION

From 2009, the ‘bigger picture’ issues, which included the role and functions of Māori Wardens and a national entity to govern them, had been diverted from the Māori Wardens Project (MWP) to the Government’s proposed review and reform of the 1962 Act. In effect, the MWP became confined to ‘workstream 1’, which made it purely a mechanism for administering funding and providing training for Māori Wardens. As we have found in chapter 7, the unreformed NZMC and most DMCS lacked the representative credentials and the capacity or capability to perform this administrative task. But, as we have also found, this did not mean that the councils should have been excluded from the project’s decision-making altogether.

Much of the Wai 2417 claim is focused on the funding decisions made in the MWP. This part of the claim is made on two levels. On the one hand, the claimants argue that the Crown should not have ‘sidestepped’ them and funded Māori Wardens directly. In doing so, the claimants allege that the Crown has usurped their statutory authority to direct and control the wardens. We have already dealt with this first aspect in chapter 7, where we found that the MWP was established with the agreement of the NZMC (and NZMWA) as a temporary arrangement to provide funding and training for wardens. Both organisations agreed to work with the Crown in the meantime to establish a national Māori entity to govern both the project funding and Māori Wardens. As will be recalled from chapter 6, the NZMC’s proposal of a new entity as part of the council system – appointed jointly by the NZMC and the Crown, and responsible to both – was unacceptable to the Crown, and the Advisory Group was discontinued.

But the claim about MWP funding has a second aspect, which is the subject of this chapter: the claimants say that TPK’s *exclusive* decisions about the purposes to which wardens’ funding can be put, the terms and conditions on which it can be accessed, and individual decisions about funding applications, are all examples of

the Crown ‘de facto supervising and controlling Wardens.’¹ In the claimants’ view, this exclusive decision-making puts the Crown in breach of the Act, Treaty principles, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). They seek recommendations

that the Project be administered *in association with* the NZMC in ways which comply with the 1962 Act, which give best practical effect to the principles of self-government inherent in the 1962 Act and which provides appropriate resources for Wardens’ administration . . . [Emphasis added.]²

This chapter also addresses the claim that TPK has exercised favouritism in relation to its distribution of funding to Māori Wardens’ groups under the MWP, and that it has been inefficient or wasteful in its management of the funding, thus denying Māori Wardens the benefit of much needed resources.

We consider the following questions in this chapter:

- ▶ Has TPK been inefficient or wasteful in its management of the Government funding allocated to Māori Wardens?
- ▶ Has the contestable funding available under the MWP been allocated by TPK in such a way as to favour wardens aligned with Wardens’ Associations or the NZMWA?
- ▶ Has TPK contravened the 1962 Act in its delivery of funding to Māori Wardens?
- ▶ Has the manner by which funding for Māori Wardens has been allocated through the MWP undermined the capacity of District Māori Councils to exercise their powers of control and supervision over Māori Wardens?

8.2 THE PARTIES’ ARGUMENTS

The Crown states that Māori Wardens’ funding available through the MWP has been equally available to all Māori Wardens’ groups who have applied, and denies that the delivery of funding under the MWP has unfairly benefited groups affiliated with Wardens’ Associations or the NZMWA over those associated with DMCs and the NZMC. Crown witness Te Rauhuia Clarke stated in this regard that MWP funds are ‘available to all Māori Wardens irrespective of their affiliation to a DMC or the Association’, and Māori Wardens’ groups may decide for themselves whether they wish to access the resources and training available through the MWP.³ Further, Mr Clarke suggests, TPK does not collect information on whether the wardens’ groups applying for funding affiliate with a DMC or with the NZMWA, so would have no basis upon which to make such a discrimination.⁴

The Crown further states that the delivery of funding through the MWP is consistent with the 1962 Act and that the ‘resources provided do not interfere with

1. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p 34

2. Claimant counsel, closing submissions (paper 3.3.5), p 31

3. Te Rauhuia Clarke, brief of evidence, not dated (doc B14) p 7

4. Te Rauhuia Clarke, brief of evidence (doc B14) p 7

the DMCS' power and authority to control and supervise wardens'.⁵ This is because 'TPK's role in the Project is limited to administration of the Project and its funding and the provision of Regional Co-ordinators (also funded through the Project) who act as intermediaries between the fund and other available resources and wardens'.⁶

We note that, as the Crown's closing submissions were received prior to the claimants', the Crown has not had the opportunity to respond to some of the claimants' more specific allegations about funding (as set out in closings). Nonetheless, the Crown has issued a general denial of any allegations on the part of the claimants that TPK had an incentive to underspend funds allocated to Māori Wardens or to absorb Māori Wardens' funding internally within its own organisation.⁷

By contrast, the claimants point to what they view as significant levels of mismanagement in TPK's administration of Māori Wardens' funding. In their belief, large proportions of the funding that should have been spent on Māori Wardens was instead absorbed by TPK's own administration. Much of the MWP's funds (the claimants cite a figure of 52 per cent for the four-year period from 2007 to 2011) have been soaked up by the costs of administering the project, thus denying Māori Wardens valuable funding to support their community activities.⁸ TPK's financial management of the MWP, according to the claimants, is 'contrary to the 1962 Act's emphasis on accountability, and indeed good public sector practice'.⁹ In support of their view that TPK lacks accountability in its administration of MWP funds, the claimants cite the fact that TPK has not supplied the NZMC with financial reports for the MWP, in spite of requests that it do so.¹⁰ In relation to their claim that TPK has been deficient or wasteful in its management of Māori Wardens' funding, the claimants state that, in at least one year, TPK 'underspent significantly' the funds available for the MWP. This was 'despite there being more requests for grants than MWP funds available, and despite the need of the NZMC/DMCS for funds to support the performance of their statutory responsibilities to Wardens under the 1962 Act'.¹¹ For claimants, this alleged mismanagement on the part of TPK provides proof that Māori Wardens' funding could be managed far more efficiently by the NZMC.¹²

In addition to general mismanagement of Māori Warden funding, the claimants also suggest that TPK has unfairly favoured some Māori Wardens' groups over others in its allocation of grants under the \$1 million contestable fund available through the MWP (explained further below). In particular, the claimants say that TPK has, through the MWP, favoured wardens' groups associated with Wardens' Associations or the NZMWA while declining to fund wardens' groups associated with DMCS or the NZMC. This, in the claimants' view, has been prejudicial to the interests of those groups who have not received funding as well as being detrimental to the

5. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3), p 14

6. Crown counsel, closing submissions (paper 3.3.3), p 14

7. Crown counsel, closing submissions (paper 3.3.3), pp 23–24

8. Claimant counsel, closing submissions (paper 3.3.5), p 38

9. Claimant counsel, closing submissions (paper 3.3.5), p 52

10. Claimant counsel, closing submissions (paper 3.3.5), p 51

11. Claimant counsel, closing submissions (paper 3.3.5), pp 38–39

12. Diane Rachel Black, brief of evidence, 21 February 2014 (doc B5), p 9

claimants and Māori more generally by causing divisions among Māori Wardens. In this regard, Des Ratima has stated that the MWP has ‘had a separating effect which has had a direct impact on the cohesion and interaction of Māori Wardens who are funded under that project and those that choose not to accept that funding or who are not eligible to receive that funding.’¹³ Diane Ratahi presented evidence that the fact that some wardens’ groups have received MWP resources while others have not has created ‘uncertainty and resentment within the Wardens,’ which has in turn created difficulties for District Māori Councils in managing wardens.¹⁴ In allegedly favouring some wardens’ groups over others, the claimants suggest that the Crown has breached the Treaty principle of equity, as well as UNDRIP.¹⁵

Further, the claimants suggest that TPK’s administration of funding for Māori Wardens through bodies other than the NZMC and its associated structures is unlawful under the 1962 Act. The claimants rely in particular on their interpretation of section 7(6), or more specifically, on the meaning of ‘allowances’ and ‘remuneration’ in that section, which provides for wardens to be paid ‘remuneration’ or ‘allowances’ for their services through the Māori Associations provided for in the Act.¹⁶

Do the funds distributed through the Māori Wardens Project constitute the payment of ‘remuneration’ or ‘allowances’ to wardens? The claimants urge the Tribunal to adopt what they call a ‘plain meaning’ interpretation of the term ‘allowance.’ Citing the 1979 *Collins English Dictionary*, the claimants state that ‘allowance’ extends to money set aside ‘to compensate for something or to cover special expenses.’ If interpreted in this way, according to the claimants, TPK’s provision of funding to wardens ‘for uniforms, travel expenses and the like’ represents a breach of the 1962 Act as well as Treaty principles.

The claimants’ argument that TPK’s provision of funding to Māori Wardens constitutes a breach of section 7(6) of the 1962 Act is denied by Crown counsel, who state that funding through the project is not allocated to providing remuneration or allowances. In this respect, the Crown has drawn our attention to a document entitled ‘Guidelines for Māori Wardens Funding programme’ which expressly prohibits the use of MWP funds for (among others) ‘Wages or salaries to undertake warden work duties’ and ‘Koha, gifts or loans.’¹⁷

We turn first to examine the claim that TPK has been inefficient or wasteful in its management of funding for Māori Wardens.

13. Desma Kemp Ratima, brief of evidence, 21 February 2014 (doc B4), pp3–4

14. Diane Mary Kumea Ratahi, brief of evidence, February 2014 (doc B6), p 5

15. Claimant counsel, closing submissions (paper 3.3.5), p 39

16. Claimant counsel, closing submissions (paper 3.3.5), pp 35–36

17. Crown counsel, closing submissions (paper 3.3.3), p 20

8.3 HAS TPK BEEN INEFFICIENT OR WASTEFUL IN ITS MANAGEMENT OF GOVERNMENT FUNDING ALLOCATED TO MĀORI WARDENS?

Here we consider the claimants' allegation that TPK has been inefficient or wasteful in its management of Government funding allocated to Māori Wardens, and that TPK's management of the MWP represents poor public sector practice which 'runs contrary to the 1962 Act's emphasis on accountability'.¹⁸

The claimants cite two main pieces of evidence in support of their allegations on this point:

- ▶ that 52 per cent of the costs of the MWP between 2007–08 and 2010–11 were absorbed by TPK's administration costs (here, the claimants refer us to document B35 on our record of inquiry, which is TPK's response to a 2013 Official Information Act request submitted by the NZMC).¹⁹
- ▶ the evidence of Te Rauhuia Clarke at hearings, which confirmed that in one year TPK had significantly underspent the money available to it from Māori Warden funds.²⁰

Thus, according to the claimants, the Crown's decision to bypass the NZMC and DMCS (and to administer the funding directly) has allowed TPK to absorb more than half of the wardens' money in administration costs, and has also resulted in money that should have gone to wardens being lost due to underspending. These outcomes, they say, stem from the fundamental breach that the Crown is administering the MWP instead of the Māori institutions mandated under the Act, and are in breach of 'the partnership, active protection and utmost good faith' principles of the Treaty.²¹ The claimants also underlined that TPK cannot be made accountable to Māori communities for its administration of MWP funding, whereas the democratic foundation of the Māori institutions in the Act provides for their accountability.²²

We deal first with the allegation that TPK's financial management of the MWP funding represents poor public sector practice, and that a disproportionate amount of funds intended for Māori Wardens has been soaked up by TPK's own administration of the project.

An independent evaluation of the MWP commissioned by TPK, first released in 2012 and available to the public from February 2013, provides a convenient starting point for our discussion. In chapter 7, we discussed this evaluation in respect of training (see section 7.4.3). Research for the *Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010* was carried out between June and December 2011, by FEM (2006) Ltd, a team of independent consultants led by

18. Claimant counsel, closing submissions (paper 3.3.5), p 52

19. Claimant counsel, closing submissions (paper 3.3.5), p 38; transcript 4.1.1(a), p 239; Michelle Hippolite to Karen Waterreus, 1 March 2013 (claimant counsel, papers provided by Te Puni Kōkiri on 1 March 2013 to the NZMC in response to an Official Information Act request, 19 March 2014 (doc B35), p 1)

20. Claimant counsel, closing submissions (paper 3.3.5), p 39

21. Claimant counsel, closing submissions (paper 3.3.5), pp 38–39

22. Claimant counsel, closing submissions (paper 3.3.5), pp 15, 36–39

Kataraina Pipi.²³ The evaluation adopted a kaupapa Māori approach, summarised in the report as a method which privileges a Māori world view and is grounded in Māori values and principles. Under this approach, the MWP's performance was assessed against 12 evaluative criteria and nine outcomes.²⁴ The evaluators gathered material using a variety of methods. These included interviews with 'key national stakeholders', including members of the (actually defunct) MWP Governance Board and the project team, the Police, the NZMC, and the NZMWA. In addition, the evaluation team visited seven regions: Te Taitokerau, Tāmaki Makaurau, Whakatane–Rotorua–Hamilton–Hauraki, Taranaki–Whanganui, Te Tairāwhiti–Tākitimu, Te Whanganui ā Tara–Aotea, and Te Waipounamu. In these regional visits, the evaluators carried out further interviews with TPK Regional Coordinators and Police Iwi Liaison Officers. They also held eight hui with wardens, attended by approximately 130 Māori Wardens in total.²⁵

While the report analysed only the first four years of the project, we consider it a useful guide as to how well the MWP has operated. The report was conducted independently from TPK but we note several reservations in this respect. First, the evaluative criteria addressed in the report were 'developed in consultation with key evaluation stakeholders': the MWP Board, the Project Team, and Regional Coordinators. Had the evaluation team consulted the DMCS or NZMC on the criteria against which the MWP should be evaluated, they may well have arrived at different evaluative criteria. Secondly, the regional visits carried out by the evaluation team, while including visits to each Regional Coordinator, three police liaison officers, and one NZMWA representative, as well as hui attended by approximately 130 Māori Wardens, did not include any visits to NZMC or DMC representatives. This seems an unusual omission given that DMCS have the exclusive statutory responsibilities for controlling and supervising Māori Wardens, subject to the overall direction of the NZMC, and there were active DMCS in some of the regions visited.

The 2012 evaluation report provides us with the most detailed information we received on the relative allocation of funding under the MWP. The authors of that report found that, between 2007 and 2010, TPK's allocation of funds through the project was allocated as follows:

- ▶ 28 per cent or \$3.6 million on regional coordination;
- ▶ 24 per cent or \$3.2 million on the Funding Programme;
- ▶ 21 per cent to 'Other' (including project team staff and management, governance board costs, head office set up costs, and depreciation);
- ▶ 16 per cent or \$2 million on training;
- ▶ 6 per cent on vans;

23. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc C15), pp 819–878). The evaluators' report was originally filed as document A8 on the Tribunal's record of inquiry, however we are referencing document C15, which is more legible.

24. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc C15), p 855)

25. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc C15), pp 840–841)

- ▶ 4 per cent on uniforms; and
- ▶ 1 per cent on safety equipment.²⁶

While the claimants cite TPK's response to a 2013 Official Information Act request as their source for the figure of 52 per cent absorbed by the cost of the MWP's administration, the original source for this figure appears to have been the 2012 evaluation report. The figure of 52 per cent for the MWP's administrative costs is derived from adding the percentages spent on 'Regional Coordination' and 'Funding Programme' together.²⁷

We also note the evidence supplied to us by Kim Ngārimu that TPK has no control over the proportion of funding 'to be used within Te Puni Kōkiri' and the proportion which must 'flow externally' to Māori Wardens, as this is determined by Parliament.²⁸ However, it should also be noted that Parliament's decision on the allocation of funding was, at least in part, informed by budget estimates for the project prepared by TPK.

While the claimants have asked us to make a finding that TPK's management of the MWP funds represents an example of poor public sector practice, they have failed to signal to us what they feel would be an appropriate level of spending on administration. The logic by which the claimants have arrived at the 52 per cent figure for the project's administration is also problematic. It is unclear to us how a funding system involving local-level community organisations such as Māori Wardens' groups could be effectively administered other than through some kind of Regional Coordination system. We do not agree with the claimants that money spent on the Funding Programme, which (as we discuss further in section 8.4 of this chapter) comprises a pool of contestable funding that flows outwards to Māori Wardens groups, can be categorised as having been 'internally absorbed' by TPK's own administration.²⁹

The most detailed evidence we have on the allocation of funding under the MWP is through the report of the evaluation team. The evaluation team assessed TPK's expenditure under the MWP against the measure of 'Allocative efficiency', which assessed the extent to which: 'The available funding was allocated to an appropriate overall mix of resources – nationally, regionally and locally – that is, no alternative allocation of resources would have led to better outcomes.' In relation to this measure, the evaluation team found the MWP to have 'Mostly Achieved' the requisite standard. They noted: 'all components of the investment contributed effectively to building Māori Wardens' capacity and capability – so there were no areas of significant wastage within the overall investment mix.'³⁰ Rather than criticising the level

26. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc c15), p 865)

27. Claimant counsel, closing submissions (paper 3.3.5), p 38; Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc c15), p 865); Transcript 4.1.1(a), p 239

28. Transcript 4.1.1(a), pp 325–326

29. Transcript 4.1.1(a), p 239

30. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc c15), p 864)

of funding allocated to Regional Coordination, as the claimants have done, the evaluation team recommended ‘additional investment’ in Regional Coordinators as a way to ‘improve value for money of the overall investment.’³¹ Thus, the independent evaluators did not raise serious concerns about the way that MWP funds were allocated in the first four years of the project’s operation, and in fact recommended increased investment under the ‘Regional Coordination’ category.

Based on the evidence before us, we dismiss the claimants’ assertion that TPK has been deficient in its spending allocations under the MWP. While it is undoubtedly true that the costs of the MWP would have been reduced if the project had relied upon NZMC volunteers, we have already accepted that dysfunction among DMCS back in 2007 meant that TPK could not responsibly channel the funding through the council structure (see chapter 7). TPK had little choice but to establish some kind of system of regional coordination to administer its locally based funding programme.

We now address the second aspect of the claimants’ allegation: that TPK has been wasteful in its administration of Māori Wardens’ funding and has, in at least one year, significantly underspent the funds available to it for Māori Wardens.

As previously stated, Te Rauhuia Clarke acknowledged at our hearing that TPK underspent money appropriated for the MWP on at least one occasion, with the unspent funds being returned to Treasury at the end of the financial year. Mr Clarke’s recollection was that, on this occasion, the unspent money was returned to TPK for use in the following financial year.³²

The minutes of the Māori Wardens Advisory Group, tabled as evidence by TPK, suggest that the underspend occurred in the 2007–08 financial year. At a meeting of the group in June 2008, Te Rauhuia Clarke drew the members’ attention to a \$700,000 shortfall in MWP spending, which he attributed mainly to issues with getting Māori Wardens measured for their uniforms.³³ At this point, the Advisory Group members asked TPK to investigate whether this unspent funding could be rolled over for use in the next financial year, but the surviving minutes do not confirm whether this occurred.

Due to the limited nature of our evidence on TPK’s expenditure under the MWP, we can only consider specific underspends in respect of the contestable fund. Documents obtained by the NZMC via an Official Information Act request provide the following financial data relating to TPK’s expenditure of this fund (see table opposite).

This suggests that, over the four financial years from 2007–08 to 2010–11, TPK has underspent the amount available to Māori Wardens groups through the contestable fund by a total of \$119,454. The two most significant underspends in this four-year period occurred in the 2007–08 and 2009–10 financial years. Evidence

31. Te Puni Kōkiri, ‘Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010’ (Crown counsel, TPK document collection (doc C15), p 864)

32. Transcript 4.1.1(a), p 369

33. Minutes of Māori Wardens Advisory Group Hui, 13 June 2008 (Crown counsel, TPK document collection (doc C15), pp 651–652)

Financial year	Amount paid (excluding GST)	Amount available	Overspend (underspend)
2007–08	\$256,084	\$300,000	(\$43,916)
2008–09	\$1,006,024	\$1,000,000	\$6,024
2009–10	\$927,983	\$1,000,000	(\$72,017)
2010–11	\$990,455	\$1,000,000	(\$9,545)
Total	\$3,180,546	\$3,300,000	(\$119,454)

Māori Wardens Contestable Funding Programme

Source: Claimant counsel, papers provided by Te Puni Kōkiri to NZMC in response to Official Information Act request, 19 March 2014 (doc B35), p 14

from the minutes of a meeting of the Māori Wardens Advisory Group in May 2008 indicate that, at that stage in its first financial year, the project team was ‘under pressure to deliver 300k to [the] six regions’ with \$150,000 of the funds then remaining unspent. The reason for the delays was that many wardens’ groups did not have legal entity status, meaning it was necessary to search for other organisations which could offer ‘umbrella’ status to such groups in order to secure funding.³⁴ As we will see, however, TPK chose not to accept DMCS as umbrella organisations for wardens, which might have assisted matters in some of the districts. Even so, TPK was able to reduce its underspend from \$150,000 in May 2008 to \$43,916 by the end of the financial year in June. The start-up issues appear to have been resolved by the following year, in which TPK recorded a \$6,000 overspend. We received no evidence on the reason for the \$72,000 under-spend in the following year.

Based on the limited evidence available to the Tribunal on MWP expenditure, it seems that the most significant underspend of MWP funds occurred in the first year of the scheme, in 2007–08. This initial underspend appears to be associated with teething difficulties in the implementation of the scheme, and does not appear to have been repeated in later years. We do not have any information as to why the second underspend occurred in 2009–10. In our view, an overall result of a 3.6 per cent underspend over four years is acceptable in the circumstances of a complex new project, and should not be considered problematic. We therefore dismiss this aspect of the claimants’ argument.

8.4 HAS THE CONTESTABLE FUNDING AVAILABLE UNDER THE MWP BEEN ALLOCATED IN SUCH A WAY AS TO FAVOUR WARDENS ALIGNED WITH WARDENS’ ASSOCIATIONS OR THE NZMWA?

In this section, we assess the claimants’ assertion that TPK has, in its distribution of MWP funds, unfairly favoured wardens’ groups aligned with Wardens’ Associations

³⁴ Minutes of Māori Wardens Advisory Group Hui, 21 May 2008 (Crown counsel, TPK document collection (doc C15), pp 649)

or with the NZMWA over those linked with the NZMC. This aspect of the claimants' case relates specifically to the allocation of the annual contestable fund available to Māori Wardens' groups (currently \$1 million).

We begin by outlining the funding criteria for accessing this fund, and the application process. We consider evidence from Māori Wardens on how the funding scheme has operated in their district, and then provide our assessment of the claimants' case in this regard.

8.4.1 Criteria for contestable funding

The \$1 million annual fund currently available for Māori Wardens' groups has three components:

- ▶ An 'Operational Assistance Fund' of \$700,000: This fund is available to support local or district level Māori Wardens' groups with their daily running costs and is available for groups involved in one or more of the following activities: 'patrolling', 'event safety', 'security', and 'community support'.³⁵
- ▶ A 'National Event Fund' of \$100,000: This funding supports Māori Wardens to participate in national events. To qualify for this funding, the event must be 'nationally recognised and significant', be an annual or biennial event, and be a 'kaupapa Māori hui involving Māori from throughout the country'. Events that have received funding in the past include Waitangi Day celebrations, Rātana, Te Matatini, Koroneihana, and the NZMWA's national conference.³⁶
- ▶ A 'Capacity and Capability Fund' of \$200,000: This funding pool is targeted towards building the capacity of district-level Māori Wardens' groups. According to Te Rau Clarke, this fund has in the past mainly been used for 'locally identified specialised training' such as 'Site Traffic Management Supervision' training, traffic control, financial management training, and wānanga for te reo and tikanga.³⁷ The funds may also be used to pay for professional services required by an organisation, such as accounting services or governance mentoring.³⁸

While wardens' groups are the ones who decide how they spend funds awarded under the MWP, the project does not permit spending on the following items: 'Capital items (including land and buildings) over the value of \$2,000; Wages or salaries to undertake Warden work duties; Koha, gifts or loans; Alcohol; Payment of fines; International Travel'.³⁹

The funding criteria under which Māori Wardens' groups are able to access grants through the contestable funding pool are set out in guidelines for Regional

35. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 121–122)

36. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 121–122)

37. Te Rauhuia Clarke, brief of evidence (doc B14), p 8

38. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 121–122)

39. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 143)

Coordinators (updated in 2009 and 2011) and in a TPK information sheet for applicant groups. We set out the details of the funding criteria, and the process by which applications are evaluated and decided against these criteria, in appendix v. Here, we provide a brief summary.

The criteria specify that, in order to access funding through the scheme, applicants must be a 'Māori Warden group'. Examples of eligible groups include 'local Sub-Associations or Branches' or 'District, Regional or national organisations who have Māori Wardens and/or Sub-Associations as members, for example a District Māori Wardens Association'.⁴⁰ An applicant group must represent five or more warranted Māori Wardens, and demonstrate that it is a functioning legal entity with a sound governance structure, well-managed accounts, and demonstrable community support. Applicants also need to supply a budget and details for how the money will be spent and accounted for, what wardens' activities will be funded, and how the community will benefit.⁴¹

The funding guidelines for Regional Coordinators also set out in detail the process which TPK must follow in assessing each funding application, and in monitoring successful applications. At our hearing, TPK witness Te Rauhuia Clarke agreed that it would be difficult to 'imagine a closer control and supervision of the way the funds are to be properly utilised'.⁴² Regional Coordinators play the primary role in the field. They explain the funding possibilities and processes to Māori Wardens' groups, including holding workshops to ensure that key representatives of wardens' groups understand what they need to do. After receipt of the applications, the coordinators check for missing information (which is then sought from the applicants) and assess the applications for how well they meet the criteria.⁴³

This initial assessment is forwarded to the project team at head office. A check is made to ensure that the wardens involved have current warrants, and then the team makes a 'strategic appraisal' of each application on the basis of the Regional Coordinators' recommendations.⁴⁴ Regional Coordinators then work with successful applicants to set up a funding and monitoring regime. Once agreements have been signed, all invoices must include a description of the service provided or the purpose towards which funding is to be put. According to a sample invoice provided with the funding guidelines, examples of descriptions of funding use might include activities such as 'To undertake street patrol', to 'Provide Community support and advocacy', or 'Assist with local Marae hui and events'.⁴⁵

40. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 142)

41. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 123–124)

42. Transcript 4.1.1(a), p 380

43. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 131–132)

44. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 132)

45. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 196)

Under the Operational Assistance and National Event Funds, payments are made in two instalments: 90 per cent of the grant is paid out following the signing of the funding agreement, and the remaining 10 per cent is paid upon the completion of an accountability and a monitoring report.⁴⁶ Multiple payment instalments are possible under the Capacity and Capability fund, depending upon project needs.

Towards the end of the financial year, successful applicants must supply a 'Group Accountability Report', listing the funding outputs and the activities carried out by the group which relate to those outputs, and explaining how the group's activities have benefited their local community.⁴⁷ At the same time, Regional Coordinators monitor all such groups on a bi-monthly basis and then make a formal report after receipt of the group's accountability report. This formal monitoring report comments on the group's activities, its expenditure of MWP funds, its strengths and weaknesses, and any potential opportunities or risks.⁴⁸ As noted above, final payments are contingent on the acceptability of these accountability and monitoring reports to TPK.

Having set out the criteria and process by which Māori Wardens' groups may apply for and receive funding from the MWP's contestable funding pool, we now turn to the evidence we received from Māori Wardens and their representatives as to how this funding system has operated in individual districts.

8.4.2 Evidence of the operation of the contestable fund

It is clear from the evidence we have heard in this inquiry that, for those groups who have benefited from the funding and other resources available under the project, MWP funding has enabled them to expand and enhance their existing work as Māori Wardens. Linton Sionetali, a Māori Warden who oversees the Ngā Wātene Māori O Te Rohe Pōtae Regional Association, said that involvement in the project has been 'rewarding' for the Wardens' sub-associations under his group's umbrella: 'Access to resources and training has provided the Māori Wardens in our region confidence and reassurance in carrying out their duties with the communities they service.'⁴⁹ Jordan Haines, of the Raukawa District Māori Wardens Association, told us that participation in the project has been highly beneficial both for himself personally and for the Māori Wardens in his district: 'Access to resources and training has provided me with confidence and reassurance in the mahi that I carry out as a Māori Warden within our district, community, iwi, and on our Marae.'⁵⁰ Crown witness Ngaire Schmidt, of the Tāmaki ki Te Tonga Māori Wardens Association, told

46. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 144)

47. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 199–201)

48. 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators', 1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 203)

49. Linton Sionetali, brief of evidence (doc B34), p 2

50. Jordan Winiata Haines, brief of evidence (doc B28), p 3

us that her association has been able to access funding, training, and ‘some wonderful resources that have prepared us for the jobs we do.’⁵¹

Other evidence presented to us, however, suggests that funding for Māori Wardens’ groups through the MWP has been highly uneven both within and between different districts. We heard from witnesses from the Aotea District, for instance, that a high level of division exists among wardens’ sub-associations in the district, with some of these associations receiving project funding while others do not. Māori Warden Mauriri Haines Winiata told us that: ‘Aotea District is a big district and since the project began . . . we have two groups in most of the areas, Taranaki, Whanganui, Taihape and some groups get funded by the project and some don’t’. Her own wardens’ group in Taihape ‘is one group that doesn’t get funded by the project.’⁵² Another Aotea witness, Diane Ratahi, of the Aotea DMC, told us that wardens’ sub-associations in Aotea are currently split between those who align with the DMC and those who are connected to the Aotea District Māori Wardens’ Trust, which acts as an umbrella association for a number of sub-associations in the region. According to Ms Ratahi, those sub-associations affiliated with the trust receive funding while those associated with her own DMC do not.⁵³

Whanganui Māori Warden, Wilma (Billie) Mills, told us that, while she supports some aspects of the MWP, she objects to the fact that some groups are receiving funding and training while others are not.⁵⁴ However, her evidence also suggests that the situation in Aotea may currently be in flux, with some groups that formerly did not receive MWP funding now being funded. Ms Mills informed us that, of the two Māori Wardens’ groups in Taihape, only one (aligned with the Aotea Māori Warden Association Trust) received MWP funding, while the other did not.⁵⁵ However, Ms Mills also informed us that the divisions between these two groups have recently been resolved.⁵⁶ Similarly, while in Whanganui there were previously two Māori Wardens’ groups, only one of which was funded through the MWP, both groups are now funded ‘as a result of us pushing for equality across both groups.’⁵⁷

The financial records of the MWP, placed before this inquiry as part of the evidence of Te Rauhuia Clarke, confirm that the Aotea District Māori Wardens Trust has been the recipient of successive grants under the MWP, mainly for training and district coordination purposes.⁵⁸ Evidence from other districts also suggests that a significant level of MWP funding has been channelled to District Māori Wardens’ Associations acting as umbrella organisations for a range of smaller sub-associations. According to Crown witness Ngaire Schmidt, the Tāmaki ki Te Tonga District Wardens Association has previously acted as an umbrella organisation for a number

51. Ngaire Schmidt, brief of evidence (doc B16), p 2

52. Transcript 4.1.1(a), p 135

53. Transcript 4.1.1(a), pp 141–142

54. Transcript 4.1.1(a), pp 131–132

55. Transcript 4.1.1(a), p 143

56. Wilma Tumanako Mills, brief of evidence, 21 February 2014 (doc B3), p 8

57. Wilma Mills, brief of evidence (doc B3), p 8

58. Māori Wardens Funding Programme 2007–2014 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 210–217, 221–225)

of wardens' sub-associations in South Auckland. MWP funds accessed in this way have provided 'key local training, financial management and administrative support to the District and our associated subs'.⁵⁹ In Te Waipounamu, the Nelson-based Te Waipounamu Māori Wardens Association has, in the past, received substantial grants of MWP funds to 'provide district coordination and support to sub associations throughout the South Island'.⁶⁰

The evidence of Gloria Hughes confirms that, prior to 2012–13, the NZMWA itself acted as an umbrella organisation for up to 28 wardens' sub-associations in the areas of Waiariki, Waikato, Maniapoto, Hauraki, Tauranga Moana, Aotea, Tūwharetoa, Raukawa, Tāmaki ki Te Tonga, and Tāmaki Makaurau.⁶¹ According to Mrs Hughes, the NZMWA has also, in past years, acted as an umbrella body for sub-associations both 'within and outside of the Association membership'.⁶² Since TRK ceased funding the NZMWA over concerns relating to its governance and financial accountability, many of these sub-associations have come under the umbrella of Ngā Wātene Māori O Te Rohe Pōtae Regional Association. The association's regional manager, Linton Sionetali, told us that his organisation has affiliated wardens' sub-associations in Waikato (Huntly, Kirikiriroa, Morrinsville), Hauraki (Thames, Paeroa, Waihi), Maniapoto (Te Kūiti), Mataatua (Whakatane, Tāneatua, Waimana), Tauranga Moana (Tauranga, Matakana Island), and Waiariki (Taupō).⁶³ In previous financial years (2008–09, 2009–10, and 2011–12), the NZMWA also received funding through the project's 'National Event Fund' to assist it in holding its national conferences.⁶⁴

The financial records of the MWP thus make it clear that many District Māori Wardens' Associations, and the sub-associations that come underneath them, have been able to benefit substantially from funding grants through the MWP. There is nothing in the funding criteria themselves to suggest that such groups have been favoured for funding. Any wardens' group may apply. Apart from the evidence of the number of successful applications by District Māori Wardens' Associations, the claimants have not been able to point us to any evidence of equivalent applications by DMCS, or Wardens' Trusts or Associations affiliated with DMCS, that have been turned down for Government funding.

Rather, the claimants' view that wardens' sub-associations affiliated with the DMCS have been substantially disadvantaged in terms of project funding is countered by the evidence that a range of wardens' groups aligned with DMCS have benefited – in some cases substantially – from project funding. Billie Mills is involved in the Whanganui Māori Wardens Trust, which accounts for 32 Māori Wardens operating in the Whanganui region and is owned by a local iwi trust, Tūpoho Trust,

59. Ngairé Schmidt, brief of evidence (doc B16), p 2

60. Māori Wardens Funding Programme 2007–2014 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 222)

61. Tangihaere Gloria Hughes, brief of evidence (doc B31), p 2

62. Gloria Hughes, brief of evidence (doc B31), p 2

63. Linton Sionetali, brief of evidence (doc B34), p 2

64. Māori Wardens Funding Programme 2007–2014 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 213)

representing the hapū and marae of the lower reaches of the Whanganui River.⁶⁵ The trust works closely with the Aotea DMC. The trust receives income from security contracts, but also receives MWP funding to cover ‘basic administration and rent costs’, which it arranges through its Regional Coordinator.⁶⁶ This funding is confirmed in the MWP funding information provided by Te Rau Clarke, which shows that in the last two financial years the Whanganui Māori Wardens Trust has received annual grants of \$21,764 and \$23,200 respectively for the purpose of ‘providing a safe and secure environment in and around the Whanganui District.’⁶⁷ The MWP’s financial records also show that an organisation named the Whanganui Māori Wardens Association received annual grants for the same purpose between 2008–09 and 2011–12, although we are unable to confirm whether this and the Trust are the same entity.

Tāmaki ki Te Tonga DMC treasurer and NZMC representative Diane Black is also secretary of the Manurewa Māori Wardens’ Sub-association, which aligns to the DMC. Ms Black describes her sub-association as largely self-funded: ‘We pay for our own uniforms, our safety gear, our wet weather gear and for the running of our van, expenses which the association covers through koha.’⁶⁸ However, her brief of evidence also suggests that her sub-association has previously received a \$4,000 grant from project funds.⁶⁹ Financial records from the MWP suggest that the Manurewa Māori Wardens sub-association has received several grants from MWP funds, including \$8,600 in the 2007–08 financial year, \$4,000 in 2008–09 and \$13,300 in 2010–11, although it has received no further MWP funds since that year.⁷⁰

The example of the Tākitimu Māori Wardens Trust, the subject of evidence by claimant Des Ratima, confirms that some district-level wardens’ bodies aligned with DMCs have benefited from MWP funds over a number of years. Mr Ratima, now the interim chair of the Tākitimu DMC, was among a group of Māori Wardens who founded the Tākitimu Māori Wardens Trust at the beginning of the MWP as a way of accessing project funding. All the chairs of the participating sub-associations are represented on the trust, and work alongside their Regional Coordinator to access Project funding.⁷¹ The trust also works closely with the Tākitimu DMC. At the time of its establishment, the trust acted as an ‘umbrella’ organisation for two sub-associations. This number now stands at six. The trust holds monthly meetings, at which each sub-association presents their accounts from the previous month, and the accounts are approved and paid. Through this system, according to Mr Ratima, the sub-associations ‘know how much funding they have’ and have ‘access

65. Wilma Mills, brief of evidence (doc B3), p 4

66. Wilma Mills, brief of evidence (doc B3), p 6

67. Māori Wardens Funding Programme 2007–2014 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 221, 224)

68. Transcript 4.1.1(a), pp 173–174

69. Diane Black, brief of evidence (doc B5), p 16

70. Māori Wardens Funding Programme 2007–2014 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 205, 206, 212)

71. Transcript 4.1.1(a), p 64

to that funding through the trust at any time'. This has led to a 'high level of confidence amongst our people'.⁷²

The financial records of the MWP indicate that the Tākitimu Māori Wardens Trust has been the recipient of some \$250,000 of project funds between the 2008–09 financial year and the current financial year.⁷³ According to Mr Ratima, a portion of this funding goes to help pay for the trust's administrator to manage the distribution of vehicles and uniforms (on behalf of the project team).⁷⁴ Individual sub-associations within the trust are free to make their own individual applications for project funding, and so far a number of associations affiliated with the trust – such as the Heretaunga and Ahuriri Māori Wardens sub-associations – have received individual grants through the MWP.⁷⁵

This is not to deny that a number of District Māori Wardens' Associations aligned with the NZMWA, as well as the NZMWA itself, have in the past been highly successful in attracting Government funding through acting as umbrella organisations for a range of wardens' sub-associations in their area. It is easy to see how the perception of institutional favouritism by the TPK administrators of the project may have arisen. Such an allegation has, however, been strenuously denied by Te Rau Clarke, who was vehement that membership of or alignment to the NZMWA did not affect funding decisions under the MWP:

So, if preferential treatment – well, there's no preferential treatment given to the New Zealand Māori Wardens Association members at all. I have no idea how many Māori Wardens belong to the New Zealand Māori Wardens Association. I have no idea how many belong to the New Zealand Māori Council. What I do know is this, and this is my view of a reality, there are some within this room who are tūturu ki te Māori Wardens Association, there are others who are tūturu ki New Zealand Māori Wardens – oh Māori Council and its districts, there is a third group that affiliate or don't mind supporting either of those rōpū, and there are others who just wanna be a Māori Warden, and don't really care about the other stuff that goes on above it. Now, to me, that kind of sums up where Māori Wardens are at the moment.⁷⁶

It is plain from a perusal of 20 pages comprising the annual allocations schedules that a significant proportion of MWP funding has flowed to wardens' associations aligned with District Māori Wardens' Associations or the NZMWA. It must be remembered, however, that district and sub-associations are not necessarily affiliated to the NZMWA. First, there are two rival camps within the NZMWA, with some

72. Transcript 4.1.1(a), p 64

73. Māori Wardens Funding Programme 2007–2014 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 205–225) Mr Clarke's evidence actually shows a range of \$254,630 to \$290,530 because of a typographical error in the records for the 2010–11 financial year, which lists the Tākitimu District Māori Wardens Trust as the recipients of a grant to 'provide district wide coordinated services of Māori Wardens sub associations throughout South Auckland.'

74. Transcript 4.1.1(a), p 75

75. Māori Wardens Funding Programme 2007–2014 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 205–209, 213–217, 221–224)

76. Transcript 4.1.1(a), p 355

aligning themselves to one part of the national executive and some to the other. A number of District Wardens' associations – such as Aotea and Te Waipounamu – have left the NZMWA and declared themselves 'independent' of either the NZMWA or the DMCS. Secondly, as we have seen, significant numbers of wardens' sub-associations in each district are not aligned with District Māori Wardens' Associations but affiliate to DMCS, or support both.

Further, it is a major step to move from a statement of fact that district wardens' associations, some aligned with the NZMWA, have benefited substantially from MWP funds, to a finding that the reason for that fact is some sort of institutional favouritism by the TPK administrators of the project, as is alleged by the claimants. We also need to make the point that apart from the silent evidence of the number of successful applications by sub-associations or associations that affiliate to or align with the NZMWA, the claimants have not been able to point to any document, or piece of correspondence, or other evidence that supports their conclusion.

Moreover, as we have seen from the model of the Tākitimu District Māori Wardens' Trust, there appears to be nothing to prevent a wardens' group aligned with a DMC from acting as an umbrella for funding purposes on behalf of a range of Māori committees or wardens' associations.

On the other hand, we did receive evidence of other reasons which collectively may explain what appears to be an unbalanced outcome as a matter of fact. That evidence included the following features:

- ▶ The fact that there is a major groundswell of opinion, for a range of reasons, among Māori Wardens in favour of a concept that the wardens' associations and sub-associations at both national and district levels should operate either independently of the council structure or as a complement to it. People of that view were entirely comfortable about being able to apply directly for funding allocations rather than having to use their DMC to do so.⁷⁷
- ▶ The very fact of DMCS being dysfunctional in many areas meant that there is, or was, no DMC presence operating in those areas to even be able to make applications for funding.
- ▶ DMCS themselves are not considered a wardens' group within the meaning of the MWP funding criteria, and so cannot act directly as an umbrella group for funding applications. This point was clarified for us in a post-hearing exchange between Karen Waterreus and Te Rau Clarke.⁷⁸ Mr Clarke stated: 'We have not funded DMC groups or in fact the NZMC from Project funds since the Project started in 2007 preferring to stay true to the Project's intent and focus on building warden capacity and capability.'⁷⁹
- ▶ There is a view among some Māori that the voluntary aspect of Māori Wardens is important and maintains tino rangatiratanga which is lost if one accepts

77. See, for instance, Linton Sionetali, brief of evidence (doc B34); Gloria Hughes, brief of evidence (doc B31); Haki Wihongi, brief of evidence (doc B30); Clare Matthews, brief of evidence (doc B29); Jordan Haines, brief of evidence (doc B28); Ngairi Schmidt, brief of evidence (doc B16).

78. Karen Waterreus, brief of evidence, 17 October 2014 (doc C22), p5; Te Rauhuia Clarke, brief of evidence, 28 October 2014 (doc C25), pp 2–3

79. Te Rauhuia Clarke, brief of evidence (doc C25), p 3

Crown funding and hence undergoes the financial accountability to the Crown and supervision by Crown organisations that comes with such funding. Some Tāmaki wardens, for instance, have made a conscious decision to remain outside of the MWP. According to Diane Black of the Tāmaki ki Te Tonga District Māori Council, three out of the nine Māori Warden sub-associations connected to the DMC have chosen to go without TPK funding.⁸⁰ In West Auckland, an area with high concentrations of Māori Wardens, according to Titewhai Harawira, the Māori Wardens have opted to remain outside of the Māori Wardens Project and instead rely solely on the support of their community and local businesses.⁸¹

The combination of those matters is, in our view, the reason why the allocations on their face appear to favour ‘Māori aligned to Wardens associations (including the NZMWA)’, as asserted by the claimants. We do not find there is any cogent evidence of a favouring of successful applicants by TPK because of the fact that they are aligned to wardens’ associations (including the NZMWA). Had that been the case, we are quite sure the claimants would have been in the position of being able to call evidence of applications by DMC-aligned wardens’ groups being declined repetitively; such evidence has simply not been produced to us.

In a general sense, the claimants can point to the fact that DMCs are not being funded to carry out their statutory responsibilities towards Māori Wardens and the communities that they serve, and that they cannot act as umbrella organisations to receive funding on behalf of wardens’ groups. Diane Black told us:

New Zealand Māori Council has consistently asked Te Puni Kōkiri for funding to administer the Māori Wardens more effectively but have been denied. When the Wardens’ pūtea was released to Te Puni Kōkiri they negotiated for the New Zealand Māori Wardens Association to administer funding for Youth at Risk programmes and provide some funding for resources.⁸²

Te Rau Clarke and Kim Ngārimu of TPK confirmed that the NZMWA received an annual funding allocation of \$89,000 for delivering Youth at Risk programmes.⁸³

It is very frustrating to the claimants that large sums of money are available to help administer the work of Māori Wardens, and are used partly for administrative purposes by the groups which receive that funding, yet the council system cannot obtain funding for administrative costs. What was described by Diane Black was a general request repetitively made by the NZMC for Government funding assistance to ‘effectively administer the Māori Wardens’, whereas the funding that the NZMWA succeeded in obtaining was for a specific project – the Youth at Risk programme.⁸⁴ The two purposes cannot be equated and do not provide an adequate comparison supporting an assertion of favouritism. Because of its parameters, the MWP itself

80. Transcript 4.1.1(a), pp 173–174

81. Transcript 4.1.1(a), pp 149–150

82. Diane Black, brief of evidence (doc B5), pp 11–12

83. Transcript 4.1.1(a), pp 323, 367

84. Diane Black, brief of evidence (doc B5), p 11

cannot be the vehicle for making Government funding available to Māori councils for their administrative costs (even where those costs relate to wardens) – it has to go to Māori Wardens.

The claimants pointed to the past declining of funding for two specific purposes (a wardens' administration manual and a training programme).⁸⁵ While the claimants might argue the merits of the decision not to fund these two projects, it does not assist the argument of 'favouring', unless there was a comparative granting to the NZMWA-aligned bodies for a similar purpose. That has not been advanced in relation to those two aspects by the claimants. Rather, the training programme was put forward outside of the discretionary fund, as part of the Training Advisory Group's (TAG) deliberations – and was rejected by the Police as the basis for a national training programme, which was one of the reasons the Māori members all withdrew from the TAG. A training programme proposed by Gloria Hughes of the NZMWA was similarly rejected.⁸⁶

Although it is not specifically identified in the claimants' closing submissions as a comparison upon which they rely as demonstrating favouritism, there is one other issue that we should address for completeness. A number of witnesses for the claimants commented on the fact of the NZMWA annual conferences being funded under the project's contestable funding for 'National Events', whereas the only funding the NZMC has received has been its annual allocation, the effect of which inflation has been steadily eroding. However, again, there was no comparative evidence in the sense of any application to the contestable fund for financial support for an NZMC conference for wardens' purposes being declined. Without such comparative evidence, again there is no basis to support a finding of favouritism.

In short, we reject the assertion that the manner of allocation of funding from the contestable fund of \$1 million per year for purposes relating to the Māori Wardens has been the subject of favouritism by TPK in favour of 'Māori who are aligned to Wardens associations (including the NZMWA)'.⁸⁷

8.5 HAS TPK CONTRAVENED THE 1962 ACT IN ITS DELIVERY OF FUNDING TO MĀORI WARDENS?

In terms of MWP funding and the manner in which it is administered, the claimants allege that this aspect of the project may infringe section 7(6) of the 1962 Act, which the claimants argue authorises only Māori Associations to pay remuneration or allowances to wardens for their services.⁸⁸ Payments through the MWP as it is currently configured, therefore, are unlawful payments by an entity which is not a Māori Association. Further, the claimants argue that the payments are made on terms imposed by TPK without reference to DMCS (or the NZMC), contrary to

85. Claimant counsel, closing submissions (paper 3.3.5), p39

86. Diane Black, brief of evidence (doc B5), p10

87. Claimant counsel, closing submissions (paper 3.3.5), p39

88. Claimant counsel, closing submissions (paper 3.3.5), pp 35–36

the 1962 Act.⁸⁹ This submission was cross-referenced to section 2 of the 1962 Act and its definition of a ‘Māori Association’ as an association recognised by the Act. Claimant counsel also submitted that a broad approach to the interpretation of section 7(6) should be adopted by this Tribunal in respect of the term ‘allowance’. If that is accepted, then the claimants contend that the Crown is in breach of section 7(6) by providing funding or a form of allowance through the Māori Wardens Project for ‘uniforms, travel expenses and the like’.⁹⁰

The Crown argues that the Māori Wardens Project is consistent with the 1962 Act. In Crown counsel’s submission, the resources provided do not interfere with the DMCS’ power and authority over the wardens.⁹¹ The Crown considers that section 7(5) is not contravened by it appointing Regional Coordinators to support the project or by providing funding for training and other material support.⁹² There was also no breach of section 7(6) which enables Māori Associations to pay wardens remuneration and allowances.⁹³ The Crown argues that it is not providing remuneration and allowances and that the funding guidelines for the Māori Wardens Project expressly prohibit expenditure on certain items, such as ‘Wages or Salaries to undertake warden work duties’ and ‘Koha, gifts or loans’.⁹⁴

We note that the claimants’ argument that the Crown has acted contrary to section 7(6) must be assessed in light of section 3, which empowers the Minister to administer the Act, and provides for the powers conferred by the Act to be exercised under the ‘general direction and control of the Minister’. Section 7(6) states:

Subject to any regulations made under this Act, a Māori Association may in its discretion pay out of its funds to any Māori Warden exercising functions in its area such remuneration or allowances for his services as it may determine.

We note that there are also provisions that authorise the contribution of funds to Māori Associations (section 24) and the granting of subsidies (section 25), as we set out in chapter 1. However, the funding that has been accessed by wardens under the Māori Wardens Project does not seem to fall under either of these provisions.

The claimants argue that some wardens’ associations have received sums that could be classified as ‘allowances’ but we think nothing turns on that. In our view, the Minister could rely on section 3 to justify making funding contributions to Māori Wardens’ Associations or directly to Māori Wardens. We see nothing in the Act that expressly provides for the payment of funds through the project, but there is equally nothing that expressly prohibits it. Even if we are wrong in reading the Act in this way, it is our view that section 7(6) could only be complemented by any additional sums that wardens may receive through the project. It certainly does not make any such contributions unlawful per se. Finally section 7(6) is worded

89. Claimant counsel, closing submissions (paper 3.3.5), pp 33–34

90. Claimant counsel, closing submissions (paper 3.3.5), p 36

91. Crown counsel, closing submissions (paper 3.3.3), pp 14, 19

92. Crown counsel, closing submissions (paper 3.3.3), p 19

93. Crown counsel, closing submissions (paper 3.3.3), pp 19–20

94. Crown counsel, closing submissions (paper 3.3.3), p 20

as an enabling provision for Māori Associations. It is not worded in a prohibitory manner which, for example, is intended to prevent charities, iwi organisations, or the Crown from making such payments. In our view, the Crown has not contravened the Act in making funding and resources available to Māori Wardens via the Government-administered MWP.

In the end, what really is at issue in this jurisdiction is whether the Crown has acted solely in good faith in providing such contributions or whether it has undermined the authority of the DMCS and the NZMC in doing so, contrary to the principles of the Treaty of Waitangi. That is a matter we address next.

8.6 HAS THE MANNER BY WHICH FUNDING FOR MĀORI WARDENS HAS BEEN ALLOCATED THROUGH THE MWP UNDERMINED THE CAPACITY OF DISTRICT MĀORI COUNCILS TO EXERCISE THEIR POWERS OF CONTROL AND SUPERVISION OVER MĀORI WARDENS?

We turn now to the claimants' charge that the funding mechanism set up under the MWP has undermined the DMCS and represented 'de facto' control and supervision of Māori Wardens by the Crown through the provision of funds to Māori Wardens' groups directly, without the involvement of or consultation with the DMCS or NZMC.⁹⁵

The claimants assert that the ability of local wardens' groups to apply for funding directly through the MWP, without recourse to the DMCS, has undermined the authority of the DMCS by – as Diane Ratahi put it – 'dealing with the Wardens outside of our oversight.'⁹⁶ NZMC secretary Karen Waterreus informed us that the DMCS and NZMC have no involvement in TPK's decision-making on how Māori Wardens funding should be allocated. Ms Waterreus stated at our hearing:

The Council has had no involvement in the processing of funding or the grant approval for the Māori Wardens Project and to my knowledge none of the districts are involved either in providing comment on the applications that go for TPK Māori Wardens project funding.⁹⁷

The lack of publicly available information on how TPK's grants are allocated is, according to Ms Waterreus, a cause of 'anxiety and concern with the districts about who's getting funding and how', as wardens' sub-associations are able to apply for funding directly without going through the District Māori Councils.⁹⁸

It is plain from the guidelines for funding applications under the MWP that it is not only possible, but entirely routine, for wardens' groups to apply for and receive funding under the MWP without reference to their DMCS. As these guidelines demonstrate, wardens' groups applying for funding must first submit their applications

95. Claimant counsel, closing submissions (paper 3.3.5), p 34

96. Diane Ratahi, brief of evidence (doc B6), p 5

97. Transcript 4.1.1(a), p 192

98. Transcript 4.1.1(a), p 192

to their Regional Coordinator. After adding their own recommendations, Regional Coordinators then forward the applications to project team staff for processing. Upon approving a group's application for funding, TPK head office staff must advise both the applicants and their Regional Coordinators of the outcome of the application, but are not required to inform the DMC. Similarly, the monitoring and activity reports which must be submitted by the Regional Coordinators and wardens' groups respectively to account for their use of MWP funds, are not required to be passed through or approved by DMCs. In other words, at no stage in the process set out in these funding guidelines are DMCs required to be consulted or informed of funding applications or their outcomes.

This disjunction between the responsibilities of the DMCs to control and supervise Māori Wardens and the ongoing operational role of TPK in funding wardens through the MWP places a range of practical obstacles in the way of DMCs exercising their statutory powers over Māori Wardens in areas where DMCs are operational. This was starkly illustrated to us by the evidence of Sir Edward Taihakurei Durie at our hearing. Sir Edward advised us that it was only through the claim proceedings that he became aware that in the previous financial year the Raukawa District Māori Wardens Association had received \$71,000 of funding:

I have always been a little bit embarrassed about the fact that we have only 19 Wardens and we need to bring up the numbers. We are one of the smallest numbers of Wardens which is very unfortunate. I think that is largely because we only have one large town in our district and that is Palmerston North but we do need to boost the number of Wardens, we have only got 19 I think. But the amount paid over to our Wardens in our area was \$71,000 in the year to 28 February and that is the first I have heard of it. It hasn't been raised at our District Māori Council meetings and so I don't know if, what use it has been put so that is a bit embarrassing.⁹⁹

Sir Edward's complaint was that this had occurred despite the Raukawa DMC being in full operation and being charged by statute with the exclusive control and supervision of Māori Wardens in the district. Notwithstanding those statutory responsibilities, he found himself in the embarrassing situation as Chair of not knowing that the 19 wardens in his district had received a sum of \$71,000 for warden activity purposes. Sir Edward stressed that he acknowledged and respected the enthusiasm of Jordan Winiata Haines, the Operations Manager of the Raukawa District Māori Wardens Association, but he still emphasised strongly that the DMC should not be in a situation where its statutory responsibilities were ignored.¹⁰⁰

Sir Edward's evidence on this point is confirmed by that of Jordan Haines, who acknowledged that, while his association had, in the past, supplied details of grants received through the MWP as a matter of courtesy, it was under no obligation to

99. Transcript 4.1.1(a), pp 265–266

100. Transcript 4.1.1(a), pp 255–256, 265–266

do so under the terms of its funding agreement with TPK.¹⁰¹ The Tribunal asked Mr Haines whether there was any accountability to the DMC or any DMC supervision of the expenditure of MWP funds. Mr Haines replied: ‘No, there hasn’t, no there hasn’t been.’¹⁰²

No criticism is levelled at Mr Haines by quoting his evidence in that regard. Quite the contrary; as Sir Edward acknowledged, Mr Haines has been an enthusiastic advocate for Māori Wardens in his Raukawa district. But what his and Sir Edward’s evidence highlights is that the responsibilities contained in the Act are not being observed in districts such as Raukawa where the District Māori Council is operative. And the concern is wider than that, in that, as often happens if an ad hoc temporary arrangement continues for any length of time, variations in practice appear to have arisen across the country. We also received evidence of varying levels of reporting to DMCs such as in Aotea, Tākitimu, Tairāwhiti, Tai Tokerau, and Auckland, to name just some.

Moreover, this lack of financial information available to DMCs is not only a recent issue but one which has been previously raised by the councils and the NZMC in communications with Crown representatives. For instance, in a 2009 communication to the Minister of Māori Affairs, Dr Pita Sharples, the NZMC stated:

The R[egional] C[oordinator]s work in complete isolation to DMCs, answer only to Te Rau Clarke, the Manager of the Project team, are totally independent of the DMC and or its Chairman, can issue funding to wardens of their choice for mahi of which the DMC and or the Chairman of the DMC is not aware of.

*Almost without exception, all that the Project Team undertakes, and or the way that they go about it, is in complete contravention of the MCDA. [Emphasis in original.]*¹⁰³

The same point may be made in relation to the NZMC’s access to financial information associated with the project. As previously noted, since the dissolution of the Advisory Group and the virtual demise of the Governance Board, the NZMC has had no official forum to obtain data on the use of project funding, either at the district or the national level. It seems to us highly unsatisfactory that the statutory bodies charged with exclusively controlling and supervising Māori Wardens should have to file Official Information Act requests to obtain even basic information about wardens’ funding, let alone specific information on the funding of wardens in their own districts.¹⁰⁴

In designing and implementing the MWP back in 2007, TPK could not have foreseen the NZMC’s present efforts to reform its governance structure and rebuild the

101. Transcript 4.1.1(a), pp 287–289. Interested party Rihari Dargaville made a similar point in his evidence at hearings: Transcript 4.1.1(a), pp 219–221.

102. Transcript 4.1.1(a), p 308

103. NZMC Discussion Paper on Māori Wardens Presented to Minister of Māori Affairs, 13 March 2009 (Crown counsel, TPK document collection (doc C15), pp 763–775)

104. Michelle Hippolite to Karen Waterreus, 1 March 2013 (claimant counsel, papers provided by Te Puni Kōkiri on 1 March 2013 to the NZMC in response to an Official Information Act request, 19 March 2014 (doc B35), pp 1–2)

8.7 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

District Māori Councils. However, now that the NZMC structure is showing signs of renewal, we believe that there is a pressing need for the Crown to revisit its approach to the MWP. We further address this matter in chapter 10.

The structuring of the funding in such a way as to entirely bypass the DMCS makes it difficult to see how the DMCS could exercise their powers of control and supervision over Māori Wardens in their district in any real sense. While evidence presented to us at Tribunal hearings suggests that, in some districts such as Raukawa, wardens' groups routinely report back to District Māori Councils on funds received under the project, they are not obliged to do so under the accountability requirements of the scheme, and – as the Raukawa example also suggests – these arrangements can be unreliable. Given the recent efforts of the DMCS to achieve compliance with the 1962 Act, it seems to us that it is now timely for the arrangements by which MWP are currently administered to be reassessed. We return to this matter in chapter 10.

8.7 THE TRIBUNAL'S FINDINGS ABOUT MWP FUNDING DECISIONS

The claimants sought findings that:

The Crown is breaching the partnership, active protection and utmost good faith principles, as well as Arts 4, 5, 18 and 20(1) of UNDRIP, in its exercise of de facto powers of supervision and control of Wardens through the MWP, including its funding of Wardens . . . on terms and conditions imposed by TPK without reference to DMCS (or the NZMC), contrary to the 1962 Act.¹⁰⁵

Examples of 'the Crown de facto supervising and controlling Wardens through its MWP, which constitute breaches of Treaty principles and UNDRIP', were said to have included:

the provision of funding grants directly to Wardens, on conditions prescribed and overseen exclusively by TPK through contractual arrangements between TPK and the grant recipient. The consistent evidence from Claimant witnesses, independent witnesses, and indeed from Crown witnesses, is that the NZMC is not involved nor consulted and neither are DMCS on applications for MWP funding.¹⁰⁶

At a higher level, TPK has also failed to 'consult with the NZMC (or through it, DMCS) on how MWP funding can most efficiently and effectively be spent'.¹⁰⁷

On these points, our view is that the claim is well-founded.

As we discussed in chapter 7, the Crown has excluded the NZMC and DMCS from any role whatsoever in the funding of Māori Wardens via the MWP. At the higher level, the absence of a partnership mechanism means that the NZMC has no role

105. Claimant counsel, closing submissions (paper 3.3.5), pp 33–34

106. Claimant counsel, closing submissions (paper 3.3.5), p 34

107. Claimant counsel, closing submissions (paper 3.3.5), p 34

in deciding funding policies. At the district level, DMCS have no role in evaluating, commenting on, helping to decide, or even finding out about individual funding applications. In these two respects, the MWP has interfered with the statutory role of DMCS and the NZMC under the 1962 Act – and needlessly so, as mechanisms such as the Advisory Group could easily have provided for such a role, even if the DMCS were too dysfunctional in 2007 to take on direct superintendence and administration of the project's funding. The result is that funding decisions are made in complete isolation from the NZMC and DMCS, the statutory bodies with responsibility for controlling and supervising the work of Māori Wardens.

We thus find the Crown to have breached the Treaty principles of partnership, active protection, and Māori autonomy in the identified aspects of its MWP funding decisions.

Māori have been prejudiced by this Treaty breach. The Māori Councils are supposed to provide for Māori communities' exercise of tino rangatiratanga at district and national levels, in respect of the matters provided for in the 1962 Act, so long as Māori communities continue to elect representatives (the 2012 renewal is especially pertinent here). Māori communities cannot exercise that self-government when they are excluded from all MWP funding decisions. As a result, communities have no say in which projects are to be funded or how the funding overall is to be directed towards meeting their needs. At the most basic level, wardens' groups have a say by the mere act of applying for the funding – but otherwise Māori communities and their representatives are excluded at all levels of funding decision-making. This has prejudiced their already limited ability to exercise self-government and self-determination under the 1962 Act, a right guaranteed to them by the Treaty and affirmed by the UNDRIP.

We also believe that the Crown has acted inconsistently with article 18 of the United Nations Declaration. We do not think the Crown has breached the other articles alleged (4, 5, and 20), because most DMCS were not in a fit state to administer funding when the project was established. While Crown under-funding of the council system has had an impact in this respect, the NZMC needed to re-establish the DMCS on a properly constituted footing before they could seek to administer funding through a project like the MWP – a process of renewal which has been underway under Māori leadership, with considerable success, since 2012.

Various of the claimants' allegations, however, have not been made out. We agree with the Crown that the MWP is an efficiently run project which provides much-needed resources to support wardens in their vital work for Māori communities. There have been many success stories, which Māori Wardens shared with us during our hearings.

We do not accept the claimants' allegations that the project has been run inefficiently or wastefully. The claimants have not been able to substantiate these allegations, and all the evidence available to us – including the independent review of 2012 – points to a well-run project that is 'mostly achieving' its objectives.

Further, we commend the Crown for making resources and training available to Māori Wardens over the past seven years.

From all the evidence that we have seen, there is also no justification for the claimants' view that the MWP administrators have favoured groups aligned with the NZMWA over groups aligned with the Māori Councils. As we noted above, this perception has arisen partly because:

- ▶ DMCS have been absent or largely inoperative in many districts, and cannot act as umbrella organisations for funding applications in any case; and
- ▶ some wardens' groups aligned with the councils believe that applying for Government funding – with its accountability and reporting requirements – could compromise their independence.

But there is no evidence of actual favouritism in the MWP's funding decisions.

Nor is the provision of funding directly to Māori Wardens unlawful under the 1962 Act.

These aspects of the claim are not upheld.

SUMMARY OF FINDINGS

The claim is well-founded in the following respects

- ▶ There are some important deficiencies which have marred the overall success of the Māori Wardens Project (MWP) in Treaty terms.
- ▶ Māori community oversight has been completely excluded from the project since 2010. This includes all funding decisions, which are made in isolation from the New Zealand Māori Council (NZMC) and District Māori Councils (DMCs), the statutory bodies with responsibility for controlling and supervising the work of Māori Wardens.
- ▶ After the dissolution of the Advisory Group (and the demise of the Governance Board), there was no partnership mechanism at the central level of the project, and thus no Māori community oversight of funding policies or funding decisions.
- ▶ At the regional level, DMCS had no role in evaluating, commenting on, helping to decide, or even finding out about individual funding applications.
- ▶ The funding policies and decisions of the Te Puni Kōkiri-run MWP have thus interfered with the ability of DMCS and (ultimately) the NZMC to perform their statutory duties in respect of controlling and supervising Māori Wardens. This is especially so since the rejuvenation of some DMCS and the NZMC in 2012.
- ▶ We find the Crown to have breached the Treaty principles of partnership, active protection, and Māori autonomy in these aspects of its MWP funding decisions. Nonetheless, the Crown is to be commended for making much-needed resources available for Māori Wardens. The fault was in the manner in which the funding decisions have been made.

- ▶ Those Māori communities which elect representatives under the 1962 Act have been prejudiced because they have no say in which projects are to be funded or how the funding overall is to be directed towards meeting their needs. This has prejudiced their already limited ability to exercise self-government and self-determination under the 1962 Act.

Aspects of the claim that are not upheld

- ▶ We do not accept the claimants' allegations that the MWP has been run inefficiently or wastefully. The evidence available to us – including the independent review of 2012 – points to a well-run project.
- ▶ From all the evidence that we have seen, there is no justification for the claimants' view that the MWP administrators have favoured groups aligned with the New Zealand Māori Wardens Association over groups aligned with the Māori Councils.
- ▶ Nor is the provision of funding directly to Māori Wardens unlawful under the 1962 Act.

Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

We agree with the claimants that the manner in which the Crown has made MWP funding decisions is not consistent with the rights affirmed in article 18 of the UNDRIP.

CHAPTER 9

TE WHAKAMANA I NGĀ WĀTENE /
WARRANTING WARDENS

9.1 INTRODUCTION

In this chapter, we consider the claimants' case in relation to TPK's role in the warranting of Māori Wardens.

Under a 1969 amendment to section 16(5) of the 1962 Act, District Māori Councils (DMCs) have 'exclusive power and authority to control and supervise' wardens.¹ Under section 7 of the Act, DMCs also have the power to nominate any person to be appointed or reappointed as a Māori Warden in their district, and to make recommendations to the Minister on the suspension or cancellation of Māori Wardens' appointments.² Following the receipt of nominations from a DMC, the power to appoint wardens lies with the Minister of Māori Affairs.³ Under the Act, wardens are appointed for a three-year term but may apply to their DMC to be reappointed. If their reappointment is endorsed by their DMC, it may forward a recommendation to the Chief Executive of TPK for reappointment.⁴ The Minister of Māori Affairs also holds the power to cancel the appointment of any Māori Warden, either at the recommendation of a DMC or after having received a resignation in writing from a Māori Warden.⁵

The claimants' allegations about warranting fell under two broad categories: first, that delays in the process of obtaining warrants are serious and are the responsibility of TPK; and, secondly, that the Crown is warranting wardens on the nomination of bodies that do not have the statutory power to make such nominations, or (in the case of Wellington) refusing nominations from the body that *does* have the statutory power.

Frustrations and complaints surrounding the timely processing of wardens' warrants were among the most significant grievances raised by Māori Wardens who presented oral and written evidence to us in this inquiry. While the processing of wardens' warrants on behalf of TPK is not, strictly, within the scope of the MWP,

1. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p 33
2. Māori Community Development Act 1962, s7
3. Māori Community Development Act 1962, ss7(1)-(2)
4. Māori Community Development Act 1962, s7(3)
5. Māori Community Development Act 1962, s7(4)

9.1.1 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

evidence presented to us suggests that the MWP team took over the role of processing Māori Wardens' warrants in approximately 2008 or 2009.⁶ Broadly speaking, the claimants believe that issues with warranting are contributing to what they see as part of a wider attempt on the part of TPK to discredit and undermine the 1962 Act structures.

In addition, the claimants made specific allegations about the situation in Wellington and Te Tau Ihu (where there are disputes about whether DMCs are validly in office), and about districts where there is no DMC.

9.1.1 The Crown's case

The Crown acknowledges that there have been issues with TPK's processing of Māori Wardens' warrants in the past, and states that 'steps are being taken to improve TPK's systems', including the development of a database to track applications.⁷ Te Rauhuia Clarke also admits that the current process for appointing and reappointing Māori Wardens is 'long-winded' but submits that TPK is simply following the process set down by the Act.⁸ However, the Crown denies the claimants' wider point that TPK's role in administering warrants has interfered with the responsibilities of the DMCs in relation to warranting.⁹ The Crown asserts that its Regional Coordinators have been involved in wardens' warranting only to the extent of providing 'administrative support' to aid the warranting process, and denies the claimants' allegation that Regional Coordinators have infringed upon the authority of DMCs to nominate Māori Wardens for appointment.¹⁰

9.1.2 The claimants' case

By contrast, the claimants attribute what they consider to be excessive delays in the return of Māori Wardens' warrants to deficiencies in TPK's system for processing warrants.¹¹ While the Act gives no specific timeframe for processing wardens' warrants, the claimants believe that it is an 'implicit statutory requirement' that warrants be processed in a timely manner. According to the claimants, TPK is not meeting this standard.¹² In some cases, the claimants say, delays in warranting have led wardens to resign from their duties in frustration. In other cases, wardens have been left working with no legal authority and have lost mana through being forced to operate without warrants.¹³ These issues with warranting, the claimants believe, are due to processing issues within TPK and the Minister's office. The claimants also state that TPK has contributed to the delays surrounding warranting by unnecessarily forwarding applications for wardens' reappointments through the Minister's

6. Donna Thomson to Claire Mason, 'Handover Brief – Māori Wardens Project', 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 11)

7. Crown counsel, closing submissions, 14 May 2014 (paper 3.3.3), pp 22–23

8. Transcript 4.1.1(a), pp 356–360

9. Crown counsel, closing submissions (paper 3.3.3), p 14

10. Crown counsel, closing submissions (paper 3.3.3), p 14

11. Claimant counsel, closing submissions (paper 3.3.5), p 40

12. Claimant counsel, closing submissions (paper 3.3.5), p 40

13. Claimant counsel, closing submissions (paper 3.3.5), p 40

office, even though the power to renew warrants rests with the Chief Executive of TPK. The claimants seek a Tribunal finding that this approach is ‘without warrant in terms of the 1962 Act’ and creating unnecessary delays in the processing of warrants.¹⁴ These omissions and delays on the part of the Crown, the claimants believe, breach the Treaty principles of partnership and good faith.¹⁵ The claimants further assert that the Regional Coordinators employed under the MWP have undercut the authority of DMCS through their involvement in warranting. This is through informing individual wardens rather than DMCS when wardens’ warrants are about to expire.¹⁶

9.1.3 The structure of this chapter

We begin our discussion of warranting by outlining the existing process for Māori Wardens’ appointments and reappointments, including the role of TPK and the role of a Māori Wardens’ warranting committee recently established by the NZMC. Here, we also address the claimants’ assertion that TPK is creating delays in the warranting process by unnecessarily forwarding applications for re-appointment through the Minister’s office. We go on to describe the extent and impact of delays in receiving Māori Wardens’ warrants and then offer our views on the cause or causes behind those delays. Next, we consider the specific question of whether the involvement of TPK’s Regional Coordinators in the warranting process contravenes the 1962 Act. Finally, we examine the claimants’ assertion as to whether TPK has undermined the 1962 Act, by warranting Māori Wardens other than through DMCS. Our findings in relation to this question centre on the legal point of whether DMCS may legally delegate their powers of nomination of Māori Wardens (as well as their broader powers of control and supervision) to Māori Wardens’ groups.

After dealing with those matters, we address the claimants’ concerns about warranting in the Wellington and Te Tau Ihu districts, as well as the dispute between the parties as to whether DMCS are validly in office in those districts. We also consider the situation for districts with no DMC, and the question of districts where there are ‘District Māori Councils-in-waiting’, which were elected outside of the requirements of the 1962 Act.

9.2 CLAIMS ABOUT THE DELAYS IN WARRANTING

9.2.1 What is the current process for warranting Māori Wardens?

While the 1962 Act and 1963 regulations clearly state which particular entity is responsible for approving Māori Wardens’ warrants at each stage of the process, they do not spell out the detail of how Māori Wardens’ warrants should be administered in terms of the national coordination of warranting or the maintenance of record-keeping or tracking systems. Instead, procedures for administering and tracking the applications of Māori Wardens to be appointed or reappointed have

14. Claimant counsel, closing submissions (paper 3.3.5), pp 42–43

15. Claimant counsel, closing submissions (paper 3.3.5), pp 42–43

16. Claimant counsel, closing submissions (paper 3.3.5), pp 34–35

been developed over time. Currently, responsibility for the national coordination of Māori Wardens' warrants rests with the MWP team at TPK's head office in Wellington. However, we are informed by the claimants that the NZMC have, in the past year, established their own Māori Wardens Warranting Committee as a parallel structure to TPK's existing warranting system.

The process by which an individual can apply to become a Māori Warden begins at the community level. As Lady Emily Latimer told us, for the Te Tai Tokerau DMC:

Our practice is that the Māori Committees nominate the people that they think would be appropriate for the role, and that is passed along to me as [DMC] secretary and it is put to the District Māori Council.¹⁷

The role of the DMCs in the warranting process is outlined in some detail in a wardens' manual for Tāmaki ki Te Tonga, written by Diane Black and tabled as part of her evidence for this inquiry. (Ms Black and former Te Waipounamu DMC chair Noel Jory were later responsible for compiling a Māori Wardens' Administration Manual for the NZMC, which was circulated to all districts.)¹⁸ The process laid down in the Tāmaki ki Te Tonga Manual is as follows:

- ▶ A prospective Māori Warden must train 'on the job' with a warranted Māori Warden for up to 12 months before their application for nomination will be considered. During this time, a trainee warden may receive training in areas such as 'how to defuse situations, street patrols, public relations, crowd control'. Some trainees may choose to specialise in areas such as budgeting or advocacy for whānau dealing with government agencies such as WINZ and CYFS.¹⁹
- ▶ Once the nominating body (which may be a Māori Committee or a wardens' sub-association) feels that a particular trainee is ready to be warranted, each prospective Māori Warden must obtain three character references to support their nomination.
- ▶ The Māori Committee or wardens' sub-association then signs off the nomination and forwards it to the DMC.
- ▶ Each warrant application is tabled before a meeting of the DMC. The applicant must also appear before the meeting, and at this stage, members of the community have the opportunity to object to a nomination.
- ▶ If the warden's nomination is approved, the DMC signs the application and forwards it to TPK in Wellington so that the paperwork can be processed and warrants and badges issued.
- ▶ TPK adds the warden's details to a District Māori Wardens register and sends a letter congratulating the warden on their appointment on behalf of the Minister of Māori Affairs. A copy of this letter is also forwarded to the relevant DMC, along with the warden's warrant and badge.

17. Lady Emily Latimer, brief of evidence (doc B27), p 9

18. Diane Rachel Black, brief of evidence (doc B5), pp 6–7

19. Diane Black, brief of evidence (doc B5), p 14

- ▶ The DMC presents the new Māori Warden with the warrant and badge at the next meeting of the DMC or Māori Committee.²⁰

The Tāmaki ki Te Tonga Manual does not, however, supply a guide for the process followed for Māori Wardens' reappointments.

A roughly similar account of the warranting process is outlined in the evidence of Te Rau Clarke. Mr Clarke told us that the nominations may originate from local Māori or marae committees or wardens' groups. Following that they must be signed off by the relevant DMC, which then forwards the application to TPK's MWP team for processing.²¹ Mr Clarke stated at hearings that while, on occasion, TPK has received applications directly from marae or wardens' groups, these applications are not approved but are instead sent back to the DMC for the correct authorisation.²² Upon receiving an application, MWP staff check and enter the application details into an electronic document tracking system and then forward them on (to the Minister's office in the case of new appointments, and to the Chief Executive in the case of reappointments). After final sign-off by the Minister's office or Chief Executive, warrants are returned to the MWP team within TPK who then return them to DMCs.²³

As previously noted, the claimants have alleged that TPK's current process for reappointments is causing delays because applications are sent to the Minister, when under the 1962 Act only the Chief Executive's signature is necessary. The claimants acknowledge that the process for handling Māori Wardens' re-appointments was the subject of conflicting evidence from TPK witnesses.²⁴ We did hear evidence that TPK takes the optional step of forwarding Māori Wardens' reappointments to the Minister, but Te Rau Clarke advised that only new appointments pass through the Minister's office. All reappointments, he told us, are processed internally within TPK. As the witness with the greatest level of familiarity with the everyday operations of the MWP, and in the absence of any further evidence from the claimants on this matter, we accept Mr Clarke's explanation of the process.

One of the most striking features of the warranting process is that alternatives have been developed where institutions provided for in the 1962 Act either no longer exist or are not performing their statutory tasks. We now turn to consider the role of the NZMC's chosen alternative: the Māori Wardens Warranting and Administration Committee (MWWAC).

According to evidence provided to us by Des Ratima, the deputy chair for Māori Wardens under the NZMC, the MWWAC was established in 2013 and, by the time of our March 2014 hearing, had met on three or four occasions.²⁵ MWWAC is funded through a 'small percentage' of the NZMC's annual government funding, which goes towards the cost of holding meetings.²⁶ The aim of MWWAC is to

20. Diane Black, brief of evidence (doc B5), pp 14–15

21. Transcript 4.1.1(a), pp 356–360

22. Transcript 4.1.1(a), pp 372–373

23. Transcript 4.1.1(a), pp 372–373

24. Claimant counsel, closing submissions (paper 3.3.5), p 43

25. Transcript 4.1.1(a), pp 62, 79

26. Des Ratima, brief of evidence (doc B4), pp 2–3

provide national-level coordination and support for Māori Wardens. One of its functions has been to introduce a separate and parallel system for administering Māori Wardens' warrants, which operates alongside the existing system maintained by TPk. Under this system, DMCS forward nominations through to MWWAC rather than directly to TPk. Upon receiving an application, MWWAC vet it (a process which includes peer-review by other DMCS), sign it, and input it into a wardens' database maintained by the NZMC. Following this, MWWAC then hand applications directly to the Minister of Māori Affairs.²⁷ This, according to Mr Ratima, has improved turn-around for warrants by creating a 'more direct line of engagement with the Minister of Māori Affairs'.²⁸

One of the purposes of MWWAC, according to Mr Ratima, is to provide an option for approving Māori Wardens' warrants in those areas in which there is currently no operative DMC able to sign off on warrants. Mr Ratima informed us:

There is a mechanism under the Act for the areas that don't currently have a District [Māori] Council, to be awhi[ed] and manaaki[ed] by adjacent District Councils and we've used that in the past. And we have also had the New Zealand Māori Council support the warranting committee, in passing warrants because there is no committee either adjacent or in that area. We signed off as a committee, we signed off on some warrants which I then took directly to the Minister and ask that he then approve them – he didn't – but that's the mechanism.²⁹

Mr Ratima indicated that the reason for the Minister's refusal to sign off the warrants in this instance was that they related to the disputed district of Wellington (dealt with separately in section 9.3.5).³⁰ Mr Ratima's evidence that the MWWAC has been used to approve warrants in areas where there is no active DMC (and no adjacent DMC suitable to approve a nomination) is confirmed by the written evidence of Karen Waterreus. Ms Waterreus advised that Māori Committees in Kaikōura have handed their warrant applications directly to MWWAC to be approved.³¹ However, evidence presented to us at hearings indicates that the MWWAC system is currently operating only in some regions. Wardens from Aotea and Raukawa indicated to us that they have had no involvement with MWWAC. In response to questioning, Karen Waterreus stated that the full implementation of MWWAC remains a work in progress.³²

Some Māori Wardens have also expressed concerns that the NZMC, through MWWAC, may be overstepping the powers of the DMCS. Jordan Haines has stated in this regard:

27. Transcript 4.1.1(a), pp 78–79

28. Des Ratima, brief of evidence (doc B4), p 4

29. Transcript 4.1.1(a), pp 62–63

30. Transcript 4.1.1(a), p 63

31. Karen Waterreus, statement in reply to Crown evidence (doc B25), p 4

32. Transcript 4.1.1(a), p 204

for the last couple of years the NZMC has been trying to overstep the DMC's legal authority and power to appoint, control and supervise the activities of Māori Wardens carrying out duties within its district by implementing Māori Warden forums such as the Māori Council Warden Committee . . .³³

We commend the NZMC's initiative in establishing MWWAC as a positive sign that the Council is taking proactive steps to address warranting issues arising from its non-operative districts. However, we have some reservations about the current functions of MWWAC, as described to us by the claimants.

First, it appears to us that the NZMC can only provide one lawful option to circumvent the absence of functioning DMCs. Amalgamation of districts is permitted under the Act and would serve that purpose. But, as we discuss more fully below, the power to nominate Māori Wardens for appointment and reappointment is vested in DMCs. There is no statutory authority in sections 7 or 16 for DMCs to delegate this power, or for any other institution – including the NZMC or a committee of the NZMC – to exercise that power instead of DMCs. The Act appears to us to be very clear on those points.

Secondly, claimant witnesses Des Ratima and Owen Lloyd suggest that the MWWAC warranting system has led to improved turn-around for Māori Wardens' warrants.³⁴ It is unclear why this would be the case, as the MWWAC route for processing warrants appears to us to add an additional layer of complexity to the process by which warrants are approved. Des Ratima has acknowledged, in response to questioning, that the additional step of forwarding nominations for warrants through MWWAC is not required by the 1962 Act.³⁵ Implementing a parallel system for administering warrants on top of an existing system, without first resolving the underlying issues surrounding warranting, appears to us to carry the risk of creating further confusion for Māori Wardens and DMCs. Nevertheless – as we discuss further below – we see MWWAC as the NZMC's response to the fundamental mismatch between the powers vested in the DMCs under the 1962 Act, and access to the resources and information which would be necessary for DMCs to carry out their functions. We return to this subject, and make suggestions as to some possible steps that might be taken to ameliorate this situation, in chapter 10.

9.2.2 What has been the extent and impact of delays in processing Māori Wardens' warrants?

Many Māori Wardens spoke to us of lengthy delays in receiving their warrants and the impact that this has on their work. Aotea warden Te Reo Hemi spoke of the issues wardens in his district had experienced in the past in having their warrants returned:

33. Jordan Winiata Haines, brief of evidence (doc B28), p5

34. Des Ratima, brief of evidence (doc B4), p 4; Transcript 4.1.1(a), p 93

35. Transcript 4.1.1(a), p 79

EVIDENCE OF WARRANTING DELAYS

Delays in warranting in recent years have been a cause of great frustration to both Māori Wardens and for their DMCs. The Chair of the NZMC's Warranting Committee, Des Ratima, stated: 'Wardens throughout the country are all suffering the same dilemma in that warrants are not being actioned in a timely manner some experiencing delays which are years overdue'. Diane Black, the treasurer of the Tamaki ki Te Tonga DMC and a Māori Warden told us that, since the transfer of warranting to TPK's Project Team, warranting delays have increased:

They now collect nominations and reappointments, take them to the secretary of the District Māori Council then they either send them down to Wellington or take them down to be processed. The Māori Wardens then wait and wait and wait. Some come back within around six months, some take longer. For example, I waited 2 years for my warrant to be renewed which has left me with about 11 months before I have to apply again.

Melanie Mark-Shadbolt has also written of the delays experienced in receiving warrants for Ōtautahi wardens back from TPK: 'The Ōtautahi Māori Wardens Association warrants which were submitted to Te Puni Kōkiri one year ago have only just arrived back.'

Titewhai Harawira spoke of her frustrations as chair of the Auckland District Māori Council about the delays in having warrants returned:

Some of the nominations for Māori Wardens that the Auckland District Māori Council has passed on to TPK still have not been actioned, despite them passing on to TPK many months ago. This is very frustrating for affected Māori Wardens, some of them long serving. It has been very frustrating for us at the Auckland District Māori Council. We feel powerless in our inability to help smooth over the process, and feel that we too are being undervalued and undermined by the delays in processing warrant applications.

Rihari Dargaville informed us that in his district of Te Tai Tokerau, there

have been major issues relating to the warranting process with . . . a number of wardens working as wardens unwarranted in the renewal phases, and a wait of up to 2 years in registration warranting of new wardens.

For more information, see Desma Ratima, brief of evidence (doc B4), para 8; Diane Rachel Black, brief of evidence (doc B5), p 15; Melanie Mark-Shadbolt, brief of evidence (doc B8), p 4; Titewhai Harawira, brief of evidence (doc B10), p 11; Rihari Dargaville, brief of evidence (doc B11), p 3.

we were having . . . rarurarus getting our warrants from our marae to the District [Māori] Council to the Minister and back again . . . The warrant I got before the one I have now, I got it on the 22nd of January and it had expired in September the year before.³⁶

Another Aotea warden, Mauriri Haines Winiata, informed us that a group of warrants put forward 12 months previously, had not yet been returned by the Minister's office. This included the warrant of a Māori Warden who had passed away in the time that the warrants had taken to be processed.³⁷ Auckland DMC chair Titewhai Harawira informed us: 'Some of the nominations for Māori Wardens that the Auckland DMC has passed on to TPK still have not been actioned, despite them passing on to TPK many months ago.'³⁸ The evidence of Rihari Dargaville and Taka Hei, for Te Tai Tokerau District, suggests that the DMC has at times had to wait for up to two years to receive warrants back.³⁹

The Crown does not dispute that there have been and remain issues with the timely processing of warrants, although it maintains that processing times have improved of late and that TPK is actively addressing the remaining warranting issues. According to the claimants, delays in processing warrants have led to some wardens resigning their duties out of frustration. Others have been left operating on expired warrants and without legal authority. As we heard from Des Ratima, operating without warrants can leave wardens open to challenges to their authority:

the warrant is what gives them the authority, and, I might dare say, their mana to be who they are on the streets, and allows them to engage with our people in a way that . . . answers the question 'who do you think you are', and you say, 'Well, actually I'm a Māori Warden and here's my warrant, signed by the Minister', which allows them under the Act to do these things . . .⁴⁰

It should be noted that we also received evidence from Māori Wardens who stated that the warranting process is working well in their districts. Jordan Haines told us that his Raukawa District Māori Wardens' Association has a good relationship with their DMC in terms of warranting:

the warranting process has been pretty straight forward for us . . . within our District Māori Council, we have got a lot of kaumātua and kuia who were Māori Wardens and who are very up to play with how everything goes with the Māori Wardens and get very upset if the process of warranting is interfered with or is held up and they are pretty much on the mark. I can't say we have had a lot of problems with the warranting

36. Transcript 4.1.1(a), p134

37. Transcript 4.1.1(a), p135

38. Titewhai Harawira, brief of evidence (doc B10), pp11-12

39. Rihari Dargaville, brief of evidence (doc B11), p3; Taka Hei, addendum to the brief of evidence of Rihari Dargaville (doc B11), p8

40. Transcript 4.1.1(a), p69

9.2.3 WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

in my lifetime that I have been with the district which is going on six, nearly seven years . . .⁴¹

However, it is undeniable that there have been districts in which the warranting process has worked less well. Further, neither party in this inquiry denies that delays have occurred with warranting in the past (although the Crown submits that processing times for warrants have improved in recent times). Before it is possible to make a finding on whether or not we believe that TPK has been negligent in its processing of warrants, we must determine where the responsibility for the processing delays lies.

9.2.3 What factors have contributed to delays in processing Māori Wardens' warrants?

The claimants believe that responsibility for warranting delays can be exclusively attributed to deficiencies within TPK's procedures for coordinating the warranting of wardens, and that delays have worsened under the MWP.

As stated previously, the Crown has not denied that there have been past issues with TPK's processing of warrants. However, Te Rau Clarke told us at hearings that processing times have now improved, and that TPK is – in most cases – now meeting its internal performance standard of a turn-around of six weeks for processing warrants.⁴² But he has also acknowledged that some warrants still 'fall through the cracks' and that his team lacked confidence in the ability of their database 'to deliver accurate information'. The project team, he told us, are still working with IT to improve the system.⁴³ Mr Clarke also suggested, however, that delays which appear to be TPK's fault can be due to the receipt of warrant applications which are incomplete or unsigned, or are caused by the practice of DMCS holding onto warrants so that group presentations can be made.⁴⁴

By the Crown's own admission, TPK must bear part of the blame for delays or other issues with warranting. However, we do not accept the claimants' argument that TPK is exclusively at fault with regard to delays in processing warrants. Given the notable level of dysfunction among DMCS up to 2012, it is difficult to see how some DMCS could have legally discharged their duties in relation to the warranting of Māori Wardens. Several Māori Wardens have told us that they have, in the past, experienced considerable difficulties with having their warrants approved through their DMC. Ngaire Schmidt of the Tāmaki ki Te Tonga District Māori Wardens Association states in her brief of evidence that, while in recent times their DMC has shown a greater interest in Māori Wardens, in the past the DMC's response to their application for warrants was 'very substandard and extremely slow', with some wardens waiting for two years to receive their warrants.⁴⁵ Owen Lloyd told us that when

41. Transcript 4.1.1(a), p 285

42. Transcript 4.1.1(a), p 357

43. Transcript 4.1.1(a), pp 356–360

44. Te Rauhuia Clarke, brief of evidence (doc B14), pp 8–9

45. Ngaire Schmidt, brief of evidence (doc B16), p 3

he took on his role as the chair of the Tairāwhiti DMC-in-waiting, he ‘inherited a long backlog of Warrant applications’ from the previous DMC chairs, and that his council is ‘still in the transition period of cleaning up the backlog and settling a process to go forward’.⁴⁶

In fact, we are doubtful that there has ever been a time when the warranting process has operated entirely smoothly. As we saw in chapter 5, complaints by Māori Wardens at excessive delays in the processing of warrants stretch back to the early 1980s. Evidence placed before us in this inquiry also suggests that delays and backlogs in the approval of warrants were already significant by the time the MWP was set up in 2007, and cannot be exclusively blamed upon the project. TPK data from 2007, the year of the project’s introduction, indicates that only 600 wardens were then warranted, out of an estimated 2,000 wardens believed by TPK to be active.⁴⁷ Warranting was also identified as a major issue by the members of the Māori Wardens Project Advisory Group. The group’s minutes from May 2008 indicate that there were, at that time, approximately 1500 outstanding warrants yet to be signed off.⁴⁸ The Māori Affairs Select Committee of 2009–10 also noted a high level of dissatisfaction around warranting among submitters:

We heard a lot of frustration from submitters about the warranting and appointment process for Wardens. We understand that current legislation provides for the Minister of Māori Affairs to sign off warrant applications only once they have been recommended by District Māori Councils. Many District Māori Councils are defunct or highly dysfunctional. They often fail to pass on these recommendations, resulting in long waits for Wardens; some submitters told us they had waited up to eight years.⁴⁹

It was concerns about this existing backlog of warrants awaiting sign-off by DMCs that led to the creation, in 2008, of a joint NZMC and NZMWA Warranting Group to work with the Māori Wardens Advisory Group.⁵⁰ The members of this Warranting Group were Titewhai Harawira, Ngaire Te Hira, Diane Black, and Noel Jory (from the NZMC), and Matiu King, Gloria Hughes, and Linton Sionetali (from the NZMWA), as well as TPK representatives.⁵¹ It reported back to the Advisory Group in June 2008 and provided TPK staff with a proposal for a new warranting process.⁵² Although we do not have the details, it appears that processing of

46. Owen Rutherford Lloyd, brief of evidence (doc B12), p 7

47. Donna Thomson to Claire Mason, ‘Handover Brief – Māori Wardens Project’, 7 April 2009 (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), p 9)

48. Minutes of Māori Wardens Advisory Group Hui, 21 May 2008 (Crown counsel, TPK document collection (doc C15), pp 648–650)

49. ‘Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues: Report of the Māori Affairs Committee’, November 2010 (Mereana Kim Ngārimu, comp, papers in support of brief of evidence (doc A2(a)), p 11)

50. Minutes of Warranting Group hui, 9 October 2008 (Crown counsel, TPK document collection (doc C15), pp 659–661)

51. Minutes of Warranting Group hui, 9 October 2008 (Crown counsel, TPK document collection (doc C15), pp 659–661)

52. Minutes of Māori Wardens Advisory Group Hui, 13 June 2008 (Crown counsel, TPK document collection (doc C15), pp 651–654)

warrants by a NZMC sub-committee and longer appointment terms for wardens were among its proposed remedies. The Māori Wardens Advisory Group met again on 17 November 2008. At this meeting, the Warranting Group was advised by TPK that their proposals had ‘some legal compliance issues’ and would contravene the Māori Community Development Act if implemented.⁵³ Clearly, reforms such as a longer than three-year term would require targeted amendments to the 1962 Act, which was not unthinkable if sought for this particular subject by the NZMC and NZMWA. But, based on later evidence from the NZMC, it appears that the project team’s objections stemmed partly from advice provided by TPK’s legal team that restrictions under the Privacy Act would prevent the group from accessing the names and addresses of wardens held by TPK.⁵⁴ The group objected to this reasoning – according to their later account – on the basis that ‘it was the DMCS who had provided TPK with that information in the first place.’⁵⁵ According to the NZMC’s account of the meeting, TPK’s facilitator then promised to seek further information on the legal position prior to the Advisory Group’s next meeting. However, no further meeting of the Advisory Group was convened.⁵⁶ In the NZMC’s view in 2009, this was a lost opportunity as the proposed new warranting process would have greatly benefitted ‘DMCS, TPK, and of course, the wardens.’⁵⁷

As we have noted previously in relation to the Advisory Group, from this point on the DMCS and the NZMC had no formal mechanism to work alongside TPK to find solutions to some of the issues arising from the warranting process. We have no evidence that the short-lived Governance Board addressed this particular matter. This seems to us like an important missed opportunity. We return to this point when we make our findings below (section 9.4).

We turn next to consider a matter that is inextricable from the question of delays in warranting: the impact on the warranting system of so many districts without a functioning DMC for many years, leading both the Crown and claimants to rely on alternative mechanisms for nominating wardens.

9.3 HAS THE CROWN ACCEPTED NOMINATIONS FROM THE CORRECT BODIES?

9.3.1 Introduction

After the NZMC began its restoration and renewal process, seven DMCS were appointed as a result of Māori committee elections held in February 2012. Since then, another four ‘District Māori Councils-in-waiting’ have been appointed

53. Minutes of Māori Wardens Advisory Group Hui, 17 November 2008 (Crown counsel, TPK document collection (doc C15), pp 662–664)

54. NZMC Discussion Paper on Māori Wardens Presented to Minister of Māori Affairs, 13 March 2009 (Crown counsel, TPK document collection (doc C15), pp 763–775)

55. NZMC Discussion Paper on Māori Wardens Presented to Minister of Māori Affairs, 13 March 2009 (Crown counsel, TPK document collection (doc C15), pp 763–775)

56. NZMC Discussion Paper on Māori Wardens Presented to Minister of Māori Affairs, 13 March 2009 (Crown counsel, TPK document collection (doc C15), pp 763–775)

57. NZMC Discussion Paper on Māori Wardens Presented to Minister of Māori Affairs, 13 March 2009 (Crown counsel, TPK document collection (doc C15), p 766)

outside the terms of the 1962 Act. This leaves five districts out of 16 with no DMC at all. Although we do not have exact figures for the period before 2012, the evidence to the select committee in 2009 suggests that many districts had had no democratically elected committees (or validly appointed DMCs) for some time. Inevitably, this posed an almost insuperable problem for the warranting of Māori Wardens in those districts, unless (a) the NZMC amalgamated its inactive districts with active ones, (b) lawful mechanisms were found to circumvent the requirements of the 1962 Act, or (c) a law change was sought.

One of the main solutions utilised before 2012 was for DMC chairs to be rolled over if no elections were held, and to purport to act as the DMC and to nominate wardens for warranting. The reformed NZMC objected to this practice, particularly in relation to the South Island (where the Crown accepted Archdeacon Ruru as chair of a combined Te Tau Ihu/Te Waipounamu DMC, and continued to appoint and reappoint wardens on his nomination). Another solution utilised appears to have been delegation of the nominating power from DMCs to local wardens' associations, and the Crown was accepting nominations from such associations up to 2011. The claimants alleged that both of these practices were unlawful and were in breach of Treaty principles. They also alleged that the MWP's Regional Coordinators had involved themselves in the approval process for warrants in areas where there was no operative DMC, which the claimants considered to be an encroachment on the statutory powers of DMCs. Further, the claimants were concerned that the Crown is refusing to warrant wardens on the nomination of the Wellington DMC, which, they say, has had serious consequences for the number of warranted wardens in that district. Added to the delays in warranting that occur even where there is a functional DMC, the claimants' concerns paint a worrying picture about the ability of Māori Wardens to obtain warrants so that they can provide their unique services to their communities.

Nonetheless, to get around the problem of inactive districts, the NZMC has recently adopted its own extra-statutory solution: a sub-committee that would nominate wardens in districts where there was no DMC. Also, it appears that the NZMC has been allowing the DMCs-in-waiting to make nominations, despite their informal status. These are matters which the Tribunal has also had to consider in evaluating the claim that the Crown has been operating unlawfully in some of its warranting decisions. We begin our analysis with the question of whether the MWP's Regional Coordinators have interfered in the DMCs' warranting processes.

9.3.2 Have the MWP's Regional Coordinators interfered with warranting?

In support of their first point – that the MWP's Regional Coordinators have encroached upon the powers of approving wardens' nominations exclusively vested in DMCs under the Act – the claimants cite evidence given by Te Rau Clarke under cross-examination. At our hearing, claimant counsel referred Mr Clarke to the job description for the Regional Coordinators' role, which he had submitted in evidence. The job description lists among the 'job accountabilities': to 'assist with Māori Warden warranting by assisting Māori Wardens with processing warrant

applications when required.⁵⁸ Questioned by claimant counsel as to why the job description read ‘assisting wardens rather than assisting District Māori Councils’, Mr Clarke responded: ‘Because some District Māori Councils weren’t operative’, but he did not explain how the Regional Coordinators assisted wardens to obtain warrants in districts without DMCS.⁵⁹ In his evidence in chief, Mr Clarke stated that Regional Coordinators did not in fact involve themselves in ‘receiving nominations for warrants’ but rather assisted with administrative matters – such as ensuring that wardens’ identification photographs met the requisite standard for warranting.⁶⁰

We do not accept the claimants’ argument that ‘assisting’ Māori Wardens with their warrants necessarily interferes with the ‘approving’ of warrant applications by DMCS. The claimants have shown no evidence in support of this allegation. Diane Black told us that the Regional Coordinators had disrupted the handling of warrants by collecting applications from Wardens’ sub-associations or Māori Committees, delivering them to the DMC for approval, and then forwarding them to TPK for processing.⁶¹ But it is not clear to us how this kind of assistance undermines the DMC or detracts from its ability to nominate wardens.

9.3.3 Has the Crown accepted wardens’ nominations from bodies other than DMCS, and is it lawful for the Crown to do so?

The claimants argue in their amended statement of claim that TPK has, in the past, contravened the 1962 Act by endorsing nominations for Māori Wardens’ warrants received from bodies such as the NZMWA or other groups which, in the view of the claimants, ‘have no power or authority under the 1962 Act compact to nominate Wardens for appointment (that authority residing exclusively in District Māori Councils under s7(2) of the 1962 Act).⁶² In addition to prejudicing the claimants by undermining the role of DMCS, the claimants believe that what they see as the Crown’s failure to comply with the 1962 Act constitutes a breach of the Treaty principle of partnership, due to the special nature of the 1962 agreement between Māori and the Crown. In the claimants’ submission:

The Crown’s warranting of Wardens other than through DMCS constitutes a further breach of the partnership, active protection and utmost good faith principles. It is also contrary to Arts 4, 5, 18 and 20(1) of UNDRIP.⁶³

As stated by the claimants, Te Rau Clarke acknowledged in his evidence that TPK has, in the past, signed off Māori Wardens’ warrants approved by Māori Wardens’ Associations – but only, it was claimed, in cases where the relevant DMC was understood to have delegated the power of nomination to Wardens’ Associations. But this

58. Te Puni Kōkiri, Regional Coordinator job description (Te Rauhuia Clarke, comp, attachments to brief of evidence (doc B14(a), p 34)

59. Transcript 4.1.1(a), p 360

60. Te Rauhuia Clarke, brief of evidence (doc B14), p 5

61. Diane Black, brief of evidence (doc B5), pp 14–15

62. Claimant counsel, amended statement of claim, 17 January 2014 (paper 1.1.1(a)), p 7

63. Claimant counsel, closing submissions (paper 3.3.5), p 49

practice has ceased. Mr Clarke stated that, since June 2011, aside from one instance of administrative oversight, TPK has only issued warrants for Māori Wardens who have been nominated by a DMC.⁶⁴

The claimants' submission about the warranting of wardens 'other than through DMCS' was as follows:

The Crown accepts in its evidence that this has happened in the past, but suggests that this occurred only when the relevant DMC had delegated its power of nomination to a Wardens association. However, . . . no evidence of any written delegation has been provided by the Crown to substantiate this, notwithstanding that this is a requirement of the 1962 Act (see s 16(6)–(7)), and further, s 16(6) of the 1962 Act permits of delegations only to Māori Executives and Committees.⁶⁵

On this view of the case, there was a great deal of attention paid at the hearing to Jordan Winiata Haines' claim that just such a delegation had been made in writing to his wardens' association by the Raukawa DMC. According to Mr Haines, this was achieved by the DMC recognising the wardens' association as a Māori Kōmiti under the Act, making it possible 'to nominate Māori Wardens that did not whakapapa to local iwi, hapū or Marae'.⁶⁶ This evidence was, however, contradicted by the chair of the Raukawa DMC, Sir Edward Taihakurei Durie, who was unaware of such a delegation having been approved by his council.⁶⁷ The claimants have further argued, first, that no written evidence exists to suggest that such a delegation took place; and, secondly, that such a delegation would in any case have been unlawful as 'there is no authority in the 1962 Act for DMCS to so delegate to a Wardens association or anyone other than a Māori Committee or Executive'.⁶⁸

A number of different issues became mixed up in this question of whether DMCS can delegate their powers to wardens' associations, and – if so – which of their powers can be delegated.

Mr Haines told us that a memorandum was drafted in July 2012 between the Vice-Chairperson and Secretary of the DMC and the executive of the District Māori Wardens' Association. The draft was signed and returned to the DMC by the association. However, it appears from the claimants' evidence that no countersigned copy was sent back from the DMC, meaning that this particular purported delegation agreement has not been completed.⁶⁹

But can a DMC actually delegate its exclusive authority to nominate wardens? In our view, the question turns upon a matter of statutory interpretation arising from section 16 of the 1962 Act. Under section 16(6), DMCS are given the power to 'by notice in writing to any Māori Committee or Māori Executive Committee within its district, delegate to the Committee in respect of any specified warden

64. Te Rauhuia Clarke, brief of evidence (doc B14), p 9

65. Claimant counsel, closing submissions (paper 3.3.5), pp 48–49

66. Jordan Haines, brief of evidence (doc B28), p 4

67. Transcript 4.1.1(a), p 265

68. Claimant counsel, closing submissions (paper 3.3.5), p 33

69. Transcript 4.1.1(a), pp 297–298

or wardens, the power and authority to control and supervise and to assign duties conferred on the Council by subsection (5).⁷⁰ We note that section 16 of the 1962 Act must be read alongside section 15A(2) of the Act, which allows for a DMC to grant to any 'Māori society' within its district the right to be 'recognised as having the status of a Māori Committee'.⁷¹ For the purposes of the Act, a 'Māori society' is defined broadly as

any club, board, society, committee, or other group or body of Māoris, whether incorporated or not, which in the opinion of the District Māori Council is comprised of members of, or democratically represents, or is involved with, any Māori tribe, sub-tribe, community, marae, religious congregation, school or other teaching institution, or has as members a significant number of Māori people having some common interest or interests.⁷²

We believe that the definition of 'Māori society' is sufficiently broad that a local or district Māori Wardens' Association could be regarded as constituting a 'Māori society' for the purposes of the Act, so long as it is officially recognised as such by a DMC. Evidence cited earlier in this chapter suggests that it is common for DMCs to accept nominations for wardens submitted from Māori wardens' sub-associations as well as Māori Committees. This suggests that the practice of DMCs recognising wardens' associations as having the status of a Māori Committee may have been common (whether or not all such associations have been formally designated Māori Committees under section 15A(2) of the Act). In any case, there is nothing in the Act which prescribes how Māori wardens are to be selected for nomination by their district council, other than that the nominee must live in the district. Thus, DMCs can receive nominations from anyone they choose, including wardens' associations or other local Māori organisations.

Nonetheless, section 16(6) is quite clear that only the powers in section 16(5) can be delegated: that is, the power to supervise and control Māori Wardens, and to assign them duties. No other powers can be delegated under section 16(6). The exclusive power of DMCs to nominate wardens for appointment and reappointment is conferred under section 7(2). Section 7(2) states:

No person shall be appointed or reappointed a Māori Warden in respect of any Māori Council District unless he is residing in that district and has been nominated by the District Māori Council for that District.

The statutory language is incontrovertible. No person shall be appointed unless nominated by a DMC. There is no power in the Act to delegate this exclusive authority. It cannot be exercised by anyone other than a DMC – neither the NZMC's warranting committee nor a Māori Wardens' association can lawfully substitute for

70. Māori Community Development Act 1962, s16(6)

71. Māori Community Development Act 1962, s15A(2)

72. Māori Community Development Act 1962, s15A(1)

a DMC under the terms of the 1962 Act – even if a DMC has mistakenly purported to delegate its power of nomination. The only remedy available to the NZMC (in the event of a non-functioning DMC) is to amalgamate districts so that another DMC can make the nomination. The NZMC cannot substitute its warranting committee for inoperative DMCs. While the Act empowers the NZMC to control, supervise, and direct DMCs, it cannot exercise the power to nominate wardens that is exclusively vested in DMCs by section 7(2).

Thus, even if the Raukawa DMC's delegation to the local wardens' association had been counter-signed by the DMC, it could not lawfully have included a delegation to nominate wardens. The claimants state in their closing submissions that the Crown has not provided us with any written evidence of a DMC having formally delegated its powers to nominate Māori Wardens to a Māori Wardens' Association.⁷³ The Crown did provide some evidence on this point. TPK's document bank, filed after the close of hearings but in advance of closing submissions, contains evidence that several DMCs have previously delegated their duties in relation to Māori Wardens to District Māori Wardens' Associations. For instance, the minutes of a 2006 meeting of the Auckland DMC record that the council passed a motion reaffirming that 'the controlling supervision of Māori Wardens within the Auckland District Māori Council is vested with Tāmaki District Māori Wardens.'⁷⁴ This particular delegation purported to include the power to nominate Māori wardens for appointment and reappointment. The power was delegated to the Tāmaki District Māori Wardens' Association (which would then forward nominations to Gail Hohaia of TPK's regional office in Auckland to process).⁷⁵ As we see it, this purported delegation must have been in error, based on a mistaken interpretation of the Act.

The other evidence supplied by TPK did not include specific delegation of the power to nominate wardens. The Waikato DMC, for example, passed a resolution at a 1995 meeting to 'delegate responsibilities over Māori Wardens to the Waikato Māori Wardens District Association', with the delegation to expire in 1997.⁷⁶ But it did not specify the right of nomination. Further, the Tāmaki ki Te Tonga Wardens manual, tabled as evidence by Diane Black, correctly refers to the ability of DMCs to delegate the 'power and authority to control, supervise and assign duties to Wardens in the district' to District Māori Wardens' Associations, which is the power conferred by section 16(6), so long as wardens' associations have been formally recognised as Māori associations within the meaning of the 1962 Act. The manual notes that such authority 'shall be given in writing' and further that the DMC 'has the right to revoke this authority at will'.⁷⁷

73. Claimant counsel, closing submissions (paper 3.3.5), p 49

74. Junette Rielly to Gail Hohaia, 27 February 2006 (Crown counsel, TPK document collection (doc C15), pp 1396–1397)

75. Junette Rielly to Gail Hohaia, 27 February 2006 (Crown counsel, TPK document collection (doc C15), pp 1396–1397)

76. Annual General Meeting of the Waikato Māori District Council, 27 August 1995 (Crown counsel, TPK document collection (doc C15), pp 1399–1401)

77. 'Te Kaunihera Māori O Tāmaki Ki Te Tonga, Policies Protocols and Regulations Manual' (Diane Black, comp, attachments to brief of evidence (doc B5(a)), p 19)

From the Crown's document bank, therefore, we only have one example of a DMC purporting to delegate its section 7(2) power of nominating Māori Wardens. Yet Mr Clarke's evidence conceded that the Crown accepted nominations from bodies other than DMCs prior to 2011, in the belief that power to nominate wardens could be (and had been) lawfully delegated. His team became responsible for processing Māori Wardens' warrants around late 2008 (to the best of his recollection). He stated:

Claimant evidence alleges that wardens have, at times in the past, been warranted on nomination of the Māori Wardens Association. My understanding is that this has only occurred in circumstances under which the relevant District Māori Council has delegated this function to the Association or other wardens group.

In addition, I can confirm that apart from one instance of administrative oversight, the only warrants issued by Te Puni Kōkiri since June 2011 have been on nomination by District Māori Councils.⁷⁸

We have no information as to how widespread this practice might have been prior to 2011. We note, however, that the claimants also believed that DMCs could lawfully delegate the power of nomination. They simply disputed whether the power had been delegated as a matter of fact, and – if it had – whether it could legitimately be delegated to wardens' associations.⁷⁹ Thus, a mistaken view of the Act has been common to both the Crown and claimants, in our view.

9.3.4 Has the Crown accepted nominations from DMCs that are not validly in office?

In addition to accepting nominations from wardens' associations, the claimants argued that the Crown has breached the 1962 Act and the Treaty by continuing to warrant wardens in districts where there is no operative DMC. Their primary concern was Te Tau Ihu, where the Crown has admitted accepting nominations from (former) DMC chair Archdeacon Ruru, but the claimants made the same allegation about Hauraki, Waikato, Maniapoto, and Tauranga Moana. For us, this issue is complicated by a matter which the claimants did not seem to consider a problem: four districts have 'District Māori Councils-in-waiting', appointed outside the requirements of the 1962 Act, some of which have also been making nominations resulting in the warranting of Māori Wardens.

We turn to the situation in Te Tau Ihu first, which was the claimants' primary concern.

(1) The situation in Te Tau Ihu

In Te Tau Ihu, the key issue was the Crown's acceptance of nominations since 2012 from a 'rolled-over' DMC chair. Claimant counsel submitted:

⁷⁸ Te Rauhuia Clarke, brief of evidence (doc B14), p 9

⁷⁹ Claimant counsel, closing submissions (paper 3.3.5), pp 48–49; claimant counsel, amended statement of claim (paper 1.1.1(a)), p 5; Sir Edward Taihakurei Durie, brief of evidence (doc B24), p 5

the Crown (TPK) in breach of the 1962 Act has continued to work with persons who are no longer District chairs, including in relation to Warden (re)appointments. In this recognition of former officers, TPK has hindered the NZMC's ongoing processes for reform.

Formerly, some District chairs had continued in office without conducting triennial elections or without notifying the public of election venues and times. The NZMC had sought to end such practices. TPK's recognition of them undermines the NZMC's stance. The TPK decision to deal with former District chairs has also hindered the NZMC's attempts to re-establish the inactive Districts on the basis of democratic elections.

Dealing with the first issue of TPK effecting warrants through persons who are no longer District chairs, it is submitted that the problem arises entirely from TPK's failure to observe the terms of the statute or to consult on the matter with the NZMC as the body ultimately responsible for Wardens under the 1962 Act.⁸⁰

In June 2012, the NZMC informed the Minister of the results of the triennial elections, including that no elections had been held in Te Tau Ihu.⁸¹ According to claimant counsel, the NZMC's next step would have been to amalgamate Te Tau Ihu with the Wellington district to cover the gap until the next elections in 2015, but this was impossible because the Crown accepted the former Te Tau Ihu chair, Archdeacon Ruru, as still in office and continued to accept wardens' nominations from him. Also, Archdeacon Ruru had made some complaint to TPK about the 2012 elections, the substance of which was not shared with the claimants (or revealed in evidence at our hearing).⁸² After receiving this complaint, TPK recommended that the two parties enter mediation.⁸³ Crown Counsel stated in closing submissions that Archdeacon Ruru has recently agreed to participate in mediation.⁸⁴ However, the claimants say that they are still yet to be informed 'on what the issue is and why TPK continues to deal with Archdeacon Ruru.'⁸⁵

Nonetheless, the council's co-chair, Sir Edward Taihakurei Durie, would prefer to see all districts reactivated if possible in the 2015 elections, and said:

the point when I think we will be ready to make a more concerted approach on the review [of the Act] is when we have got more districts up and running. I wouldn't like us to go ahead too far down the track when we don't have people like Mr Harvey Ruru of Te Tau Ihu back on board, if we can get him back on board. He has made a major contribution to the council in earlier years.⁸⁶

80. Claimant counsel, closing submissions (paper 3.3.5), pp 43–44

81. Sir Edward Durie to Dr Pita Sharples, 27 June 2012 (Crown counsel, TPK document collection (doc C15), pp 809–811)

82. Claimant counsel, closing submissions (paper 3.3.5), pp 44–45

83. Transcript 4.1.1(a), pp 165–167

84. Crown counsel, closing submissions (paper 3.3.3), p 21

85. Claimant counsel, closing submissions (paper 3.3.5), p 45

86. Transcript 4.1.1(a), p 269

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Irrespective of the complaint and any possible mediation, the Crown's position is that Archdeacon Ruru is still lawfully in office. Citing the evidence of Kim Ngārimu, Crown counsel submitted that 'there is nothing in the MCDA that signals that a DMC ceases to exist if elections are not held within the statutory time frame'. It was on the basis of legal advice to this effect that TPK continued to sign off wardens' nominations approved by Archdeacon Ruru.⁸⁷ Ms Ngārimu also told us that Archdeacon Ruru has been used to sign off warrants for Te Waipounamu district as well, based on previous advice from the NZMC in 2010 that the boundaries of Te Tau Ihu had been altered to include Te Waipounamu.⁸⁸ This was confirmed by the evidence of Melanie Mark-Shadbolt, who told us that the nominations for Christchurch wardens were still being signed off by Archdeacon Ruru.⁸⁹

Crown counsel prefaced their submissions by stating: 'It is not expected that the Tribunal will make a finding on the competing interpretation of the MCDA with respect to non-operative Districts.'⁹⁰ Nevertheless, counsel submit that

under s20(3) of the MCDA 'the term of office of every member of a District Māori Council shall expire with 30 April in each year when a triennial election is held'. The basis for TPK's practice of accepting warranting applications from DMCS who have not held elections is that the expiry is contingent upon a triennial election being held. Absent a provision to extinguish a DMC where elections are not held, it is submitted that DMCS do not automatically cease to exist under the Act.⁹¹

Crown counsel advised that TPK has thus continued to accept nominations from Archdeacon Ruru on the basis that 'notwithstanding that a DMC had not held elections within the statutory timeframe; it did not cease to exist'.⁹²

In relation to Te Tau Ihu, the claimants submit that TPK's actions in continuing to deal with Archdeacon Ruru for the purposes of warrants amount to breaches of the Treaty principles of partnership, active protection, and good faith, as well as being unlawful in terms of the 1962 Act. In their closing submissions, the claimants state that the meaning of the 1962 Act is plain: that section 20(3) 'causes the term of office of a DMC's members to expire at the three yearly dates when DMC elections need to take place'.⁹³

Further, the claimants state:

The Crown's position – that the expiry of the term of office in a DMC is contingent upon a valid election being 'held' – is inconsistent with the purpose of the 1962 Act (ie.

87. Crown counsel, closing submissions (paper 3.3.3), p 20

88. Transcript 4.1.1(a), pp 323–324. The 2010 letter advising TPK of this position was later filed with the Tribunal: Crown counsel, TPK document collection (doc C15), p 795.

89. Melanie Mark-Shadbolt, brief of evidence, 21 February 2014 (doc B8), p 4

90. Crown counsel, closing submissions (paper 3.3.3), p 21

91. Crown counsel, closing submissions (paper 3.3.3), p 21

92. Crown counsel, closing submissions (paper 3.3.3), p 21

93. Claimant counsel, closing submissions (paper 3.3.5), p 45

ensuring those elected to office are and throughout remain accountable to their local communities).⁹⁴

The claimants also point out a discrepancy between the Crown's position in relation to non-operative districts and section 20(1) of the 1962 Act, by which the expiry of the term of office of Māori Committee members is tied to when a successor is elected. The claimants submit:

If Parliament had intended this same approach to apply to DMCS, then s 20(3) would similarly tie terms of office to the election of successors. But it does not. Section 20 (3) does not take that approach because of s 14(4), which provides for the mischief of an inactive District by allowing the NZMC to 'at any time by resolution alter the boundaries of any Māori Council district or amalgamate 2 or more districts or constitute a new district over part of an existing district'.⁹⁵

According to the claimants, section 14(4) provides the means by which the NZMC can correct the 'mischief of an inactive District', by amalgamating it with another district. This enables DMCS and the NZMC to remain accountable to their communities.⁹⁶ The claimants also believe that this interpretation is consistent with the 'scheme and purpose' of the 1962 Act and with its legislative history:

It shows that Parliament when inserting the power of amalgamation now in s 14(4) into the 1962 Act, did so to provide for the ongoing administration of Wardens in situations where the Māori Committee responsible for them was 'defunct', 'inactive', or 'just [did] not exist'.⁹⁷

According to the claimants, the only two appropriate courses of action arising from Archdeacon Ruru's complaint are (i) that the NZMC's decision must be challenged in the courts, or (ii) that Archdeacon Ruru's challenge must be referred to the NZMC to arbitrate according to its own procedures. The claimants say that TRK has done neither, and they therefore ask the Tribunal to make a finding that the Crown has breached the partnership, active protection, and good faith principles.⁹⁸

Post-hearing evidence from Te Rauhuia Clarke and Karen Waterreus confirms, however, that mediation is still being discussed by the parties as a possibility – but that it has taken so long that, as Ms Waterreus points out, the whole issue will be resolved by default in 2015 when fresh elections are held.⁹⁹ The claimants also deny that Te Waipounamu and Te Tau Ihu were ever formally amalgamated. Ms

94. Claimant counsel, closing submissions (paper 3.3.5), p 45

95. Claimant counsel, closing submissions (paper 3.3.5), p 45

96. Claimant counsel, closing submissions (paper 3.3.5), p 45

97. Claimant counsel, closing submissions (paper 3.3.5), p 46

98. Claimant counsel, closing submissions (paper 3.3.5), p 46

99. Karen Waterreus, brief of evidence (doc c22), p 4

Waterreus advised of their intention to remove all doubt by passing a resolution at the November 2014 NZMC meeting, to the effect that the districts are separate.¹⁰⁰

As far as warranting is concerned, it is clear that both the Minister and the Chief Executive have to act in compliance with subsections 7(2) and (3) of the 1962 Act. These provisions require that DMCS recommend appointments or reappointments of wardens before either the Minister or Chief Executive can appoint or reappoint. However, we accept that it is difficult if not impossible for the Minister and Chief Executive to perform their tasks, if DMC elections are not held in some areas. In relation to inoperative districts where no triennial elections were held in 2012, it is unlikely that warrants could be processed under these sections of the Act. That is because members of DMCS are persons appointed triennially by the Māori Executive Committees within their area. Each committee is entitled to nominate two members to the DMC. Members hold office until 30 April in an election year. In each May of an election year, a meeting of the DMC is held to appoint members to the NZMC.

However, we were told in evidence that no Māori Executive Committees exist. As we noted in chapter 1, the practice has been to approve the direct representation of Māori Committees on their DMCS, presumably under section 10A of the 1962 Act. Under this mechanism, the Māori Committees are entitled to be represented on the DMC to the extent determined by the relevant DMC. As Māori Committees are the primary building block of the hierarchy of organisations in the 1962 Act, the manner in which elections take place for Māori Committees influences all the other Māori Associations recognised by that Act.

In this respect, all such elections should be conducted under section 19, which requires:

(1) On the last Saturday in February in the year 1964 and on the corresponding day in every third year thereafter an election of members of Māori Committees shall be held.

(2) Notwithstanding the provisions of subsection (1), if in any year it is not practicable to hold an election in any Māori Committee area on the day prescribed in that subsection, the election shall be held in that area on a day not earlier than 7 days before the prescribed day and not later than 14 days after the prescribed day.

(3) All Māoris of or over the age of 20 years ordinarily resident in a Māori Committee area shall be entitled to vote at elections for members of the Māori Committee for that area.

(4) Any person of or over the age of 20 years, whether or not he is a Māori, ordinarily resident in the Māori Committee area shall be eligible for election:

provided that any person not ordinarily resident in the area shall be eligible for election if he has marae affiliations in the area; but no person shall be entitled to be a member of more than 1 Māori Committee at any one time.

(5) All elections under this section shall be held in accordance with regulations under this Act.

100. Karen Waterreus, brief of evidence (doc C24), paras 5–6

(6) Notwithstanding any other provision of this Act or of any regulations made under this Act, where the members of any Māori Committee (being a committee revived after being in recess) will have been in office for less than 6 months on the date fixed by this section for the election of Māori Committees, no election of members of that Committee shall be held on that date if the District Māori Council concerned has by resolution determined that no such election be held and, in such case, the members of that Committee in office on that date shall continue in office as if they had been elected on that date.

Section 19(5) above adds additional requirements because it provides that elections must be held in accordance with regulations made under the 1962 Act. Regulations 3, 11, and 12 of the Māori Community Development Regulations 1963 are particularly relevant, and these provisions provide as follows:

(1) At least 2 weeks before the last Saturday in February 1964 and at least 2 weeks before the corresponding day in every third year thereafter, each functioning Māori Committee shall, by public notice in a newspaper circulating in its area or in such other or additional manner as it thinks will adequately inform the Māoris in its area, call a public meeting of Māori residents for the purpose of electing members of the Committee for the ensuing 3 years. The notice shall state the date, time, and place of the meeting.

(2) At any such meeting any person who is a Māori, who resides in the Committee's area, and who is of the age of 20 years or upwards shall be eligible to vote.

(3) At any such meeting the chairman of the outgoing Māori Committee (if present) shall preside. If he is not present a chairman for the meeting shall be chosen by the members of the outgoing Māori Committee present or if no chairman is so chosen a chairman shall be elected by the meeting.

(11) Where a new Māori Committee area is constituted or where any Māori Committee has ceased to function, any Māori in the area may apply to the appropriate Māori Executive Committee or District Māori Council to call a meeting of Māori residents for the purpose of electing a Māori Committee. The Māori Executive Committee or the District Māori Council shall call a meeting as requested. The Māori Executive Committee or the District Māori Council may also of its own motion call any such meeting.

(12) In any case to which subclause (11) applies the election shall be held as soon as practicable and the provisions of this regulation, as far as they are applicable and with the necessary modification, shall apply accordingly.

If the procedure adopted during the 2012 triennial elections was properly followed, then the newly appointed DMC members representing the different Māori Committees assume office.

This is particularly apposite given the functions of the NZMC in section 18(2)–(3) and the power it has to direct DMCs in section 16(2). That latter provision provides that each DMC shall be subject in all things 'to the control of the New Zealand

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Māori Council and shall act in accordance with all directions, general or special, given to it by the New Zealand Māori Council. The problem with these provisions, of course, is that they do not address specifically what happens when no election is held. However, the NZMC gave uncontested evidence that the 2012 triennial elections were subject to its supervision as part of its process of renewing itself. It could only have undertaken such supervision under these provisions in the 1962 Act.

After completing elections in 2012, the NZMC communicated its election results to TPK, as is confirmed by a number of sources.¹⁰¹ In terms of the statute, those election results should have been binding with no further action required. But TPK has decided for warranting purposes to work through individuals who previously held office in a DMC, where there are no operative DMCs as a result of the 2012 election process. Also, as we shall see below, it appears to have accepted nominations from DMCs elected outside of the Act's requirements but (it appears) endorsed by the NZMC for that purpose.

As we outlined above, the Crown referred us to section 20(3) which provides that the term of office of every member of the DMC expires on '30 April in each year when a triennial election is held'.¹⁰² If the Crown is correct in its interpretation of this section, then this would mean that a member of a DMC can continue in office if no election is held. Given the practice of TPK, it also implies that the Government may continue to work with people who may no longer be DMC members where such people contest an election result (as Archdeacon Ruru has purportedly done).

Such a proposition could only be useful for the Crown if it were able to demonstrate that no attempt had been made to conduct elections or follow the procedure in the 1962 Act. It would also require that the Minister through TPK is entitled to take a supervisory role over the elections, which, upon our reading of the Act, is not authorised by section 3. That is because that provision only relates to the Minister directing the manner in which powers are exercised under the 1962 Act. We note in this regard, section 21 provides:

21. Appointment of members of Māori Associations—(1) During the month of March in each year in which a triennial election is held, every Māori Committee shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the Māori Executive Committee for its Māori Executive area.

(2) During the month of April in each year in which a triennial election is held, every Māori Executive Committee shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the District Māori Council for its Māori Council district.

(3) During the month of May in each year in which a triennial election is held, every District Māori Council shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the New Zealand Māori Council.

101. Claimant counsel, closing submissions (paper 3.3.5), p 42; Sir Edward Durie to Dr Pita Sharples, 27 June 2012 (Crown counsel, TPK document collection (doc C15), pp 809–811); Sir Edward Durie to Karen McGuiness, 5 July 2012 (Crown counsel, TPK document collection (doc C15), pp 812–817)

102. Crown counsel, closing submissions (paper 3.3.3), p 21

(4) Notice of all appointments under this section shall be given to the secretary of the New Zealand Māori Council who shall compile and keep a list of the members of the various Māori Associations. Any such list shall be available for inspection at any reasonable time.

(5) Any member appointed to a Māori Executive Committee or a District Māori Council or the New Zealand Māori Council shall cease to be a member of the body to which he was appointed if he ceases to be a member of the body by which he was appointed and, in any such case, the appointing body may by resolution appoint another member in place of the person ceasing to be a member to hold office for the residue of the term for which that person was appointed.

(6) Notwithstanding the provisions of this Act, where pursuant to this Act the number of Māori Committees, Māori Executive Committees, or District Māori Councils in any area or district is altered, each member of any Māori Executive Committee or District Māori Council or of the New Zealand Māori Council in office at the date of the alteration shall, unless his office becomes vacant otherwise than pursuant to the alteration in number as aforesaid, remain in office for the residue of the term for which he was appointed.

Section 21(4) only requires that notice of the appointments made under this section be given to the Chief Executive of TPK, who is to keep a list of these members. Thus, we consider that the Act provides no power for the Minister or the Chief Executive to review or oversee DMC election results. Nor does it give the Chief Executive the right to reject election notifications from the NZMC as to election results.

We further note regulation 7(2) of the Māori Community Development Regulations 1963 only requires that the Chief Executive of TPK receive notification of officer appointments:

(1) Each Māori Association may from time to time appoint such officers as it may need to carry out its functions, including a secretary and a treasurer or a secretary-treasurer.

(2) Every appointment under subclause (1) and every change in the holders of any such offices shall in the case of District Māori Councils and the New Zealand Māori Council be notified to the Secretary for Māori Affairs. Any officer appointed under this regulation need not necessarily be a member of the Association which appoints him. . . .

Thus, we consider that the claimants correctly identify that the Minister and the Chief Executive of TPK have no authority to reject notification of results of triennial elections. Nor do they have the right to continue to work with people in districts where there is no operative DMC. That is because, on any sensible reading of section 20(3), the term of office for members of a DMC expires the year that triennial elections fall due. There are mechanisms in the legislation to provide for a situation where a DMC is inoperative, and anyone who wishes to claim that they still represent such a DMC may follow those to ensure the legality of their position. Clearly, however, where the Chief Executive is not notified of an election result for a district,

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the DMC becomes inoperative, and TPK should cease to deal with any persons purporting to hold office.

For the sake of completeness, we note section 22(d) of the Act, which provides that, with ‘respect to vacancies in the membership of Māori Associations’:

- (d) the powers of any Maori Association shall not be affected by any vacancy in the membership thereof, or because of any person continuing to act as a member of any such body after he has ceased to be a member, or because of any defect or illegality in the appointment of any member.

In our view, this section could not reasonably be interpreted so as to allow a person to continue to act as chair of a District Māori Council and to nominate wardens in a circumstance where no elections have been held and all the positions on the District Māori Council are therefore vacant.

Again, however, even if we are incorrect in this view, the issue for this Tribunal is whether the actions of TPK amount to acts or omissions contrary to the principles of the Treaty of Waitangi. We make our findings in that respect at the end of the chapter, in section 9.4.

Finally, we note the issue of whether amalgamation of districts was a remedy for the claimants. That is, could they have solved the problem of the Crown recognising a rolled-over chair in Te Tau Ihu by amalgamating that district with another Māori Council district? The claimants submitted that the only suitable choice for amalgamation was Wellington (given that there was a DMC-in-waiting in Te Waipounamu). We note, however, that the Crown had refused to accept the existence of a valid DMC in Wellington. In that circumstance, amalgamation with Wellington would have been a vexed remedy for the problem in Te Tau Ihu.

We consider the Wellington situation below in section 9.3.5. We turn next to discuss the other districts which, like Te Tau Ihu, have no operative DMC.

(2) *The situation in the other inoperative districts: Hauraki, Waikato, Maniapoto, and Tauranga Moana*

The claimants have asked the Tribunal to find that TPK has breached the 1962 Act and Treaty principles through continuing to warrant Māori Wardens from Hauraki, Waikato, Maniapoto, and Tauranga Moana districts, in spite of the fact that the NZMC has determined that there is no one validly in office in those districts. In the claimants’ view, the Crown’s practice in continuing to appoint wardens in these districts has prevented their attempts to fix the situation lawfully by amalgamating districts.¹⁰³ The claimants have not, however, pointed us to any evidence in relation to their claim in respect of these districts, and we are unable to make a finding as a result.

103. Claimant counsel, closing submissions (paper 3.3.5), p 48

(3) *The District Māori Councils-in-waiting*

Our analysis in this section would not be complete without dealing with a matter which, although it has not been raised as a grievance by the claimants, is nonetheless relevant to the Crown's conduct in respect of warranting, and the genuine dilemma faced by all parties when the 1962 Act's structures do not function correctly or in strict accordance with the law.

As noted above, seven District Māori Councils are validly in office as a result of elections held on the correct dates in 2012. In addition, however, the NZMC has recognised four provisional DMCS, which were appointed as a result of elections held outside the timeframe prescribed in the Act, and which the NZMC describes as councils-in-waiting. The claimants have not always been strict in distinguishing between the two. But evidence in clarification from the NZMC's secretary, Karen Waterreus, has established that the four provisional District Māori Councils-in-waiting are: Tamaki ki Te Tonga, Tairāwhiti, Takitimu, and Te Waipounamu.¹⁰⁴ Because they are not validly in office, these councils-in-waiting cannot exercise statutory powers, including the power to nominate wardens. It appears from Owen Lloyd's evidence, however, that the Tairāwhiti DMC has continued to nominate wardens.¹⁰⁵ The Tamaki ki Te Tonga DMC may also have nominated wardens.¹⁰⁶ Des Ratima told us that the Takitimu DMC nominates wardens. Its nominations are then approved by the NZMC's warranting committee, after which the nominations have been taken to (and accepted by) the Minister.¹⁰⁷

When we received clarification as to which DMCS were validly in office, we invited claimant counsel to make any submissions on this issue, and gave the Crown an opportunity to reply if it chose.¹⁰⁸ Claimant counsel appeared to appreciate the dilemma that the situation creates. Without specifically mentioning warranting, claimant counsel submitted:

If neither s19(1) or s19(2) [prescribing dates within which elections must be held] are complied with, then election results will not be lawful under the 1962 Act.

It is in theory possible that a Court might nevertheless recognise and give legal effect to a subsequent decision or action by a DMC which has not been elected into office in accordance with the requirements of s19 of the 1962 Act.¹⁰⁹

Elaborating upon this argument, counsel submitted that an 'unlawful decision or action is valid and effective unless and until a Court of competent jurisdiction finds otherwise', and that such a Court would be 'influenced by whether there would be serious injustice to the parties affected if the actions of an unlawfully elected/

104. Karen Waterreus, brief of evidence (doc C24)

105. Owen Lloyd, brief of evidence (doc B12), paras 5, 9, 12–15, 18

106. Diane Black, brief of evidence (doc B5), pp 14–15; Transcript 4.1.1(a), p 181

107. Transcript 4.1.1(a), p 65

108. Waitangi Tribunal, memorandum-directions, 20 October 2014 (paper 2.7.8)

109. Claimant counsel, memorandum, 28 October 2014 (paper 3.4.12), p 1

9.3.4(3) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

constituted DMC were treated as a legal nullity.¹¹⁰ Crown counsel did not respond on these points.

If pertinent, these submissions from the claimants would apply equally to the situation in Te Tau Ihu as to other districts where the Crown may have accepted nominations from a DMC not validly in office (and where wardens' warrants may be invalid as a result).

Regardless, we are not a Court and we do not have the power to declare that a DMC's actions are a legal nullity. We simply offer our opinion of the law so as to determine whether the Crown's conduct has been consistent with Treaty principles, and whether prejudice has been suffered. We make our findings on that point in section 9.4.

Here, we note that the importance of having functioning, democratically established DMCS is not limited to the exercise of the powers allowed them by statute, either in respect of their communities or their wardens. The evidence of Diane Black, Anne Kendall, and Richard Noble demonstrated that point for Tāmaki ki te Tonga.¹¹¹ According to Karen Waterreus, the NZMC has encouraged the election of committees and the appointment of DMCS outside of the Act's requirements, so as to establish communications, build up the knowledge and networks necessary for successful elections in 2015, and to provide some interim representation in the meantime.¹¹² The NZMC, she explained, recognises that these provisional councils 'do not have the same status as District Māori Councils that did run valid elections, but the practical solution is necessary to ensure that the NZMC can continue to rebuild districts and ensure that valid elections are held when the time comes'.¹¹³

We accept the point that rebuilding, including by establishing provisional DMCS, is an important part of the renewal that is currently taking place in the council system. Also, as we saw in Chapter 3, there is a longstanding tradition of Māori establishing self-government bodies for themselves, such as the DMCS of the 1950s, whether or not they have statutory powers. But the evidence at our hearings was not at all clear that the DMCS-in-waiting appreciated a difference in their status at law – hence the apparent exercise of the statutory power to nominate wardens to the Minister (endorsed, we were told in the case of Tākitimu, by the NZMC's warranting committee).

The claimants cannot have it both ways: they cannot insist that TPK strictly uphold and obey the provisions of the 1962 Act while failing to do so themselves.

We leave the matter there and turn next to the situation in the Wellington district.

110. Claimant counsel, memorandum, (paper 3.4.12), pp 1–2

111. Transcript 4.1.1(a), pp 171–184

112. Karen Waterreus, brief of evidence (doc C24), paras 7–9. See also Karen Waterreus, brief of evidence, 17 October 2013 (doc C22).

113. Karen Waterreus, brief of evidence (doc C24), para 9

9.3.5 Has the Crown declined to accept nominations from a DMC that is validly in office?

The situation in Wellington is the inverse of the situation in Te Tau Ihu, although they spring from the same cause: the Crown's belief that it has the discretion to decline to accept the NZMC's notification as to which DMCs are validly in office. In Wellington, two groups claimed to have been elected as the DMC in 2012. One of these, chaired by Rahui Katene, was subsequently accredited as the DMC for Wellington by the NZMC, the other – led by Sharyn Watene – was not.¹¹⁴ Following the 2012 elections, TPK received a complaint in relation to elections in Wellington. We are not privy to that complaint, but believe the complainant to be the former DMC chair in Te Tau Ihu, Archdeacon Harvey Ruru.¹¹⁵ We were advised at our hearing that, after receiving this complaint, TPK recommended that the two parties enter mediation.¹¹⁶ Since the dispute arose, TPK have placed all warrants for Wellington wardens on hold. Kim Ngārimu told us that TPK 'have not progressed warrants or business with either of those two separately elected District Māori Councils', due to the possibility that warrants might later prove to be invalid.¹¹⁷ Thus, it is clear that the Crown was alive to the possibility that warrants would be invalid if the Minister or the Chief Executive made appointments or renewed warrants on the basis of nominations from incorrect bodies.

The parties in our inquiry differ as to what TPK's response to the Wellington dispute should have been. The claimants argue that the course of action that TPK should have taken in relation to the dispute is clear. In their view, the options open to the Crown were to accept the advice of the NZMC as to who has been validly elected, or to 'investigate with all deliberate speed the competing claims and determine which is correct'. The claimants submit that the Crown has done neither.¹¹⁸ But even if the Crown had investigated the complaint and determined whether there was any evidence in support of it, the claimants argue that the legal position in relation to Wellington is that:

TPK is obliged to deal with the officers notified to it by the NZMC, unless and until the position notified to TPK is overturned by a Court or by the arbitration process provided for by the NZMC. No Court decision having been issued to the contrary, and indeed no Court proceedings having been filed, the statute as it stands must be applied.¹¹⁹

Crown counsel did not make any submissions on this legal point. The Crown's submission was simply that there was a dispute, and that it was not safe to warrant

114. Noelene Smiler, brief of evidence (doc B2), p 5

115. Transcript 4.1.1(a), p 237

116. Transcript 4.1.1(a), pp 165–167

117. Transcript 4.1.1(a), pp 323–324

118. Claimant counsel, closing submissions (paper 3.3.5), p 47

119. Claimant counsel, closing submissions (paper 3.3.5), p 48

wardens until the dispute was resolved. Mediation, it was hoped, would settle the matter.¹²⁰

In our view, the law is as the claimants have explained: the Crown's choice is to accept the notification of the NZMC as to which DMC is validly in office, or to abide the decision of any relevant court proceedings. On the other hand, the Act does not compel the Minister or the Chief Executive to accept nominations for the appointment or reappointment of wardens. Legally speaking, then, the 1962 Act supports the positions of both parties: the Crown is obliged to accept the NZMC's notification as to who is validly in office, but the Crown is not compelled to appoint wardens on the nomination of the Wellington DMC. The question then is whether the Crown's conduct has been consistent with Treaty principles, which we address in the next section.

The Wellington dispute has had a significant impact on the warranting of wardens in that district. According to information obtained by the NZMC (via an Official Information Act request), 11 warrant applications for Wellington wardens are currently on hold.¹²¹ Another 16 Wellington wardens held current warrants as of September 2013, but we assume that many of these have expired or will soon expire, as no warrant renewals have now been processed for over two years.¹²²

While Wellington warden Millie Hawiki was, unfortunately, unable to attend our hearing, her written brief of evidence tells of her frustration at being unable to receive a warrant:

Even though I have been a Warden for a very long time and am strongly supported by my community, my application for a warrant has not been processed by Te Puni Kōkiri. I understand that it was sent to the Minister of Māori Affairs by the WDMC, but I have not received my warrant. Te Puni Kōkiri's refusal to process the warrants is frustrating as we are very hard working volunteers and feel that we are not getting the recognition we deserve.¹²³

According to Noelene Smiler, up to 30 wardens in Wellington are currently operating without warrants.¹²⁴ This has caused 'huge problems' for the district's wardens as it has left them operating without the legal protections that a warrant offers under the 1962 Act.¹²⁵ As well as impacting upon the ability of Māori Wardens to do their work in the community, Ms Smiler also told us that her wardens cannot access MWP funding while the dispute over elections remains unresolved, due to the requirement that a wardens' group must have at least five warranted wardens to be eligible for funding:

120. Crown counsel, closing submissions (paper 3.3.3), pp 21–22

121. Michelle Hippolite to Karen Waterreus, 18 October 2013 (Karen Waterreus, comp, papers attached to statement in reply (doc B25(b)), p 19)

122. Karen Waterreus, comp, papers attached to statement in reply (doc B25(b)), p 19

123. Millie Hawiki, brief of evidence (doc B1), p 5

124. Transcript 4.1.1(a), p 69

125. Noelene Smiler, brief of evidence (doc B2), p 6

Funding is another issue that we have, and Te Rau has also spoken about that in his affidavit, and this funding criteria where you are required to have five warranted wardens to be successful in your application. We only have seven altogether in the entirety of Wellington that I know about, and four in Porirua, three are in Lower Hutt, and it's very hard to get groups of people out on patrol. You can kind of get them in events, but out on patrol you've got to work out sort of different nights and you've got to have a warranted warden present, and that's not easy when you've only got a few warranted wardens.¹²⁶

Ms Smiler suggests that while her own group, who are associated with the NZMC-recognised DMC chaired by Rahui Katene, cannot access MWP funding, other Wellington wardens aligned with the former DMC, headed by Sharyn Watene, have continued to receive such funding. Ms Smiler told us in oral evidence that wardens associated with her DMC have been 'ostracised as Māori Wardens in the sense that Te Puni Kōkiri and the Police, they actually support the other wardens, who are not a part of us, and those wardens are out there doing all this work with their support and we've got nothing'.¹²⁷

The financial records of the MWP show that between the 2012–13 and 2013–14 financial years, the Rimutaka Māori Committee, the Wainuiōmata Māori Committee, Lower Hutt Māori Committee, and Ngāti Toa Māori Wardens have all received funding through the MWP.¹²⁸ We are informed by Ms Smiler that, aside from the Wainuiōmata Māori Committee, which has recently joined her DMC, none of these groups are affiliated to the DMC recognised as validly in office by the NZMC.¹²⁹ We assume that these groups have been able to receive funding because they still have the minimum number of warranted Māori Wardens to apply for a grant (although we are informed that since August 2012 TPK has processed no Māori Wardens' warrants for the Wellington area). In other words, this is not a matter of discrimination but rather the effect of the Crown's refusal to accept nominations from the Wellington DMC.

We consider this matter further in our findings below.

9.4 THE TRIBUNAL'S FINDINGS ABOUT WARRANTING

Overall, the evidence presented to us on the subject of warranting indicates that, where the warranting system operates well, it provides a robust process which ensures that Māori Wardens are vetted by and accountable back to their communities. It is also clear that in order to function well, the system relies upon the effective functioning of all of its layers. Issues at any level – whether it is with Māori Committees, DMCS, TPK, or the Minister's office – can impede the appointment or reappointment of wardens and the effective and timely processing of their warrants.

126. Transcript 4.1.1(a), pp 163–164

127. Transcript 4.1.1(a), pp 161–163

128. Transcript 4.1.1(a), pp 169–170; Māori Wardens Funding Programme (Te Rauhuia Clarke, comp, papers in support of brief of evidence (doc B14(a)), pp 205–225)

129. Transcript 4.1.1(a), pp 169–170

In respect of timely processing of wardens' warrants, we note first that the Crown has conceded that it shares some of the blame for the delays that have occurred. Te Rau Clarke's evidence was that TPK's system had improved since the MWP team took it over, but that problems with the electronic database had not been solved at the time of our hearing.

The problem of lengthy delays has been endemic to the system for a long time. As we discussed in chapter 5, complaints have been made about serious delays since the 1980s. And in 2010, the select committee noted that the problem still existed. In 2012 the independent evaluators also noted the issue. MWP team members interviewed by the evaluators had identified a need to review the current system to improve the 'timeliness and effectiveness' of the processing of warrants: this might include an alert system to notify District Māori Councils of expiring warrants.¹³⁰ This highlighted an important part of the problem; DMCS lacked the resources to administer warrants in any more systematic way than to process applications if they were received (and sometimes not even then). As Diane Black told the Tribunal, the Tāmaki ki Te Tonga DMC was operated out of her 'back pocket' and could barely afford to hold meetings. At present, the processing of Māori Wardens' warrants relies on a government department that admits there are systemic flaws, and DMCS which have little or no resources and administrative capacity.

Added to this problem of delays and the DMCS' lack of administrative capacity is that some districts have no DMC at all. In the past, the Crown and the NZMC have both developed mechanisms to compensate for dysfunction at this level of the council structure. The question here is not so much whether the mechanisms work but whether the mechanisms are lawful. This is a particularly important question for the present claim. The claimants emphasised to us that fostering respect for the law among the Māori people is a statutory obligation for all levels of the council system. We were told:

The Council takes the view that the Minister and TPK must set an example to all Māori about complying with the law, and should explain why they consider they are entitled to deal with persons who do not appear to the Council to have been appointed to the Council in accordance with the law.¹³¹

Sir Edward Taihakurei Durie, co-chair of the NZMC since 2012, claimed that the question of lawfulness was – in the context of the 1962 Act and the compact which it represents – inherently related to the question of good faith. The Crown, he said, cannot claim to be acting in good faith if it is not complying with the law and seen by Māori to be doing so.¹³²

130. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc C15), p 855). The evaluators' report was originally filed as document A8 on the Tribunal's record of inquiry, however we are referencing document C15, which is more legible.

131. Sir Edward Durie, brief of evidence (doc B9), p 5

132. Sir Edward Durie, brief of evidence (doc B24), p 2

As we explained above, some of the mechanisms adopted by the Crown and the claimants have operated outside the requirements of the 1962 Act.

First, both parties seem to have believed that DMCs could delegate the power of nomination to Māori Wardens' associations, so long as the association had been accorded the status of a 'Māori Association' under the Act and the delegation was in writing. In our view, it is not legally possible for a DMC to delegate this particular power, and any such purported delegations were not lawful. We know as a matter of fact that at least one DMC did make such a delegation, and that the Crown accepted nominations from wardens' groups prior to 2011. We have no information as to whether this non-compliance with the 1962 Act was extensive, or how many wardens were warranted as a result of it.

Secondly, the Crown and claimants both operated prior to 2012 on the basis that 'rolled-over' DMC chairs could nominate wardens for appointment and reappointment. The reformed NZMC has insisted that this practice is undemocratic, unlawful, and must stop. The Crown has taken the position that it is lawful and will continue (in respect of Te Tau Ihu and possibly in respect of other districts). We agree with the claimants that the practice is unlawful.

Thirdly, the Crown and claimants both appear to have accepted that DMCs-in-waiting can nominate wardens. In our view, this practice does not comply with the 1962 Act and is unlawful.

What the delays, the DMCs' lack of administrative capacity, and the unlawful mechanisms for getting warrants processed all show is systemic failure. The whole system is affected by any remaining incapacity within TPK (although the Crown has assured us that warrants are mostly turned around within six weeks, despite lingering concerns about electronic tracking). The whole system is also affected by the lack of resources and capacity within DMCs. The result is that something like an alert system for upcoming expiry of warrants (as recommended by the independent evaluators) is simply beyond their reach. Regional coordinators have tried to assist here – with what overall effect is unknown. Most importantly, parts of the system do not function at all if there is no DMC validly in office. This appears to have been the case for the majority of districts both before and after the 2012 elections. Mechanisms have evolved to get around this problem but, in our opinion, they are all unlawful. The only mechanism provided by the 1962 Act is for the NZMC to amalgamate districts.

As we see it, the Crown is at fault in Treaty terms for allowing this systemic dysfunction to continue. At the very least, TPK ought to have funded a review of the warranting system in partnership with the NZMC to identify the issues and develop solutions. The Treaty partners came close to this point in 2008. As we explained above, the Advisory Group took the initiative and established a Warranting Group consisting of NZMC and NZMWA representatives along with TPK officials. But the response to the Warranting Group's proposals was lacking. The Crown took the position that aspects of the proposals would contravene the law, rather than considering the negotiation of a tripartite agreement to effect a law change. After

protest from the NZMC–NZMWA Warranting Group, officials agreed to look into matters further – but the MWP Advisory Group never met again. This was a missed opportunity to have at least started to address the problems in appointing and warranting Māori Wardens. In our view, the Crown should have taken the work of the Warranting Group out to the NZMC and NZMWA for further discussion towards a possible agreed solution to the system failures. Instead, the initiative was lost in the 2009 decision to review the Act more generally.

There was another opportunity in 2012, when the independent reviewers called for a review and redevelopment of warranting systems to improve timeliness and effectiveness.¹³³ This recommendation was made despite the fact that a wider review of the Act was also about to take place. It could have been carried out in a targeted fashion and in partnership with the NZMC and NZMWA.

We therefore find the Crown in breach of its partnership and active protection obligations under the Treaty for its failure to review and reform the warranting system in concert with the NZMC, despite the existence of systemic flaws of long standing. The Māori organisations involved had shown the willingness to take the lead (in the 2008 Warranting Group) but this opportunity was lost.

The prejudice to the claimants is that Māori Wardens have either been unable to function in some communities, or have had to play a limited role without their warrants. We do not know for sure how many Māori Wardens do not have current warrants, but we accept from estimates supplied by both the claimants and the Crown that it is a large number. At the time of the Advisory Group's review of the situation in 2008, it was believed that 1500 warrants were outstanding. From the evidence that we heard, this has clearly had a significant and prejudicial impact on the wardens and on the Māori communities that they serve.

There remains the question of whether the Crown's unlawful acceptance of nominations from bodies other than valid DMCS is a breach of Treaty principles. The claimants believed that it was:

The Crown's warranting of Wardens other than through DMCS constitutes a further breach of the partnership, active protection and utmost good faith principles. It is also contrary to Arts 4, 5, 18 and 20(1) of UNDRIP.¹³⁴

In particular, the Crown 'in continuing to deal with Archdeacon Ruru as if he remains validly in office for the Te Tau Ihu District is acting in breach of the 1962 Act and, thereby, the Crown is breaching the partnership, active protection and utmost good faith principles.'¹³⁵

In assessing this claim, the Tribunal must have regard to whether the Crown's actions have been reasonable in the circumstances, and whether the Crown has acted in good faith and fulfilled its obligation to act in partnership with the NZMC

133. Te Puni Kōkiri, 'Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007–2010' (Crown counsel, TPK document collection (doc C15), p 833)

134. Claimant counsel, closing submissions (paper 3.3.5), p 49

135. Claimant counsel, closing submissions (paper 3.3.5), p 46

for the matters covered in the 1962 Act. In particular, we need to consider whether the duty placed on Māori Associations in the Act to instil faith in the law has been served by the Crown's adherence to the law. Another factor to consider is that the NZMC itself, in permitting DMCS-in-waiting to nominate wardens (as the evidence suggests that it has) is not acting in accordance with the law.

We acknowledge that both parties, it must be remembered, believed that wardens' associations could make nominations if properly delegated the power to do so. And both parties had agreed to the roll-over of DMC chairs in the absence of elections, and to the nomination of wardens by those chairs. By 2012, however, the Crown was no longer accepting nominations from bodies other than DMCS.

Also by that time, the NZMC had made it clear to the Crown that the whole council system was being reformed and re-established on democratic lines and in compliance with the requirements of the 1962 Act. Here, we think the claimants' reliance on Treaty principles and the UNDRIP is particularly apposite. In particular the latter as it informs our understanding of how the Treaty partnership, and the Crown's obligation to respect and protect tino rangatiratanga, should work in this situation.

As noted above, the claimants asserted that the Crown's actions were in breach of articles 4, 5, 18, and 20(1) of the UNDRIP.¹³⁶ As we discussed in chapter 2:

- ▶ Article 4 of the UNDRIP states: 'Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.'
- ▶ Article 5 states: 'Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.'
- ▶ Article 18 states: 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.'
- ▶ Article 20(1) states: 'Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.'

In the claimants' view, these articles affirm their right to govern their affairs according to their own chosen institutions and procedures.¹³⁷ We agree. For the Crown to appoint wardens on the nomination of bodies not democratically or lawfully in office (according to the Act agreed in 1962), and not accountable to Māori communities under that Act's structures post-2012, is a breach of the Treaty principles of good governance and tino rangatiratanga as elaborated further in the autonomy and self-determination rights in the United Nations Declaration. The

136. Claimant counsel, closing submissions (paper 3.3.5), p 49

137. Claimant counsel, closing submissions (paper 3.3.5), pp 29–30

1962 Act was part of a negotiated compact between Māori and the Crown, in which Parliament recognised and conferred statutory powers on Māori self-government institutions, for those Māori communities which exercised their right to elect those institutions under that Act. This included the investment of important roles and powers in Māori Wardens, and the exclusive authority for elected DMCs to nominate wardens and supervise their activities on behalf of Māori communities. These were not idle arrangements or lightly entered into; they were carefully negotiated so as to secure Māori autonomy and the accountability of Māori self-government institutions to their communities.

As we see it, the Crown's actions have been inconsistent with articles 4 and 18 of the UNDRIP. Articles 5 and 20(1) refer to the right to develop and maintain distinctive institutions in a different context, and do not appear to us to have been breached by the Crown's actions in this instance.

As noted in chapter 2, we give our opinion on these matters because it informs our Treaty findings and our understanding of how the Treaty applies to the present claim. The Crown is required to respect the tino rangatiratanga of the Māori communities represented by the claimants, and to act in partnership with them. Its insistence, despite the objections of the NZMC, that rolled-over chairs are still in office, and its acceptance of wardens' nominations from those chairs, is not consistent with the partnership principle, nor with the Crown's duty actively to protect tino rangatiratanga. The claimants are prejudiced when their self-government institutions are set aside or nullified in this way, and when wardens are nominated outside of the community vetting and accountability provided for in the Act. While the DMCs-in-waiting have been democratically elected and endorsed by the NZMC, the Crown is also acting unlawfully if the Minister appoints or reappoints wardens on their nomination when their elections did not meet the statutory requirements. Here, we accept that both parties are acting in good faith and in partnership, and that there is democratic accountability, but we caution the parties that the practice is, in our view, unlawful.

Finally, we note in respect of the situation in Wellington, that the Act does not compel the Minister to accept nominations from a DMC, although we think it goes against the spirit of the Act (and of the compact) for the Crown to decline the nominations of a DMC validly in office. We appreciate the Crown's view that the 2012 elections in Wellington are disputed, and that to appoint wardens on the nomination of the wrong DMC may make those wardens' warrants invalid. But the NZMC has notified the Crown as to which DMC is in office. As we see it, the Crown's refusal to accept and act on the NZMC's notification is inconsistent with its partnership obligations, and its duty actively to protect the tino rangatiratanga of Wellington Māori communities. In the meantime, the proposal for mediation has gone nowhere (as at our last information, in late October 2014) and no wardens have been warranted since 2012.

It is clear that both Māori Wardens and the claimants have been prejudiced as a result of Crown actions in Wellington. TPK's failure to accept the DMC endorsed

by the NZMC has left Māori Wardens operating without warrants and ineligible for funding to support their activities. The ongoing uncertainty and confusion within the district as to which is the valid DMC, stemming from TPK's refusal to recognise the NZMC's notification of the outcome of the 2012 election, undermines not only the Wellington DMC but also the NZMC's efforts to reconstitute itself along democratic lines in other districts, as there is no certainty that its jurisdiction to decide on the outcome of elections will be recognised by TPK.

SUMMARY OF FINDINGS

The claim is well-founded in the following respects

The omission to rectify systemic failure in partnership with the NZMC

- ▶ When the warranting system operates well, it provides a robust process which ensures that Māori Wardens are vetted by and accountable back to their communities. But, on the whole, the system has not functioned well for many years.
- ▶ The Crown accepts a share of the blame for delays in warranting, although it argues that TPK's problems have now mostly been fixed.
- ▶ More widely, systemic failures have occurred because the District Māori Councils (DMCs) are under-resourced and hence have no administrative capacity, and some districts have no DMCs at all. A series of unlawful mechanisms have been developed to try to fix the system on the ground, without notable success. These include the warranting of wardens on the nomination of (a) wardens' associations, (b) rolled-over DMC chairs, and (c) DMCs-in-waiting, elected outside the requirements of the 1962 Act.
- ▶ The Crown has known of serious systemic flaws for a long time, most recently drawn to its attention by the 2008 Warranting Group, the 2010 select committee report, the 2012 independent evaluators' report, and the present claim.
- ▶ The Crown is at fault in Treaty terms for allowing this systemic dysfunction to continue. At the very least, TPK ought to have funded a review of the warranting system in partnership with the New Zealand Māori Council (NZMC) to identify the issues and develop solutions. There have been important missed opportunities to do this, including most notably the NZMC–NZMWA (New Zealand Māori Wardens Association) Warranting Group in 2008.
- ▶ The Crown has breached its partnership and active protection obligations under the Treaty for its failure to review and reform the warranting system in concert with the NZMC, despite the existence of systemic flaws of long standing.
- ▶ The prejudice to the claimants is that Māori Wardens have either been unable to function in some communities, or have had to play a limited role without their warrants. We do not know for sure how many Māori Wardens lack current warrants, but we accept that it is a large number. From the evidence that we heard,

this has clearly had a significant and prejudicial impact on the wardens and on the Māori communities that they serve.

The Crown's acceptance of unlawful nominations

- ▶ The Crown is required to respect the tino rangatiratanga of the Māori communities represented by the claimants, and to act in partnership with them. Its insistence since 2012, despite the objections of the NZMC, that rolled-over DMC chairs are still in office, and its acceptance of wardens' nominations from those chairs, is not consistent with the partnership principle nor with the Crown's duty actively to protect tino rangatiratanga.
- ▶ The claimants are prejudiced when their self-government institutions are set aside or nullified in this way, and when wardens are nominated outside of the community vetting and accountability provided for in the Act.
- ▶ Although the DMCS-in-waiting have been democratically elected and endorsed by the NZMC, the Crown is also acting unlawfully if the Minister appoints or reappoints wardens on their nomination when their elections did not meet the statutory requirements. Here, we accept that both parties are acting in good faith and in partnership, and that there is democratic accountability, but we caution the parties that the practice is, in our view, unlawful.

The situation in Wellington

- ▶ The Crown's refusal to accept and act on the NZMC's notification of the election results in Wellington is inconsistent with its partnership obligations, and its duty actively to protect the tino rangatiratanga of Wellington Māori communities.
- ▶ The claimants have been prejudiced. No Wellington wardens have been appointed or reappointed since 2012. The NZMC's efforts to reconstitute itself on democratic lines have been defeated in the Wellington district. More generally, the claimants have been prejudiced by the uncertainty which has been created as to the NZMC's jurisdiction to decide on the outcome of elections.

Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples

We agree with the claimants that the Crown has appointed or reappointed wardens on the nomination of rolled-over DMC chairs, who are not accountable to Māori communities under the 1962 Act's structures. In our opinion, this is a breach of the autonomy and self-determination rights as affirmed in articles 4 and 18 of the United Nations Declaration.

CHAPTER 10

NGĀ WHAKATAUNGA /
FINDINGS AND RECOMMENDATIONS

10.1 INTRODUCTION

In these proceedings, we have heard claims under section 6(1) of the Treaty of Waitangi Act 1975 from the New Zealand Māori Council (NZMC). The claimants have alleged that they have been or are likely to be prejudicially affected by policies, actions, or omissions of the Crown. They further claim that such actions are inconsistent with the principles of the Treaty.

The Tai Tokerau District Māori Council appeared as an interested party. It claimed that Crown actions and policy have intentionally undermined Māori institutions established by the Māori Community Development Act 1962 (the 1962 Act), in particular the Māori Wardens; and that its policies intentionally ‘attenuate’ the authority of Māori Wardens in terms of the Act.¹

The claimants alleged that the Crown through its agent Te Puni Kōkiri (TPK) failed to approach the 1962 Act in ways that respected the Act as providing a measure of Māori self-government following an agreement between Māori and the Crown.² TPK’s actions, they claimed, gave rise to breaches of the Treaty principles of the right to govern in exchange for the protection of rangatiratanga; partnership; active protection and informed decision-making; and equity. TPK’s actions are also alleged to have resulted in Crown breaches of articles 4, 5, 18, 19, 20, 33, and 39 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which sets out the rights of Māori which the Treaty sought to secure.³

The claimants further claimed that in developing and administering the Māori Wardens Project (MWP) the Crown has breached Treaty principles as informed by the UNDRIP rights by diminishing or excluding the authority of the NZMC and District Māori Councils (DMCs) to administer Māori Wardens in terms of the 1962 Act and in terms of the compact to which that Act gives effect.⁴

They sought the following findings:

1. In regard to self-determination or the reform of the 1962 Act:

1. Counsel for Te Tai Tokerau District Māori Council, closing submissions, 27 May 2014 (paper 3.3.4), pp 2–3
2. Claimant counsel, closing submissions, 28 May 2014 (paper 3.3.5), p 1
3. Claimant counsel, closing submissions (paper 3.3.5), p 1
4. Claimant counsel, closing submissions (paper 3.3.5), p 1

- A finding that the process proposed for the reform of the 1962 Act is inconsistent with the Treaty and UNDRIP. This is because the 1962 Act represents an agreement to give effect to Māori proposals for self-government. It follows that the process for the reform of that Act should be self-determining and not Government-led. It is therefore for Māori to propose and Government to respond.
 - A finding that in terms of the agreement, and in terms of the 1962 Act, DMCS and the NZMC have responsibility for wardens.
 - A finding that the Crown should provide adequate resources for the administration and operation of the wardens in terms of the 1962 Act.⁵
2. In regard to the Māori Wardens Project:
- A finding that the policies and practices of the Crown under the MWP are inconsistent with the 1962 Act because they usurp the administration of the wardens by other than the DMCS and the NZMC, or diminish the capacity of the DMCS and the NZMC to perform their statutory responsibilities.
 - A finding that the same is inconsistent with the principles of the Treaty and the UNDRIP because the wardens are an integral part of the historic arrangement for Māori self-determination through rūnanga, karere, and wātene and are in effect agents for Māori autonomy with accountability to their communities.
 - A finding that the failure to deal reasonably through the NZMC led or substantially contributed to an unlawful interference in the Council's election processes and to the warranting of wardens by unauthorised personnel.⁶

The Crown denied the allegations and therefore opposed the findings sought.

After inquiring into the claim under section 6(2) of the Treaty of Waitangi Act 1975, we find the claim to be well-founded in the respects set out in chapters 6 to 9 of this report, although we have not upheld certain aspects of the claim (as also detailed in those chapters).

In this chapter, we summarise our findings and then we make recommendations to compensate for or remove the prejudice that has resulted from Crown policies, actions or omissions.

10.2 FINDINGS ON GENERAL ISSUES

In this report, we introduced the nature and extent of the claim before this Tribunal in chapter 1. In chapter 2, we found that the principles of the Treaty of Waitangi relevant to this claim are:

- › kāwanatanga – the right to govern and the duty of good government;
- › tino rangatiratanga – the right to self-government – Māori autonomy;
- › partnership;
- › collaborative agreement;
- › active protection;

5. Claimant counsel, closing submissions (paper 3.3.5), pp 81–82

6. Claimant counsel, closing submissions (paper 3.3.5), p 82

- ▶ equity and equal treatment; and
- ▶ development.

We then considered how these principles were informed by the United Nations Declaration on the Rights of Indigenous Peoples, in which the international community (including New Zealand) has affirmed fundamental rights of indigenous peoples. In particular, we noted the guidance provided by article 19 to define in more precise terms the Treaty principle of collaborative agreement, which requires the parties to work cooperatively and reach agreement on administrative and legislative reform, in cases where the Crown's right to govern and the Māori right to autonomy and self-government overlap and intersect.

In chapter 3, we explored the claimants' argument that there was an agreement between the Crown and Māori in 1962 to give effect to Māori proposals for self-government, arising from a Māori-led or self-determined process. In doing so, we considered the history of Māori self-government initiatives since 1840 as essential context for understanding the importance of the 1962 Act.

We concluded that the 1962 Act and its various amendments including the 1969 amendment reflect an important acknowledgement from the Crown that it must recognise and provide for Māori rangatiratanga or Māori autonomy and self-government at all levels (that is, local, regional and national) as required by article 2 of the Treaty of Waitangi. In partnership with the Māori leaders of the Tribal Committees established under the Māori Social and Economic Advancement Act 1945, we found that the Crown worked collaboratively with Māori to arrive at a compact or agreement to realise their vision for self-government, including for the first time constituting a national Māori organisation, the New Zealand Māori Council. We consider that in doing so it demonstrated the positive effects of working in a manner consistent with Treaty of Waitangi principles.

In chapter 4, we reviewed the history of the NZMC from the 1960s to the 2000s within a broader social and cultural setting, with a particular focus on how the Crown engaged with the NZMC, particularly where it proposed to introduce changes to the 1962 Act and in terms of financial support. We also explored the shift in the representational landscape for Māori, with the reassertion of tribal autonomy and the rise of urban organisations. We then considered the implications for the role of the NZMC.

We concluded that over the decades reviewed, while the Crown consulted the NZMC, the Crown did not always cooperate and negotiate an agreement with the NZMC before amendments to the 1962 Act were introduced to Parliament and enacted. Thus, since 1974–75, the Crown has pursued a pattern of determining for itself how the 1962 Act should be reviewed and amended, although the NZMC asserted a contrary principle at the time (and since). We also noted that since its establishment, the council system has not been funded to adequately carry out statutory functions at the national, district and local levels. Finally, we considered that the resurgence of tribal authority has not led to a decline of support in the Māori world for some form of a national body.

In chapter 5 we traversed the history of the Māori Wardens and their unique position in the New Zealand legal system prior to and post the 1962 Act. The chapter explored the impact of urbanisation on the development of the Māori Wardens as an institution and their growing desire for operational autonomy, as reflected in the establishment of a national Māori Warden's Association and the many Māori Warden Associations constituted throughout the country. We also reflected upon the current role of Māori Wardens as expressed to us during these proceedings.

We concluded that while these developments were in large measure supported by the NZMC to the point that in some years it accepted the call for more operational autonomy, the NZMC together with the District Māori Councils have always sought to retain the Māori Wardens under the ambit of the 1962 Act. From their perspective, this was how the accountability of wardens to their communities was ensured. As we noted in chapter 5, *Te Māori* magazine captured the reason for this approach when it stated (citing Dr Ranginui Walker) that 'the institution of Māori warden [was] the modern outcome of the Māoris' desire . . . for some measure of self-determination within the context of Māoris' own social institutions.'⁷ However, the system has been plagued by dysfunction in more recent times, as a result of the Crown's warranting process breaking down and as a result of the NZMC and relevant Associations' decline over the period 1990–2010.

In the chapters that followed, we reviewed the case for the claimants and the Crown's response on matters in contention between the parties, and we summarise our findings in the following section.

10.3 THE REVIEW AND REFORM OF THE 1962 ACT

10.3.1 What chapter 6 was about

In chapter 6, we explored:

- ▶ the historical context leading to the establishment of the Māori Wardens Project in 2007, the establishment of the MWP Advisory Group in the same year, and then the group's demise in 2009;
- ▶ the review of the 1962 Act conducted by the Māori Affairs Select Committee in 2009–10, at the request of the Minister of Māori Affairs;
- ▶ the NZMC's internal reform process in 2012–14;
- ▶ the 2012–13 'pre-consultation' process between TPK and the NZMC;
- ▶ the Crown's decision in 2013 to proceed with a consultation process led by TPK; and
- ▶ the new direction offered by Michelle Hippolite, the Chief Executive of TPK, during this hearing process.

Broadly speaking, the dispute between the parties was focused on who should lead the review of the 1962 Act, and who should decide what reforms are necessary. The claimants' view was that the review must be Māori-led, and that the Māori Treaty partner would consult widely and then negotiate an agreement with the

7. 'New Burst of Life for Māori Wardens,' *Te Māori*, December 1979–January 1980 (First Waitangi Tribunal document bank, vol 1 (doc B26(a)), p 419)

Crown as to legislative reform. The Crown accepted that position in our inquiry but nonetheless maintained that its 2013 Crown-led consultation was compliant with Treaty principles. The Crown also argued that it (as funder) could suggest how the Māori-led review should be conducted, and by whom. The Crown also denied the implication of the claimants' arguments, which was that both the Treaty and the Declaration required a Māori-led process in respect of all legislation relating to Māori institutions. Our discussion in chapter 6 therefore focused on these various points.

But we also had to consider the claimants' allegations about the events leading up to the 2013 Crown-led consultation. These included concerns about the MWP Advisory Group (2007–09) and the select committee inquiry into the Act (2009–10). In particular, the claimants believed that both TPK's leadership of the Advisory Group and its advice to the select committee were directed at severing the wardens from the council system, and that this was replicated in TPK's leadership of the 2013 consultation.

Our findings for the entire chapter 6 were summarised at the conclusion of that chapter and are reproduced in part below.

10.3.2 Specific findings

(1) *The MWP Advisory Group*

- ▶ We agree with the Wai 262 Tribunal that specialist advisory committees can serve as forums for partnership and engagement, although we note that only those with a reasonable interest should be involved in an advisory group.
- ▶ The Crown used the MWP Advisory Group to bring together the NZMC and the NZMWA, which it saw as the two main stakeholders whose buy-in was essential for developing a Māori entity for managing the MWP and wardens. It is not clear whether the appointments to the Advisory Group were mutually agreed – if not, they should have been.
- ▶ The Advisory Group had some success in designing updated functions for wardens but had not reached agreement on the key issue – a Māori governance entity – by 2009.
- ▶ In our view, the Advisory Group was a promising partnership experiment, cut short when the Crown decided to proceed instead to a full review of the 1962 Act. But it could only ever have been a starting point for further consultation.

(2) *The select committee inquiry*

- ▶ TPK's advice to the select committee set the parameters for its analysis.
- ▶ Much of the information provided by TPK was avowedly neutral in tone and content, but TPK explicitly discouraged retaining the NZMC in its current form or retaining council responsibility for the wardens.
- ▶ The select committee accepted TPK's advice on many points but it was also influenced by the submissions received from Māori.

10.3.2(3) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

- ▶ We agree with the claimants that TPK's advice to the committee casts doubt on the Ministry's later claim to neutrality.
- ▶ But, ultimately, the committee's primary recommendation (and impact) was further consultation with Māori.

(3) The Crown's decision in 2013 to proceed with a Crown-led review of the 1962 Act

(a) Points of agreement between the parties at our hearing

- ▶ The Māori institutions provided for by the 1962 Act must be reformed by a Māori-led, not Crown-led, process.
- ▶ Māori should lead a review (with funding and technical assistance from the Crown), and then come to the Crown Treaty partner to discuss and agree any requested funding or legislative changes.

Despite these points of agreement, the Crown argued that its prior approach (a Crown-led review) was still compliant with Treaty principles; the claimants disagreed.

(b) The Tribunal's findings on points of disagreement between the parties

- ▶ We do not agree with the Crown's view in 2012–13 that the NZMC had a conflict of interest, preventing it from leading a review of the Act.
- ▶ We agree with the claimants that the Crown should have waited for the 2012 reform of the council system to be completed. It was vitally important that the review proceed on the correct principle. Interim arrangements could have been made for the administration of the MWP.
- ▶ The Crown should have known in 2012–13 that a Crown-led review, resulting in a standard Crown-consults-and-decides approach, was not appropriate. Its own argument was that this consultation was atypical: it said that it had no preferred option to put to Māori but simply wanted to find out what Māori wanted.
- ▶ The Crown's decision in 2013 to proceed with a Crown-led review, in which the Crown would consult Māori and then make decisions as to Māori self-government institutions, was inconsistent with the Treaty principles of partnership and options.
- ▶ In particular, the principle of collaborative agreement required that, where the matter was so central to Māori interests as their own self-government, and the Crown interest was correspondingly weak, the Crown could not proceed (as in 2013) without collaboration and agreement.
- ▶ Also, the Crown did not properly take into account the significance of the 1962 Act, and the negotiated compact by which this Act gave statutory recognition to self-government institutions created by Māori prior to that Act, when it made its decision to proceed with a Crown-led review.
- ▶ While the Crown was correct in 2013 that the representational landscape had changed since 1962, the appropriate response in Treaty terms was not for the

Crown to manage the ‘multiple rangatiratanga interests’ and lead the review instead of Māori.

- ▶ The Crown now accepts that the Māori self-government institutions provided for in the Act must be reviewed by Māori, to decide what reforms they want (if any). We do not accept the logic of the Crown’s argument that it was nonetheless Treaty-compliant for it to have done the opposite in 2013.

(c) *Prejudice*

- ▶ No prejudice has been suffered yet because the Crown’s review is only part-way through, and the ministerial decisions that came out of the Crown-led 2013 consultation were not ultimately prejudicial to the claimants.
- ▶ However, prejudice is likely to ensue if the findings and recommendations we make concerning the rest of the claim are not followed.

(4) *The Crown’s proposed way forward in 2014*

(a) *Points of agreement between the parties*

- ▶ Māori should be free to consider and develop for themselves reforms to their own institutions.
- ▶ The Crown should provide technical and funding assistance for that process if required.
- ▶ Māori should bring any proposals for reform, which involve funding or legislative change, to the Crown for discussion and agreement.
- ▶ Māori will need to be able to show (and the Crown will need to be able to satisfy itself) that they have conducted a fair process, that their proposals are sound, and that there is sufficient support for the proposals.

We endorse these points of agreement.

(b) *Points of disagreement between the parties*

- ▶ The Crown does not accept that the NZMC should lead the review (on its own), preferring two separate reference groups (one for wardens) which would report their recommendations to the Crown.
- ▶ The claimants do not accept that the Crown should have any say in how the Māori-led review is conducted until the end, when it has a role to audit the outcomes of the review and to agree on legislative or funding changes.

(c) *The Tribunal’s findings on points of disagreement*

- ▶ We agree with the claimants. The Crown’s article 1 kāwanatanga responsibilities do not include prescribing which Māori individuals or groups will lead the review or how the review is to be organised. That is for Māori to decide.
- ▶ We also agree with the claimants that Māori Wardens cannot stand on their own to lead a process to reform the 1962 Act – they must have a major say but they cannot have the lead or final say. Our view is that the NZMC is the appropriate body to lead the Māori side of the review.

10.3.2(5) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

- ▶ If the Crown insists on its ‘proposal’, for instance by making funding assistance contingent upon it, Māori will be prejudiced.

(5) *Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples*

- ▶ The Crown argued that the UNDRIP does not require a Māori-led review culminating in a Crown–Māori negotiation; rather, the Crown’s view is that the UNDRIP requires States and indigenous peoples to collaborate (allowing a variety of sequences and processes), and that a Crown-led process is envisaged under article 19.
- ▶ In our view, the Crown’s decision in 2013 to proceed with a Crown-led review, leading to unilateral Crown decisions about Māori self-government institutions, was not consistent with the rights affirmed in the Declaration.
- ▶ Article 19 requires that, where legislation is concerned, both sides must agree (which Māori accept). Either the Crown or Māori could initiate conversation reviewing a piece of legislation that is central to Māori interests, but in which the Crown also has an interest.
- ▶ The Māori institutions involved in the present case are self-government institutions, established by Māori and then accorded statutory recognition after negotiation with the Crown. These institutions do not arise from State action or initiative (the apparent starting point for article 19). Article 18 affirms the right of indigenous peoples to maintain and develop their own indigenous decision-making institutions and to choose their own representatives through their own procedures. Where articles 18 and 19 overlap – when State legislation relates to indigenous self-government institutions – our view is that indigenous peoples must decide what changes they want to these institutions. Collaboration follows because, as in the present case, the Crown has a duty to satisfy itself that the requested funding or legislation can be financed or enacted.
- ▶ In our view, the Treaty and the Declaration favour the Māori-led approach now agreed between the claimants and the Crown, and we expect that this would also be so in future for the reform of Māori self-government institutions accorded recognition in statute by prior agreement between Māori and the Crown.
- ▶ Different approaches could nonetheless be Treaty-consistent if the Treaty partners agreed to them.

10.4 THE ‘BIGGER PICTURE’ ISSUES IN RESPECT OF THE MĀORI WARDENS PROJECT

10.4.1 What chapter 7 was about

In chapter 7, we then moved into our analysis of the Māori Wardens Project. We reviewed the submissions and evidence from the claimants and the Crown regarding whether the project, in its development and administration by TPK, breached

the principles of the Treaty of Waitangi. The claim in this regard was that the Crown deliberately sidestepped the NZMC and District Māori Councils, and funded the wardens directly. This approach, the claimants argued, usurped their authority to control and supervise wardens. We concluded that the MWP was an important and useful means by which the Crown has provided much needed training and funding assistance to Māori Wardens, and that there was a measure of agreement from the NZMC and NZMWA to work with TPK in 2007 until a suitable Māori organisation was found to run the project. But the claimants were concerned that they had been excluded from the project's decision-making on such matters as funding and training, with the result that its centrally delivered training (in particular) was distorting the kaupapa of Māori Wardens, aligning them with the Police instead of their communities.

In broad terms, we agreed with the Crown that the NZMC and many DMCS were not suitable vehicles for administering the project and its funding as at 2007. But we also agreed with the claimants that there were significant risks that a Crown-administered project could change and distort the kaupapa of Māori Wardens, whether deliberately or not. The key safeguard against these risks was Māori community oversight of the project. In respect of this key safeguard, the Crown has failed to provide for it since the demise of the Māori Warden's Governance Board (February 2011), and thus has not acted consistently with Treaty principles. Further, the Crown disregarded the advice of the NZMC and NZMWA members of the Training Advisory Group, to the extent that there has been no safeguard for the project's centrally delivered training from its very beginning.

10.4.2 Detailed findings

(1) *Aspects of the claim that are not upheld*

- ▶ The Crown's provision of much-needed financial resources for Māori Wardens, in response to requests from wardens and Māori communities, was in keeping with its partnership obligations under the Treaty.
- ▶ We do not accept the claimants' position that the MWP was established without consent.
- ▶ From the evidence available to us, TPK obtained the agreement of the NZMC (and of the NZMWA) that a funding and training programme should be established, while a partnership mechanism – the Advisory Group – guided its administration in the meantime and developed a national Māori entity to manage the project (and Māori Wardens).
- ▶ We agree with the Crown that the council system was not capable of administering the project in 2007, and that a temporary alternative was necessary.
- ▶ We do not accept the claimants' evidence that the MWP has attempted to change the kaupapa of Māori Wardens by requiring wardens to be young and physically fit as a condition of funding.

(2) The claim is well founded in the following respects

(a) Māori community oversight of the MWP

- ▶ In Treaty terms, Māori community oversight of the MWP was essential, not optional.
- ▶ This role was originally played by the Advisory Group (and its successor, the Governance Board).
- ▶ There are significant doubts as to whether the Advisory Group was enabled to carry out this role successfully, and we have no information as to whether the Governance Board exercised effective oversight or even influenced the project.
- ▶ But there is no doubt at all that the continuance of the project after February 2011, in the absence of any partnership mechanism or Māori community oversight, was a breach of the Treaty principles of partnership and Māori autonomy. The temporary nature of the MWP was based on an agreement that there would be some mechanism for Māori community oversight in the meantime, while a new national entity was developed.
- ▶ Māori communities have been prejudiced by the loss of this safeguard, which – at the very least – ought to have ensured that the project had no adverse or distorting effects on the kaupapa of Māori Wardens, and was administered in keeping with the wishes, aspirations, and self-government of the Māori communities it was supposed to serve.

(b) Centrally delivered training

- ▶ In particular, centrally delivered training through the MWP has posed a risk to the kaupapa of Māori Wardens.
- ▶ The Crown's initial attempt to design this training in collaboration with Māori experts (through the Training Advisory Group (TAG)) failed because the Government refused to heed the advice and input of the NZMC and NZMWA experts, who resigned from the group in protest.
- ▶ The purpose and content of the centrally delivered training was decided by the Government alone. The Advisory Group tried to influence training decisions but was discontinued in 2009.
- ▶ The Crown's unilateral training decisions were in breach of the principles of partnership and Māori autonomy. The Crown's failure in 2012 to heed the suggestion of its independent evaluators that the TAG (or an equivalent) should be revived compounds the breach.
- ▶ The discontinuance of the TAG and the Advisory Group removed a crucial safeguard from the design and delivery of the MWP training programme.
- ▶ Māori communities have been prejudiced by the loss of this safeguard, which – at the very least – ought to have ensured that the project had no adverse or distorting effects on the kaupapa of Māori Wardens. There is a particular risk here that wardens will become too close to the Police, or will be perceived by their communities as more accountable to Government and the Police than to the community.

(3) *Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples*

Māori community experts and representatives, including from the NZMC and from the NZMWA, have been excluded from the design and implementation of the project's training, and then from all oversight of the project itself. In our view, this is not consistent with the rights affirmed in the UNDRIP. We are surprised that this kind of situation could arise in the twenty-first century, when advisory/governance mechanisms have become standard. It is not consistent with the Treaty, as we have set out above, and we trust that the Crown will heed our recommendations to put it right.

10.5 ADMINISTRATION OF FUNDING BY THE MĀORI WARDENS PROJECT TEAM

10.5.1 What chapter 8 was about

In chapter 8, we reviewed the claimants' allegations about MWP funding decisions. These included allegations that the Crown was wasteful and inefficient in its administration of the project's resources, and that the project team's funding decisions favoured wardens who were aligned with Māori Wardens' Associations (especially the NZMWA). In the claimants' view, MWP funding decisions discriminated against wardens aligned with their DMCS and the NZMC. In particular, the claimants argued that the statutory bodies with responsibility for controlling and supervising wardens have been excluded entirely from the decisions as to which groups, activities, and locally based training will be funded. In their view, the Crown's sole control of funding amounted to an attempt to de facto supervise and control the wardens, in breach of the 1962 Act and of Treaty principles.

The evidence reviewed by us shows that, as claimed, the NZMC and DMCS have no role at all in the vetting or granting of funding applications – indeed, they struggle to discover the most basic information about which wardens under their supervision are being funded, and what they are being funded to do. On the other hand, the claimants' allegations about inefficiency and favouritism were not upheld.

10.5.2 Specific findings

(1) *The claim is well founded in the following respects*

- ▶ There are some important deficiencies which have marred the overall success of the MWP in Treaty terms.
- ▶ Māori community oversight has been completely excluded from the project since early 2011. This includes all funding decisions, which are made in isolation from the NZMC and DMCS, the statutory bodies with responsibility for controlling and supervising the work of Māori Wardens.
- ▶ After the dissolution of the Advisory Group (and the demise of the Governance Board), there was no partnership mechanism at the central level of the project, and thus no Māori community oversight of funding policies or funding decisions.

10.5(2) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

- ▶ At the regional level, DMCs had no role in evaluating, commenting on, helping to decide, or even finding out about individual funding applications.
- ▶ The funding policies and decisions of the Te Puni Kōkiri-run MWP have thus interfered with the ability of DMCs and (ultimately) the NZMC to perform their statutory duties in respect of controlling and supervising Māori Wardens. This is especially so since the rejuvenation of some DMCs and the NZMC in 2012.
- ▶ We find the Crown to have breached the Treaty principles of partnership, active protection, and Māori autonomy in these aspects of its MWP funding decisions. Nonetheless, the Crown is to be commended for making much-needed resources available for Māori Wardens. The fault was in the manner in which the funding decisions have been made.
- ▶ Those Māori communities which elect representatives under the 1962 Act have been prejudiced because they have no say in which projects are to be funded or how the funding overall is to be directed towards meeting their needs. This has prejudiced their already limited ability to exercise self-government and self-determination under the 1962 Act.

(2) Aspects of the claim that are not upheld

- ▶ We do not accept the claimants' allegations that the MWP has been run inefficiently or wastefully. The evidence available to us – including the independent review of 2012 – points to a well-run project.
- ▶ From all the evidence that we have seen, there is no justification for the claimants' view that the MWP administrators have favoured groups aligned with the New Zealand Māori Wardens Association over groups aligned with the Māori Councils.
- ▶ Nor is the provision of funding directly to Māori Wardens unlawful under the 1962 Act.

(3) Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples

We agree with the claimants that the manner in which the Crown has made MWP funding decisions is not consistent with the rights affirmed in article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.

10.6 NOMINATION, APPOINTMENT, AND WARRANTING OF MĀORI WARDENS

10.6.1 What chapter 9 was about

In chapter 9, we turned to the detail of TPK's warranting process for Māori Wardens. Delays in the processing of warrants were a major grievance for all wardens, whether aligned to the council system or not. In the claimants' view, the responsibility for sometimes lengthy delays lies with TPK. In order to assess the problem, we considered the extent and impact of delays in processing warrants, the causal factors contributing to the delays, and whether the Crown has interfered with the

nomination process in certain circumstances (as alleged by the claimants). We also considered allegations from the claimants that the Crown has been accepting nominations from bodies which are not authorised to make such nominations under the 1962 Act – namely, wardens’ associations and DMCs which have been rolled over without elections (and are therefore not validly in office). The related issue of the Wellington DMC, where the Crown refuses to accept that there is a valid council in office, and therefore refuses to process any warrants, was also addressed. Finally, we considered the situation of DMCs-in-waiting, which have been elected outside of the provisions of the 1962 Act but appear to be nominating wardens as if legally entitled to do so.

10.6.2 Specific findings

(1) *The claim is well founded in the following respects*

(a) *The omission to rectify systemic failure in partnership with the NZMC*

- ▶ When the warranting system operates well, it provides a robust process which ensures that Māori Wardens are vetted by and accountable back to their communities. But, on the whole, the system has not functioned well for many years.
- ▶ The Crown accepts a share of the blame for delays in warranting, although it argues that TPK’s problems have now mostly been fixed.
- ▶ More widely, systemic failures have occurred because the DMCs are under-resourced and hence have no administrative capacity, and some districts have no DMCs at all. A series of unlawful mechanisms have been developed to try to fix the system on the ground, without notable success. These include the warranting of wardens on the nomination of (a) wardens’ associations, (b) rolled-over DMC chairs, and (c) DMCs-in-waiting, elected outside the requirements of the 1962 Act.
- ▶ The Crown has known of serious systemic flaws for a long time, most recently drawn to its attention by the 2008 Warranting Group, the 2010 select committee report, the 2012 independent evaluators’ report, and the present claim.
- ▶ The Crown is at fault in Treaty terms for allowing this systemic dysfunction to continue. At the very least, TPK ought to have funded a review of the warranting system in partnership with the NZMC to identify the issues and develop solutions. There have been important missed opportunities to do this, including most notably the NZMC–NZMWA Warranting Group in 2008.
- ▶ The Crown has breached its partnership and active protection obligations under the Treaty for its failure to review and reform the warranting system in concert with the NZMC, despite the existence of systemic flaws of long standing.
- ▶ The prejudice to the claimants is that Māori Wardens have either been unable to function in some communities, or have had to play a limited role without their warrants. We do not know for sure how many Māori Wardens lack current warrants, but we accept that it is a large number. From the evidence that we heard, this has clearly had a significant and prejudicial impact on the wardens and on the Māori communities that they serve.

10.6.2(1)(b) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

(b) *The Crown's acceptance of unlawful nominations*

- ▶ The Crown is required to respect the tino rangatiratanga of the Māori communities represented by the claimants, and to act in partnership with them. Its insistence since 2012, despite the objections of the NZMC, that rolled-over DMC chairs are still in office, and its acceptance of wardens' nominations from those chairs, is not consistent with the partnership principle nor with the Crown's duty actively to protect tino rangatiratanga.
- ▶ The claimants are prejudiced when their self-government institutions are set aside or nullified in this way, and when wardens are nominated outside of the community vetting and accountability provided for in the Act.
- ▶ Although the DMCs-in-waiting have been democratically elected and endorsed by the NZMC, the Crown is also acting unlawfully if the Minister appoints or reappoints wardens on their nomination when their elections did not meet the statutory requirements. Here, we accept that both parties are acting in good faith and in partnership, and that there is democratic accountability, but we caution the parties that the practice is, in our view, unlawful.

(c) *The situation in Wellington*

- ▶ The Crown's refusal to accept and act on the NZMC's notification of the election results in Wellington is inconsistent with its partnership obligations, and its duty actively to protect the tino rangatiratanga of Wellington Māori communities.
- ▶ The claimants have been prejudiced. No Wellington wardens have been appointed or reappointed since 2012. The NZMC's efforts to reconstitute itself on democratic lines have been defeated in the Wellington district. More generally, the claimants have been prejudiced by the uncertainty which has been created as to the NZMC's jurisdiction to decide on the outcome of elections.

(2) *Our opinion as to the application of the United Nations Declaration on the Rights of Indigenous Peoples*

We agree with the claimants that the Crown has appointed or reappointed wardens on the nomination of rolled-over DMC chairs, who are not accountable to Māori communities under the 1962 Act's structures. In our opinion, this is a breach of the autonomy and self-determination rights as affirmed in articles 4 and 18 of the United Nations Declaration.

10.7 SUMMARY OF FINDINGS

Generally, we agree with the claimants that the Crown through its agent TPK failed to approach the review of the 1962 Act in ways that respected the Act as providing a measure of Māori self-government following an agreement between Māori and the Crown.⁸ TPK's actions gave rise to breaches of the Treaty principles of the right to

8. Claimant counsel, closing submissions (paper 3.3.5), p1

govern in exchange for the protection of rangatiratanga; partnership; collaborative agreement; active protection; informed decision-making; and equity. Further, our view (as set out in chapter 6) is that the Crown-led review of 2013 was inconsistent with the United Nations Declaration as a whole, and in particular with articles 18 and 19, which inform our understanding of the collaborative agreement that was required in this instance by the Treaty. In this respect, but restricted by our findings above, we consider the claim as to the review of the 1962 Act to be well founded.

We also agree with the claimants that in developing and administering the Māori Warden's Project without some form of NZMC oversight as per the Advisory Group, the Crown has breached Treaty principles as informed by the UNDRIP rights. The Crown has diminished or excluded the authority of the New Zealand Māori Council and District Māori Councils to administer Māori Wardens in terms of the 1962 Act and in terms of the compact to which that Act gives effect.⁹ In this respect, but restricted by our findings above, we consider the claim as to the Crown's administration of the MWP to be well founded.

10.8 RECOMMENDATIONS

10.8.1 Introduction

In accordance with section 6(3)–(4) of the Treaty of Waitangi Act 1975, where the Tribunal finds that any claim submitted to it is well founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future. A recommendation may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take.

The claimants seek the following recommendations in terms of the 1962 Act:

- ▶ that any reform of the 1962 Act should generally be NZMC-led and negotiated with the Government; and
- ▶ that the Crown fund the reasonable costs of any reasonable reform process proposed by the NZMC.¹⁰

Having regard to the issues that still remain between the parties and taking into account the matters we discuss below, we have decided to make some suggestions to the claimants and recommendations to the Crown. This is because the Treaty of Waitangi Act 1975 does not provide for the Tribunal to make recommendations to the Māori Treaty partner. Nonetheless, the Crown and claimants both sought the Tribunal's guidance on the substance of Ms Hippolite's proposal as to how a Māori-led review should be conducted. In the circumstances of this case, therefore, we have offered our suggestions as to how the NZMC might proceed. Our suggestions in that respect do not have the status of formal recommendations.

9. Claimant counsel, closing submissions (paper 3.3.5), p1

10. Claimant counsel, closing submissions (paper 3.3.5), pp 81–82

10.8.2 The review of the Māori Community Development Act 1962

(1) *Our view as to the way forward for Māori and the NZMC*

We begin by being mindful of the long history of the Māori pursuit of mana motuhake or autonomy and self-government. This aspiration, held so long, is reflected in article 2 of the Treaty of Waitangi as the guarantee of rangatiratanga.

The Māori Community Development Act 1962 is the only statute in New Zealand that explicitly recognises that Māori have this general right to self-government. Nothing we recommend should detract from this statutory recognition of Māori self-government. Rather it should enhance that general right.

However, during the course of these proceedings we could not help but be struck by the changing nature of the representational landscape for Māori. Many iwi and urban authorities have through the settlement process achieved a degree of self-government, most limited to their settlement or community assets and members, but others reaching into local and regional government participation and decision-making. A Māori organisation is needed to monitor and enhance these advances in Māori self-government at the national and regional level, so that lessons and experiences can be shared and common issues identified for review and reform.

This is where the role of the NZMC intersects with other Māori institutions, such as the Māori Women's Welfare League, the Iwi Chairs Forum, and the National Urban Māori Authority, and a conversation is needed between all these institutions to ascertain whether the national structure that Māori leaders fought so hard to achieve in the 1960s needs to be modified. The new representational landscape would suggest that it does, although we note that – for the matters dealt with under the 1962 Act – the institutions under that Act continue to represent those Māori communities which choose to hold elections. In a broader sense, however, the NZMC may need to redefine its role as a result of the changes in Māori political representation, so that it complements rather than competes with iwi and urban Māori autonomy. We would be feigning ignorance if we did not recognise that even at the national level, the Iwi Chairs Forum operates as a competing national voice to the NZMC on some issues. The Māori Women's Welfare League offers a unique voice at the national level as well. That said, opportunities exist for there to be clear lines of demarcation to avoid confrontation.

Amendments to the 1962 Act are obvious vehicles for those lines to be drawn clearly. Such reforms would also allow the NZMC to clearly plot its strategic direction into the future. In this respect, we note that while there are still aspects of section 18 of the 1962 Act that fit nicely with being a national institution and which complement iwi and urban Māori autonomy, there are other aspects that seem outdated in 2014.

If Māori choose to combine on the national level, then an emphasis on national issues and matters affecting most or all Māori seems a pertinent framework to consider for the future. We have looked at possible future tasks that the NZMC may consider, along with those listed in section 18(1)(a)–(c). In promoting, encouraging, and assisting Māori to apply and maintain the maximum possible efficiency and

responsibility in their local self-government and undertakings, the NZMC could have responsibility for doing the same in terms of tikanga and mātauranga Māori. It could also be charged with collaborating with and assisting State agencies with the Treaty of Waitangi relationship between Māori generally, the Crown, and the people of New Zealand. We have noted in chapter 6, for example, the need for early engagement between Māori and the Crown to identify whether legislative enactments or amendments are of such central importance to Māori as to require collaborative agreement between the Treaty partners. A national Māori body would be the obvious starting point for this early dialogue.

At the local and regional level it may be that there should be more emphasis on cross-linking District Māori Councils and Māori Committees with iwi and urban authorities. These entities have a more meaningful role to play with their people, and possibly they also have funding. They are in a better position to exercise some of the functions of the NZMC system at the local level.

What we are suggesting is that the NZMC could consider cutting away those other matters in section 18 they cannot possibly implement, after consultation with the other Māori institutions, urban authorities, or iwi which are already performing them. These are issues that require a long conversation and strategic vision among Māori. To build a consensus around these issues is the challenge and may require a model such as that used by the Kōhanga Reo movement to undertake an internal review.

In April 2014, a national hui was convened by King Tūheitia to discuss future directions for the Kōhanga Reo movement. The hui established a working party to meet with kōhanga whānau throughout Aotearoa and to gather their views on governance and suggestions for the movement going forward. The working party was to report back at a second national hui in December 2014. This is a good model of self-review by a Māori institution, underpinned by national consultation with the communities it serves, and undertaken by a group of associated experts.

(2) *Our specific suggestions for Māori and the NZMC*

We suggest that the Kōhanga Reo review could be a good model for the review of the 1962 Act. A national hui led by the NZMC should be held. The purpose of the hui could be to establish a working group of experts, with knowledge of the Māori representational landscape relevant to the institutions, to undertake a review. The review could involve consultation with the NZMC, District Māori Councils, Māori Wardens and their associations, the Iwi Chairs Forum, the National Urban Māori Authority, the Māori Womens' Welfare League, the Kingitanga, and iwi from throughout New Zealand, and could result in a report containing recommendations for the future direction of the NZMC and the institutions and kaupapa for which it is responsible under the 1962 Act. The report and recommendations could inform the NZMC's preparation of a draft Bill to amend the Māori Community Development Act 1962. We see no reason why the initial approach adopted by Minister of Māori Affairs Ben Couch in 1980 should not be repeated here in the circumstances of the

10.8.2(3) WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

current review of this historic legislation: that is, the NZMC should draft a Bill for negotiation with the Crown.

The Crown's role in relation to such a review would be to resource the review process and support the process for amending the Act in line with the draft legislation produced by the NZMC, as we outline further in our recommendations below. As we explained in chapter 6 – and as the claimants agreed in our inquiry – the Crown would also need to satisfy itself at the conclusion of the NZMC-led review that the process had been robust and that the proposals for reform were widely supported.

In terms of the Māori Wardens under the 1962 Act, we accept that they are an integral part of the statutory scheme for Māori community self-government. But the system of administering the wardens as outlined in the 1962 Act is dated and needs amendment. It has not worked well in all regions. That may mean that iwi and urban authorities should have a greater role in the nomination and appointment of wardens either through the District Māori Councils, the local Māori Wardens' Associations, or through a direct process to the NZMC. We are not closed to the many options that the NZMC could explore and we suggest that they should do so before adopting a model in collaboration with the New Zealand Māori Wardens Association that truly does meet the needs of their Māori communities. This should be a key subject of the national hui that we believe should be held, and the consultation process that follows it.

We also suggest that an interim arrangement be made pending the outcome of the review, to ensure that the current impediments in relation to the operations of the wardens can be remedied. This is further outlined in detail below in our recommendations to the Crown.

Finally we note that for much of its existence the NZMC has been said to be a 'bird without feathers'. Funding is clearly needed given the history of the Māori pursuit of mana motuhake or Māori self-government and autonomy. Many a national Māori institution has foundered on the rocks of poverty due to lack of adequate support and funding by the Crown. The demise of the 1900 Act's Māori Councils in the early decades of the twentieth century and of the National Māori Congress in the 1990s are clear examples of this. Such results are not in keeping with the principles of the Treaty of Waitangi (as the Tribunal found for the Māori Councils in its report *He Maunga Rongo*)¹¹ and the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. The Crown has an opportunity through its own legislation, the Māori Community Development Act 1962, to rectify this sad fact of New Zealand history. It is to the NZMC's credit that it has limped on and that it is trying to refresh and rebuild itself. How it should do so in order to remain relevant to Māori is its challenge.

(3) Our recommendations to the Crown

Our primary recommendation is that the Crown accepts that the recognition of Māori self-government and Māori self-determination reflected in the Māori

11. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 387–400

Community Development Act 1962 must remain in legislation, and should underpin all future administration, policy development, and law reform in this area. This is a core feature of the 1962 Act and it should not be detracted from or omitted in any subsequent reforms, only enhanced.

The Tribunal also recommends that:

- ▶ Any reform of the 1962 Act should be NZMC-led and negotiated with the Crown.
- ▶ Should the NZMC determine to do so within the next 12 months, the Crown should agree to fund the development of a strategic direction and consultation process to underpin the NZMC's review of the 1962 Act, including the role of the NZMC and District Māori Councils in light of current understandings of the Māori representational landscape, and to provide technical assistance if sought.
- ▶ Following receipt of the NZMC's report on the results of its review of the 1962 Act, which should accompany the presentation of its draft Bill, the Crown should satisfy itself that the information provided by the NZMC demonstrates a robust consultation process and suffices for it to fulfil its obligations to the Māori groups that may be affected by the NZMC's proposals, seeking any additional information or assurances through the good offices of the NZMC.
- ▶ The NZMC will lead the review and consultation process for Māori, and the Crown (and indeed both Treaty partners) must act reasonably and in accordance with the principle of good faith and cooperation in negotiating on the draft Bill that the NZMC proposes, leading to a collaborative agreement between them.
- ▶ The Crown should agree that implementation of the consultation process should commence following the triennial elections in 2015 to give the NZMC time to organise all the District Māori Councils.
- ▶ The Crown should commit to legislative amendment and funding, as far as is reasonable, to give effect to the resulting strategic direction and to constitute and maintain the structure of whatever national body by consensus is arrived at following the consultation round.

10.8.3 The Māori Wardens

The claimants seek the following recommendations in terms of the Māori Wardens:

- ▶ That the Crown, including TPK and Police, wishing to treat with the Māori Wardens, must do so through the NZMC and upon such terms and conditions as may be agreed with the NZMC; and
- ▶ That the Crown and the NZMC explore training for DMCS, community officers, and wardens on the maintenance of local law and order.¹²

As we noted in chapter 5, the legislative authority over Māori Wardens comes within the ambit of the NZMC system, first the Māori Committees and then the District Māori Councils. Where the network of Māori Committees and District Māori Councils has operated effectively, it has provided a robust system in which

12. Claimant counsel, closing submissions (paper 3.3.5), pp 82–83

Māori Wardens are selected by and remain accountable back to their communities. However, this cannot change the fact that, in many areas, local and district associations of Māori Wardens have, in the absence of an effective District Māori Council, had to assume significant responsibility for their own operations. We heard and agreed with witnesses before us, many of whom were wardens, that they are capable of making decisions that will benefit their communities. We consider that if their opinions and perspectives are not given significant weighting in the decision-making process to come, there is little hope of finding a durable solution to the difficult issues that currently face the Māori Warden movement. They have, in our view, earned the right to some operational autonomy and that should be accommodated.

In an ideal world, the most Treaty compliant process is to separate out the operational arm of the Māori Wardens, as has been done by the establishment of the New Zealand Māori Wardens Association. That should be replicated at the district and local levels. Thus, Māori Wardens Associations should continue to be promoted and encouraged. The NZMC or whatever organisation exists following the review and consultation process described above should continue to have a political link to any national or local Māori Wardens Associations.

The policy decisions regarding matters such as the Māori Wardens Project, the training of wardens, and the prioritisation of their work, however, should be set by the institution exercising rangatiratanga or acting as a conduit for it, and that should be the NZMC or the District Māori Councils or other bodies approved by the Māori communities that they serve, as identified during the consultation process we have discussed above.

(1) *Our recommendations to the Crown*

The Tribunal recommends that:

- ▶ Until the NZMC reports on its strategic direction and the results of its consultation process, and any new legislation is enacted, an interim advisory group/governance board should be established to oversee the operations of the Māori Wardens Project. It would be for this group to decide how best to provide for Māori community oversight of funding, centrally delivered training, and all other aspects of the MWP.
- ▶ This advisory group be comprised of representatives from the NZMC, the New Zealand Māori Wardens Association, and the Te Puni Kōkiri Māori Wardens Project Team.
- ▶ The Māori Wardens Project continue but in collaboration with the NZMC and the New Zealand Māori Wardens Association through the newly constituted advisory group.
- ▶ The Crown urgently negotiate a collaborative agreement with the NZMC and the NZMWA to put in place a temporary warranting regime. This may require the parties to agree on methods of validating invalid warrants, and on the process for appointments and renewal of warrants, until permanent solutions can be found as part of the NZMC's national consultation and review of the Act. An interim legislative amendment may be required to put this temporary regime

in place until the scheme for revising the Act as a whole has been negotiated between the Crown and the NZMC. Resourcing will likely be required to ensure an efficient and speedy warranting process.

(2) *Our suggestions for the New Zealand Māori Wardens Association*

As with the NZMC, our statute does not provide for us to make formal recommendations to Māori, only to the Crown. Nonetheless, the role that wardens and their association should play in the upcoming review was a matter much canvassed in our inquiry. We suggest, as part of the NZMC-led review of the Act that:

- ▶ The New Zealand Māori Wardens Association seeks to nominate an expert or experts to the working group and to submit proposals for reform, including the strategic direction for the Māori Wardens, as part of the NZMC national consultation process; and
- ▶ Those proposals should cover the nomination process, warranting, logistical support, training, and general funding issues.

10.8.4 The Tribunal's final recommendation

The Tribunal further recommends that the Crown enters into discussions in good faith with the NZMC for reimbursement of costs incurred by the NZMC in advancing its claims and not covered by legal aid.

10.8.5 Leave

Finally, leave is reserved for the parties to apply on 14 days' notice for guidance on the implementation of the Tribunal's recommendations.

Dated at Wellington this 5th day of December 2014



Deputy Chief Judge Caren Fox, presiding officer



Ron Crosby, member



Miriama Evans, member



Professor Sir Hirini Mead KNZM, member



Dr Grant Phillipson, member



Tania Te Rangingangana Simpson



APPENDIX I

**THE MAORI COMMUNITY
DEVELOPMENT ACT 1962**

ANALYSIS

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| | |
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An Act to provide for the constitution of Maori Associations, to define their powers and functions, and to consolidate and amend the Maori Social and Economic Advancement Act 1945 [14 December 1962]

1. Short Title and commencement—(1) This Act may be cited as the Maori Community Development Act 1962.

(2) This Act shall come into force on 1 January 1963.

2. Interpretation—In this Act, unless the context otherwise requires,—

‘chief executive’ means the chief executive of the Ministry of Maori Development

‘liquor’ means alcohol within the meaning of section 5(1) of the Sale and Supply of Alcohol Act 2012

‘Maori’ means a person of the Maori race of New Zealand; and includes any descendant of such a person

‘Maori Association’ includes a Maori Committee, a Maori Executive Committee, a District Maori Council, and the New Zealand Maori Council

‘Maori Warden’ means a person appointed a Maori Warden under this Act

‘meeting place’ means any church, meeting house, hall, dining hall, kitchen, or other building (other than a private dwellinghouse) owned or controlled by Maoris or trustees for Maoris and used as a meeting place for Maoris and includes any land attached or appurtenant to and commonly used in connection with any such building

‘Minister’ means the Minister of Maori Affairs

‘triennial election’ means an election of members of Maori Committees held under section 19.

Administration

3. Act to be administered by Minister—This Act shall be administered by the Minister of Maori Affairs, and the powers conferred by this Act shall be under the general direction and control of the Minister.

4. Community Officers—For the purposes of this Act there shall be appointed under the State Sector Act 1988 as officers of the Public Service (whether as permanent or temporary officers) and as officers of the Ministry of Maori Development, such Community Officers as may be necessary.

5. Honorary Community Officers—[*Repealed*]

6. Functions of Community Officers—(1) The general functions of Community Officers shall be, under the control of the chief executive, to advise and assist the Maori people in respect of their general welfare and, in particular, in respect of their health, housing, education, vocational training, and employment.

(2) In the exercise of their functions, Community Officers shall collaborate with and give such assistance and advice to Maori Associations as may be necessary or helpful in the circumstances.

7. Appointment of Maori Wardens—(1) For the purposes of this Act the Minister may from time to time appoint in respect of any Maori Council District 1 or more Maori Wardens to carry out duties in that district.

(2) No person shall be appointed or reappointed a Maori Warden in respect of any Maori Council District unless he is residing in that district and has been nominated for appointment or reappointment by the District Maori Council for that district.

(3) Every Maori Warden shall be appointed for a term of 3 years, but may from time to time be reappointed. The chief executive shall have power to reappoint any person as a Maori Warden in respect of any Maori Council District in accordance with a recommendation to that effect by the District Maori Council for that district.

(4) The Minister may at any time, on the recommendation of the District Maori Council concerned, cancel the appointment of a Maori Warden, and a Maori Warden may at any time resign his office by writing addressed to the Minister. Before recommending that a Warden's appointment be cancelled, a District Maori Council shall notify the Warden of its intention to do so and shall give him an opportunity to appear in person before the Council to oppose the recommendation. A District Maori Council may suspend a Maori Warden from duty where it intends to recommend the cancellation of his appointment.

(5) Every Maori Warden shall have the powers conferred on him by this Act or by regulations made under this Act, and shall exercise those powers under the control and supervision and subject to any express directions of the District Maori Council or of any Maori Association to which the Council may delegate its powers pursuant to section 16(6).

(6) Subject to any regulations made under this Act, a Maori Association may in its discretion pay out of its funds to any Maori Warden exercising functions in its area such remuneration or allowances for his services as it may determine.

Maori Committees

8. Maori Committee areas—(1) Any area which, at the commencement of this Act, is declared a Tribal Committee area under section 14 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be a Maori Committee area.

(2) A District Maori Council may, by resolution, alter the boundaries of any Maori Committee area, or amalgamate 2 or more Maori Committee areas, or constitute a new Maori Committee area, within the district of the Council.

(3) Each District Maori Council shall assign a name by which each Maori Committee area within its district shall be described and known and may from time to time, by resolution, amend any such name.

(4) Every resolution under this section shall be notified to the Maori Committee concerned and to the chief executive.

9. Maori Committees—(1) For the purposes of this Act there shall be a Maori Committee for every Maori Committee area constituted under section 8.

(2) Each Maori Committee shall consist of 7 members elected in accordance with this Act:

provided that in any case where a District Maori Council considers it desirable to do so, it may by resolution increase the number of members to be elected to any Maori Committee in the district of the Council to such number as it thinks fit.

(3) Notwithstanding the provisions of subsection (2), the members of every Tribal Committee in office at the commencement of this Act under section 15 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be members of the Maori Committee for the Maori Committee area in respect of which those members were appointed or elected.

(4) Any alteration in the boundaries of a Maori Committee area shall not affect the membership of the Maori Committee elected in respect of that area and each member in office at the date of the resolution effecting the alteration shall, unless his office otherwise becomes vacant, remain in office until the next triennial election.

(5) Notwithstanding the provisions of subsection (2), where 2 or more Maori Committee areas are amalgamated, all the members of the Maori Committee selected in respect of the amalgamated areas and in office at the date of the resolution effecting the amalgamation shall, unless their offices otherwise become vacant, remain in office until the next triennial election.

(6) Where a new Maori Committee area is constituted, an election of members of the Maori Committee for the area shall be held as soon as practicable after the constitution of the area.

10. Functions of Maori Committees—(1) Each Maori Committee shall, in relation to the Maoris within its area, have the functions conferred on the New Zealand Maori Council by subsection (1) of section 18.

(2) Each Maori Committee shall be subject in all things to the control of the Maori Executive Committee in whose area it operates and shall act in accordance with all directions, general or special, given to it by the Maori Executive Committee.

10A. Direct representation of Maori Committee on District Maori Council—(1) A District Maori Council may at any time, by resolution, determine that a designated Maori Committee shall have direct representation to the District Maori Council and shall, in such case, fix the manner and extent of the representation. Any such Maori Committee shall thereupon be subject in all things to the control of the District Maori Council as if the Council were a Maori Executive Committee, and the Council shall have such of the powers of a Maori Executive Committee as the Council determines.

(2) A determination under subsection (1) may at any time in like manner be varied or revoked.

Maori Executive Committees

11. Maori Executive Committee areas—(1) Any area which, at the commencement of this Act, is declared a tribal district under section 6 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be a Maori Executive Committee area.

(2) A District Maori Council may, by resolution, alter the boundaries of any Maori Executive Committee area, or amalgamate 2 or more Maori Executive Committee areas, or constitute a new Maori Executive Committee area, within the district of the Council.

(3) Each District Maori Council shall assign a name by which each Maori Executive Committee area within its district shall be described and known and may from time to time, by resolution, amend any such name.

(4) Every resolution under this section shall be notified to the Maori Executive Committee concerned and to the chief executive.

12. Maori Executive Committees—(1) For the purposes of this Act there shall be a Maori Executive Committee for every Maori Executive Committee area constituted under section 11.

(2) Each Maori Executive Committee shall consist of members appointed in accordance with this section by Maori Committees for Maori Committee areas within the Maori Executive Committee area.

(3) Where there are less than 4 Maori Committees in a Maori Executive Committee area, the number of members appointed as aforesaid shall be 3 for each Maori Committee and, in any other case, the number of members appointed shall be 2 for each Maori Committee.

(4) Notwithstanding the provisions of subsection (3), the members of every Tribal Executive Committee in office at the commencement of this Act under section 8 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be members of the Maori Executive Committee for the Maori Executive Committee area in respect of which those members were appointed or elected.

(5) Any alteration in the boundaries of a Maori Executive Committee area shall not affect the membership of the Maori Executive Committee appointed in respect of that area and each member in office at the date of the resolution effecting the alteration shall, unless his office otherwise becomes vacant, remain in office for the residue of the term for which he was appointed.

(6) Notwithstanding the provisions of subsection (3), where 2 or more Maori Executive Committee areas are amalgamated, all the members of the Maori Executive Committees appointed in respect of the amalgamated areas and in office at the date of the resolution effecting the amalgamation shall, unless their offices otherwise become vacant, remain in office for the residue of the term for which they were appointed.

13. Functions of Maori Executive Committees—(1) Each Maori Executive Committee shall, in relation to the Maoris within its area, have the functions conferred on the New Zealand Maori Council by subsection (1) of section 18.

(2) Each Maori Executive Committee shall be subject in all things to the control of the District Maori Council in whose district it operates and shall act in accordance with all directions, general or special, given to it by the Maori District Council.

District Maori Councils

14. Maori Council districts—(1) The New Zealand Maori Council may at any time by resolution declare any specified part of New Zealand to be a Maori Council District for the purposes of this Act and may assign a name by which the District shall be known.

(2) Subject to the provisions of this section, all Maori Land Court districts shall be Maori Council districts for the purposes of this Act.

(3) The district defined at the commencement of this Act pursuant to subsection (4) of section 13 of the Maori Social and Economic Advancement Act 1945 in respect of the Auckland District Maori Council shall be a Maori Council district for the purposes of this Act.

(4) The New Zealand Maori Council may at any time by resolution alter the boundaries of any Maori Council district or amalgamate 2 or more districts or constitute a new district over part of an existing district, and may at the same time amend the name of any district or assign a new name thereto.

15. District Maori Councils—(1) For the purposes of this Act there shall be a District Maori Council for every Maori Council district constituted under section 14.

(2) Each District Maori Council shall consist of members appointed in accordance with this section by Maori Executive Committees whose areas are within the district of the Council.

(3) Each Maori Executive Committee shall appoint 2 members to the District Maori Council:

provided that if the number of Maori Executive Committees in any Maori Council district is less than 5, each of those Committees may appoint 3 members to the Council.

(4) Notwithstanding the provisions of subsection (3), the members of any District Council in office at the commencement of this Act under section 13 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be members of the District Maori Council for the Maori Council district in respect of which those members were appointed.

15A. District Maori Councils may recognise Maori societies—(1) For the purposes of this section, the term ‘Maori society’ means any club, board, society, committee, or other group or body of Maoris, whether incorporated or not, which in the opinion of the District Maori Council is comprised of members of, or democratically represents, or is involved with, any Maori tribe, subtribe, community, marae, religious congregation, school or other teaching institution, or has as members a significant number of Maori people having some common interest or interests.

(2) A District Maori Council may from time to time in its absolute discretion determine that any Maori society within its district be recognised as having the status of a Maori Committee, with the right to appoint members to the District Maori Council, and may in the same manner and in its absolute discretion at any time withdraw that recognition of any such Maori society.

(3) Every Maori society recognised by a District Maori Council shall forthwith appoint a member to that Council, and the term of office of that member shall, unless recognition of the society is sooner withdrawn, expire with that of the other members of the Council. The Maori society shall thereafter, unless its recognition is withdrawn, appoint a member of the District Maori Council in the same month and year as is prescribed for the appointment of members of the Council by Maori Executive Committees.

(4) Each District Maori Council shall, at least once in every year, review the status of Maori societies to which it has granted recognition under this section.

16. Functions of District Maori Councils—(1) Each District Maori Council shall, in relation to the Maoris within its district, have the functions conferred on the New Zealand Maori Council by subsection (1) of section 18.

(2) Each District Maori Council shall be subject in all things to the control of the New Zealand Maori Council and shall act in accordance with all directions, general or special, given to it by the New Zealand Maori Council.

(3) Each District Maori Council shall advise, direct, and generally supervise each Maori Committee and Maori Executive Committee within its district and shall consider all representations and reports from each such committee.

(4) Each District Maori Council shall submit an annual report of its activities to the New Zealand Maori Council.

(5) Subject to subsection (6), each District Maori Council shall have exclusive power and authority to control and supervise the activities of Maori Wardens carrying out duties within its district, and may assign to any such warden any specified duties, consistent with this Act, within the district.

(6) Any District Maori Council may, by notice in writing to any Maori Committee or Maori Executive Committee within its district, delegate to the Committee in respect of any specified warden or wardens, the power and authority to control and supervise and to assign duties conferred on the Council by subsection (5).

(7) Every delegation under subsection (6) shall be revocable at will.

New Zealand Maori Council

17. New Zealand Maori Council—(1) For the purposes of this Act there shall be a New Zealand Maori Council.

(2) The members of the New Zealand Maori Council shall consist of members appointed in accordance with this section by District Maori Councils.

(3) Each District Maori Council shall appoint 3 members to the New Zealand Maori Council.

(4) The members of the New Zealand Maori Council of Tribal Executives established under section 13E of the Maori Social and Economic Advancement Act 1945 in office at the commencement of this Act shall be deemed to be members of the New Zealand Maori Council.

18. General functions of the New Zealand Maori Council—(1) The general functions of the New Zealand Maori Council, in respect of all Maoris, shall be—

(a) to consider and discuss such matters as appear relevant to the social and economic advancement of the Maori race:

(b) to consider and, as far as possible, give effect to any measures that will conserve and promote harmonious and friendly relations between members of the Maori race and other members of the community:

(c) to promote, encourage, and assist Maoris—

(i) to conserve, improve, advance and maintain their physical, economic, industrial, educational, social, moral, and spiritual well-being;

(ii) to assume and maintain self-reliance, thrift, pride of race, and such conduct as will be conducive to their general health and economic well-being;

- (iii) to accept, enjoy, and maintain the full rights, privileges, and responsibilities of New Zealand citizenship;
 - (iv) to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and
 - (v) to preserve, revive and maintain the teaching of Maori arts, crafts, language, genealogy, and history in order to perpetuate Maori culture:
- (d) to collaborate with and assist State departments and other organisations and agencies in—
- (i) the placement of Maoris in industry and other forms of employment;
 - (ii) the education, vocational guidance, and training of Maoris;
 - (iii) the provision of housing and the improvement of the living conditions of Maoris;
 - (iv) the promotion of health and sanitation amongst the Maori people;
 - (v) the fostering of respect for the law and law-observance amongst the Maori people;
 - (vi) the prevention of excessive drinking and other undesirable forms of conduct amongst the Maori people; and
 - (vii) the assistance of Maoris in the solution of difficulties or personal problems.
- (2) The New Zealand Maori Council shall advise and consult with District Maori Councils, Maori Executive Committees, and Maori Committees on such matters as may be referred to it by any of those bodies or as may seem necessary or desirable for the social and economic advancement of the Maori race.
- (3) In the exercise of its functions the Council may make such representations to the Minister or other person or authority as seem to it advantageous to the Maori race.

Elections

19. Elections of Maori Committees—(1) On the last Saturday in February in the year 1964 and on the corresponding day in every third year thereafter an election of members of Maori Committees shall be held.

(2) Notwithstanding the provisions of subsection (1), if in any year it is not practicable to hold an election in any Maori Committee area on the day prescribed in that subsection, the election shall be held in that area on a day not earlier than 7 days before the prescribed day and not later than 14 days after the prescribed day.

(3) All Maoris of or over the age of 20 years ordinarily resident in a Maori Committee area shall be entitled to vote at elections for members of the Maori Committee for that area.

(4) Any person of or over the age of 20 years, whether or not he is a Maori, ordinarily resident in the Maori Committee area shall be eligible for election:

provided that any person not ordinarily resident in the area shall be eligible for election if he has marae affiliations in the area; but no person shall be entitled to be a member of more than 1 Maori Committee at any one time.

(5) All elections under this section shall be held in accordance with regulations under this Act.

(6) Notwithstanding any other provision of this Act or of any regulations made under this Act, where the members of any Maori Committee (being a committee revived after being in recess) will have been in office for less than 6 months on the date fixed by this

section for the election of Maori Committees, no election of members of that Committee shall be held on that date if the District Maori Council concerned has by resolution determined that no such election be held and, in such case, the members of that Committee in office on that date shall continue in office as if they had been elected on that date.

20. Provisions as to retirement after elections—(1) The term of office of every member of a Maori Committee shall expire with the day of the election on which his successor is elected.

(2) Subject to the provisions of this Act, the term of office of every member of a Maori Executive Committee shall expire with 31 March in each year in which a triennial election is held.

(3) Subject to the provisions of this Act, the term of office of every member of a District Maori Council shall expire with 30 April in each year when a triennial election is held.

(4) Subject to the provisions of this Act, the term of office of every member of the New Zealand Maori Council shall expire with 31 May in each year when a triennial election is held.

21. Appointment of members of Maori Associations—(1) During the month of March in each year in which a triennial election is held, every Maori Committee shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the Maori Executive Committee for its Maori Executive area.

(2) During the month of April in each year in which a triennial election is held, every Maori Executive Committee shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the District Maori Council for its Maori Council district.

(3) During the month of May in each year in which a triennial election is held, every District Maori Council shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the New Zealand Maori Council.

(4) Notice of all appointments under this section shall be given to the secretary of the New Zealand Maori Council who shall compile and keep a list of the members of the various Maori Associations. Any such list shall be available for inspection at any reasonable time.

(5) Any member appointed to a Maori Executive Committee or a District Maori Council or the New Zealand Maori Council shall cease to be a member of the body to which he was appointed if he ceases to be a member of the body by which he was appointed and, in any such case, the appointing body may by resolution appoint another member in place of the person ceasing to be a member to hold office for the residue of the term for which that person was appointed.

(6) Notwithstanding the provisions of this Act, where pursuant to this Act the number of Maori Committees, Maori Executive Committees, or District Maori Councils in any area or district is altered, each member of any Maori Executive Committee or District Maori Council or of the New Zealand Maori Council in office at the date of the alteration shall, unless his office becomes vacant otherwise than pursuant to the alteration in number as aforesaid, remain in office for the residue of the term for which he was appointed.

22. Vacancies in membership—With respect to vacancies in the membership of Maori Associations, the following provisions shall apply:

- (a) any member of a Maori Association may be removed from office by the Association of which he is a member for inability to perform the functions of the office, neglect of duty, or misconduct proved to the satisfaction of the Association, or he may resign his office by notice in writing to the Association of which he is a member: provided that any person removed from office under this paragraph may appeal to the New Zealand Maori Council which may confirm or reverse the decision:
- (b) any vacancy in the membership of any Maori Association shall be filled in the same manner in which the election or appointment of the member whose office has become vacant was made:
- (c) any person elected or appointed to fill a vacancy under this section shall be elected or appointed to hold office for the unexpired term of his predecessor, and shall be eligible for reappointment:
- (d) the powers of any Maori Association shall not be affected by any vacancy in the membership thereof, or because of any person continuing to act as a member of any such body after he has ceased to be a member, or because of any defect or illegality in the appointment of any member.

23. Meetings—With respect to meetings of Maori Associations, the following provisions shall apply:

- (a) each Maori Association shall meet at such times and at such places as the Association or the chairman thereof shall appoint:
- (b) at its first meeting each Maori Association shall elect one of its members to be chairman:
- (c) the chairman shall preside at all meetings of the body of which he is chairman at which he is present, and in the absence of the chairman from any meeting the members present thereat may elect one of their number to be the chairman of that meeting:
- (d) in case any member of any Maori Association is unable to attend a meeting of that Association, the Association by which he was appointed may appoint another of its members as his proxy at that meeting:
- (e) no business shall be transacted at any meeting of any Maori Association unless a quorum of not less than half its members is present:
- (f) all questions coming before any Maori Association shall be decided by a majority of the votes of the members present at the meeting, and in the case of an equality of votes the chairman shall have a casting vote as well as a deliberative vote:
- (g) all proceedings, decisions, and resolutions of any Maori Association shall be recorded in a minute book kept for the purpose:
- (h) subject to the provisions of this Act and of any regulations under this Act, every Maori Association may regulate its procedure in such manner as it thinks fit.

Financial provisions

24. Contributions to funds—Any local authority or other public body, corporation sole, company, or other corporate body, trustee (including the Māori Trustee) or any other person may, unless expressly prohibited by any Act or by any instrument of trust, make to any

Maori Association donations or gifts of money for the purpose of augmenting the funds of that Association.

25. Subsidies—(1) Subject to any regulations under this Act, any expenditure by a Maori Committee or a Maori Executive Committee may, with the approval of the Minister, be subsidised out of money appropriated by Parliament for the purpose at a rate not exceeding 1 pound for 1 pound.

(2) The provisions of subsection (1) may be extended to any association or body of persons whether incorporated or not, approved by the Minister in that behalf, and having for its principal object or one of its principal objects the promotion of the welfare of the Maori people or of any portion of the Maori people.

(3) There shall be paid each year to the New Zealand Maori Council out of money appropriated by Parliament for the purpose such sum as is approved by the Minister.

26. Expenses of Councils and Committees—(1) The New Zealand Maori Council may from time to time require each District Maori Council to make such contributions as may be required for the purpose of paying the costs and expenses of the administration of the New Zealand Maori Council, including the reasonable travelling expenses of its members.

(2) Each District Maori Council may require each Maori Executive Committee in its district to make such contributions as may be required for the purpose of paying the costs and expenses of the administration of the District Maori Council.

(3) Each Maori Executive Committee may require each Maori Committee in its area to make such contributions as may be required for the purpose of paying the costs and expenses of the administration of the Maori Executive Committee.

27. Money to be paid into bank—With respect to all money received by a Maori Association, the following provisions shall apply:

(a) the money shall, as and when received, be paid into a bank or the Post Office Savings Bank to the credit of the Maori Association by which it was received:

(b) no money shall be drawn from any such bank except by cheque or withdrawal form signed by 2 members of the Maori Association or by 1 member and the secretary of the Association:

provided that the Minister if he thinks fit may in any case require that all cheques and withdrawal forms shall be countersigned by a person from time to time nominated by him.

28. Accounting records and financial reporting—(1) With respect to the accounting records and financial reporting of Maori Associations, the following provisions shall apply:

(a) every Maori Association shall cause accounting records to be kept, and true and regular accounts to be entered therein of all money received and paid, and of the several purposes for which any such money has been received and paid:

(b) any member of any Maori Association may at any reasonable time inspect the accounting records of the Association free of charge and take copies of or extracts from them:

- (c) the accounting records shall be kept in such manner as may be prescribed by regulations under this Act or, in the absence of any such regulations, as may be determined by the chief executive:
 - (d) within 5 months after the end of each financial year, every Maori Association must ensure that financial statements that comply with generally accepted accounting practice are completed in relation to the Maori Association and that financial year:
 - (e) every such financial statement must be audited by a qualified auditor appointed by the Maori Association concerned or by some other person approved in that behalf by the chief executive:
 - (f) the New Zealand Maori Council and each District Maori Council must submit a copy of its audited financial statements to the chief executive and each Maori Committee and Maori Executive Committee must submit a copy of its audited financial statements to the District Maori Council in whose district it operates.
- (2) The auditor must, in carrying out an audit for the purposes of subsection (1)(e), comply with all applicable auditing and assurance standards.
- (3) The auditor's report must comply with the requirements of all applicable auditing and assurance standards.
- (4) See sections 37 to 39 of the Financial Reporting Act 2013 (which provide for the appointment of a partnership and access to information in relation to the audit under subsection (1)(e)).
- (5) In this section,—
- 'applicable auditing and assurance standards' has the same meaning as in section 5 of the Financial Reporting Act 2013
 - 'financial statements' has the same meaning as in section 6 of the Financial Reporting Act 2013
 - 'generally accepted accounting practice' has the same meaning as in section 8 of the Financial Reporting Act 2013
 - 'qualified auditor' has the same meaning as in section 35 of the Financial Reporting Act 2013.

29. Disposal of assets on dissolution—(1) If any Maori Committee is dissolved or ceases to function, the Maori Executive Committee for the area in which the Maori Committee operated shall notify the appropriate District Maori Council and the chief executive.

(2) If any Maori Executive Committee is dissolved or ceases to function, the District Maori Council for the district in which the Committee operated shall notify the chief executive.

(3) Any notification under subsection (1) or subsection (2) shall be published in the *Gazette* by the chief executive.

(4) Upon the publication of any such notice in the *Gazette* the assets of the body to which it relates shall vest, in the case of a Maori Committee, in the Maori Executive Committee for the area in which the Maori Committee operated and, in the case of a Maori Executive Committee, in the District Maori Council for the district in which the Maori Executive Committee operated.

(5) The body in which any assets become vested under subsection (4) shall discharge the liabilities of the body in which the assets were formerly vested so far as the assets will extend

and shall hold any residue for such purposes as may be authorised by this Act for the benefit of Maoris in its area or district.

Prevention of unruly behaviour

30. Prevention of riotous behaviour—(1) Any Maori who—

- (a) disturbs any congregation assembled for public worship, or any public meeting, or any meeting for any lecture, concert, or entertainment, or any audience at any theatre, whether or not a charge for admission has been made, or interferes with the conduct of any religious service in any church, chapel, burial ground, or other public building or place; or
- (b) in or in view of any public place as defined by section 40 of the Police Offences Act 1927, or within the hearing of any person therein, behaves in a riotous, offensive, threatening, insulting, or disorderly manner, or uses any threatening, abusive or insulting words, or strikes or fights with any other person—

commits an offence against this Act.

(2) Nothing in this section shall be construed to prevent a penalty being imposed on any person under the Criminal Procedure Act 2011 in respect of an offence committed against section 3 of the Police Offences Act 1927, but no person shall be punished twice for the same offence.

31. Prevention of drunkenness—A Maori Warden may at any reasonable time enter any licensed premises in any area where he is authorised to carry out his duties and warn the licensee or any servant of the licensee to abstain from selling or supplying liquor to any Maori who in the opinion of the Warden is in a state of intoxication, or is violent, quarrelsome, or disorderly, or is likely to become so, whether intoxicated or not, and if the licensee or any servant of the licensee thereafter on the same day supplies liquor to that Maori, the licensee and, if the servant had been warned by the Warden, the servant, commits an offence against this Act.

32. Maori may be ordered to leave hotel—(1) A Maori Warden may at any reasonable time enter any licensed premises in any area where he is authorised to carry out his duties and order any Maori who appears to be intoxicated or partly intoxicated, or who is violent, quarrelsome, or disorderly, whether intoxicated or not, to leave the premises.

(2) If the Maori refuses or fails to leave the premises when ordered to do so as aforesaid, he commits an offence against this Act and the Warden may request any constable to expel the Maori from the premises and that constable may do so with or without the assistance of the Warden.

33. Disorderly behaviour at Maori gatherings—(1) Any person, whether a Maori or not, who is under the influence of intoxicating liquor in any Maori meeting house or church or other building or meeting place where Maoris are assembled and who refuses to leave the same when requested so to do commits an offence against this Act.

(2) Every person, whether a Maori or not, who having the control or management of any dance, meeting, tangi, hui, or other gathering of Maoris being held in any meeting place supplies intoxicating liquor to any person within the bounds of the meeting place or

permits any such liquor to be taken into or consumed within the bounds of the meeting place, commits an offence against this Act.

(3) Every person, whether a Maori or not, who, while at a dance, meeting, tangi, hui, or other gathering of Maoris is being held in a meeting place, drinks any intoxicating liquor within the bounds of the meeting place, or has any such liquor in his possession or control within the bounds of the meeting place or in the vicinity of the meeting place or supplies intoxicating liquor to any person in the meeting place commits an offence against this Act.

(4) For the purposes of subsection (2) intoxicating liquor shall be deemed to be in the vicinity of a meeting place where a gathering of Maoris is being held if it is shown that the liquor was in the possession or control of any person attending or proceeding to attend the gathering, or was consumed or intended for consumption by any person so attending.

(5) Any constable or Maori Warden who has reason to suspect that there is any breach by any person of the provisions of this section in or in the vicinity of any meeting place where a gathering of Maoris is taking place may without warrant enter the meeting place or any place in the vicinity thereof, and examine the same and search for intoxicating liquor therein and may seize and remove any such liquor found therein and the vessels containing the liquor. Any intoxicating liquor so seized in respect of which any person is convicted of an offence under this section shall, together with the vessels containing the liquor, be forfeited to the Crown.

(6) Nothing in this section shall apply to prohibit the supply to any person of intoxicating liquor or the drinking or possession of any such liquor in any case where—

- (a) the liquor is bona fide required for medicinal purposes on the authority of a medical practitioner; or
- (b) the liquor is bona fide required for religious purposes; or
- (c) the liquor has been taken to and consumed in a meeting place in accordance with a permit given under this section.

(7) Nothing in this section shall apply in relation to any liquor consumed in any dwellinghouse by persons for the time being resident therein or to any liquor in any licensed premises or shall be deemed to confer upon any constable or Maori Warden the power to enter without warrant any dwellinghouse unless the person in lawful occupation consents to the entry.

(8) A Maori Committee for any area in which a meeting place is situated may, in respect of the meeting place, issue a written permit for the introduction of intoxicating liquor into the meeting place for the purpose of being consumed therein at any gathering of Maoris other than a gathering for the purposes of a dance. Any such permit shall prescribe the nature and place of the gathering and may contain such conditions as the Maori Committee thinks fit in respect of the supply and the consumption of liquor. A copy of every such permit shall be supplied to the senior constable for the area and the permit shall not have any effect until the copy is so supplied.

(9) Nothing in this section shall be construed to prevent a penalty being imposed on any person under the Criminal Procedure Act 2011 in respect of an offence committed against section 59 of the Statutes Amendment Act 1939, but no person shall be punished twice for the same offence.

(10) In subsection (6)(a), 'medical practitioner' means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section

114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

34. Prohibition orders against Maoris—*[Repealed]*

35. Retention of car keys—(1) Where any Maori Warden is of the opinion that any Maori who is for the time being in charge of any motor vehicle is, by reason of physical or mental condition, however arising, incapable of having and exercising proper control of the motor vehicle, he may—

- (a) forbid that Maori to drive the motor vehicle; or
- (b) require him to deliver up forthwith all ignition or other keys of the motor vehicle in his possession; or
- (c) take such steps as may be necessary to render the motor vehicle immobile or to remove it to a place of safety.

(2) The powers conferred on Maori Wardens by subsection (1) may be exercised in respect of persons other than Maoris where any such person is in charge of a motor vehicle in or in the vicinity of a meeting place, or any other place where a gathering of Maoris is assembled for any lawful purpose.

(3) Every person who fails to comply with any direction given to him under this section or who does any act that is for the time being forbidden under this section commits an offence against this Act:

provided that no person shall be deemed to have committed an offence under this section unless the Maori Warden had reasonable grounds for believing that in all the circumstances of the case the direction or prohibition was necessary in the interests of the defendant or of any other person or of the public.

36. Imposition of penalties by Maori Committees—(1) If a Maori Committee is satisfied that an offence has been committed by a Maori against section 30, section 32, section 33, or section 35, it may authorise proceedings to be taken under the Criminal Procedure Act 2011 in respect of the offence or it may, in its discretion, impose on the offender a penalty in respect thereof of such amount as it thinks fit, not exceeding 10 pounds:

provided that no penalty shall be imposed by a Maori Committee under this subsection if the person charged elects to be dealt with under the Criminal Procedure Act 2011, and before imposing any penalty, the Committee shall make known to the offender his right of election and the nature of the charge against him.

(2) No person shall have a penalty imposed on him under this section for an offence in respect of which proceedings have been taken under the Criminal Procedure Act 2011 and no person shall have a penalty imposed on him under the Criminal Procedure Act 2011 for an offence for which a penalty has been imposed under this section.

(3) For the purpose of investigating any offence referred to in subsection (1) and determining the amount of the penalty, a Maori Committee may, subject to any directions of the Minister, adopt such form of procedure as it may think suitable:

provided that a Committee shall not impose any penalty on an offender without giving him a reasonable opportunity of being heard in his own defence.

(4) In any case where a person fails to pay any penalty duly imposed by a Maori Committee under this section, the amount of the penalty shall be recoverable in the District Court as a debt due to the Committee by the person so failing to pay the penalty:

provided that that person may defend the proceedings, and in any such case the matter shall be reheard by the court which in its discretion may give judgment for the plaintiff for the amount of the penalty or such less amount as it thinks fit or may give judgment for the defendant.

(5) The amount of any penalties imposed by a Maori Committee under this section shall be paid to the Committee and shall form part of its funds.

(6) The amount of any penalty imposed under the Criminal Procedure Act 2011 pursuant to proceedings authorised in that behalf under this section, and the amount of any penalty so imposed on a person who has elected under this section to be dealt with under that Act, shall be paid into the funds of the Maori Committee of the Maori Committee area within which the offence was committed:

provided that there shall be deducted from the amount of any such penalty and credited to the Ordinary Revenue Account of the Consolidated Fund an amount equal to 5% of the penalty.

Miscellaneous provisions

37. Associations to be bodies corporate—Every Maori Association shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, and of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

38. Contracts by Associations—(1) Any contract which, if made between private persons, must be by deed shall, if made by a Maori Association, be in writing under the seal of the Association.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged thereby shall, if made by a Maori Association, be either under the seal of the Association or signed by 2 members of the Association on behalf of and by direction of the Association.

(3) Any contract which, if made between private persons may be made orally without writing may be similarly made by or on behalf of a Maori Association by any member thereof, but no oral contract shall be made involving the payment by the Association of a sum exceeding 20 pounds.

(4) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of a Maori Association shall be invalid by reason only that it was not made in the manner provided by this section if it was made pursuant to a resolution of the Maori Association or to give effect to a resolution of the Maori Association.

39. Authentication of documents—(1) All instruments or documents issued or authorised by a Maori Association shall, except as may be otherwise specially provided by this Act or by any regulations thereunder, be signed on behalf of the Association by at least 2 members thereof on behalf of and by direction of the Association and shall be sealed with the seal of the Association in their presence.

(2) Every instrument or document purporting to have been executed in accordance with the provisions of this section shall, in the absence of proof to the contrary, be deemed for all purposes to have been duly executed.

40. Associations may acquire land—Any Maori Association may acquire any land or interest in land, whether by way of purchase, lease, or otherwise, for any communal purposes, and may sell, lease, sublease, mortgage, or otherwise dispose of any such land or interest so acquired.

40A. Property of former Maori Tribal Committees and Maori Tribal Executive Committees—(1) All the real and personal property which was on 1 January 1963 vested in any Maori Tribal Committee or in any Maori Tribal Executive Committee shall as from that date, without the necessity of any instrument of transfer or other assurance, be transferred to and vest in the corresponding Maori Committee or Maori Executive Committee under this Act.

(2) Where any property transferred as aforesaid consists of land or any interest in land, or of any mortgage or encumbrance of land, any security over stock or chattels, any lien, bonds, stocks, shares, debentures, or any like security, it shall be the duty of every Registrar of Deeds, District Land Registrar, Registrar of the High Court, or other person charged with the duty of keeping any register, on the application of the Maori Association in which such property is so vested, and without the payment of any fee, to register that Maori Association in the appropriate register or registers as the owner, mortgagee, encumbrancer, or grantee as the case may require and to do all such other things as may be necessary to give effect to this section.

41. Members of Maori Associations not personally liable—No member of a Maori Association shall be personally liable for any act done or omitted by the Association or by any member thereof in good faith in pursuance or in intended pursuance of the powers and authority of the Association.

42. Penalties—Every person who commits an offence against this Act for which no penalty is specifically provided shall be liable on conviction to a fine not exceeding 20 pounds.

43. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) providing for elections of members of Maori Committees:
- (b) prescribing procedures at meetings of Maori Associations:
- (c) providing for the method of appointment of members and officers of Maori Committees, Maori Executive Committees, and District Maori Councils to the appropriate Maori Association under this Act:
- (d) providing for the payment of expenses and travelling allowances to members of Maori Associations:
- (e) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Any regulations under this Act may apply to the whole of New Zealand or any part or parts thereof, or may make different provision for different parts of New Zealand.

44. **Repeals**—The enactments specified in the Schedule are hereby repealed.

Section 44

SCHEDULE

ENACTMENTS REPEALED

Maori Purposes Act 1947 (1947 No 59) (1957 Reprint, Vol 9, p 160)
Amendment(s) incorporated in the Act(s).

Maori Purposes Act 1948 (1948 No 69) (1957 Reprint, Vol 9, p 161)
Amendment(s) incorporated in the Act(s).

Maori Purposes Act 1949 (1949 No 46) (1957 Reprint, Vol 9, p 161)
Amendment(s) incorporated in the Act(s).

Maori Purposes Act 1950 (1950 No 98) (1957 Reprint, Vol 9, p 162)
Amendment(s) incorporated in the Act(s).

Maori Purposes Act 1955 (1955 No 106) (1957 Reprint, Vol 9, p 163)
Amendment(s) incorporated in the Act(s).

Maori Purposes Act 1957 (1957 No 81) (1957 Reprint, Vol 9, p 163)
Amendment(s) incorporated in the Act(s).

Maori Social and Economic Advancement Act 1945 (1945 No 43)
(1957 Reprint, Vol 9, p 131)

Maori Social and Economic Advancement Amendment Act 1951 (1951 No 52)
(1957 Reprint, Vol 9, p 162)

Maori Social and Economic Advancement Amendment Act 1961 (1961 No 41)

Tohunga Suppression Act 1908 (1908 No 193) (1957 Reprint, Vol 15, p 651)

APPENDIX II

THE MAORI WELFARE BILL 1962

ANALYSIS

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An Act to make provision for the general well-being of the Maori people and to equip them to take their full part in the privileges and responsibilities of citizens of New Zealand.

1. Short Title and Commencement—This Act may be cited as the Maori Welfare Act 1962, and shall come into force on the first day of January 1963.

2. Interpretation—In this Act, unless the context otherwise requires:

‘Area’ means a Maori Welfare area constituted by this Act:

‘Committee’ means a Maori Welfare Committee or a Maori Welfare Group Committee constituted under this Act:

‘Council’ means the New Zealand Maori Council or a District Maori Council constituted under this Act:

‘District Maori Council’ means a District Maori Council constituted under this Act:

‘Group Committee’ means a Maori Welfare Group Committee constituted under this Act:

‘Intoxicating liquor’, ‘licensed premises’, ‘licensee’, and ‘liquor’ have the same meanings as in the Licensing Act 1908:

‘Maori’ means a person belonging to the aboriginal race of New Zealand, and includes any descendant of a Maori:

‘Maori Warden’ or ‘Warden’ means a person appointed as a Maori Warden under this Act:

‘Maori Welfare Committee’ means a Maori Welfare Committee under this Act:

‘Maori Welfare Group Committee’ means a Maori Welfare Group Committee under this Act:

‘Marae’ means any church, meeting house, hall, dining hall, kitchen, or other building (other than a private dwellinghouse) used as a meeting place for Maoris; and includes any land attached to or appurtenant to and commonly used in connection with the building:

‘Minister’ means the Minister of Maori Affairs:

‘New Zealand Maori Council’ means the New Zealand Maori Council constituted under this Act:

‘Secretary for Maori Affairs’ means the person for the time being holding that office under section 4 of the Maori Affairs Act 1953.

3. Administration of Act—The Secretary for Maori Affairs, acting under the general direction and control of the Minister, shall be charged with the administration of this Act.

4. Maori Councils and Committees—(1) For the purposes of this Act there shall be a New Zealand Maori Council, a District Maori Council for each Maori Land Court District under the Maori Affairs Act 1953, such Maori Welfare Group Committees as each District Maori Council shall determine and a Maori Welfare Committee for each locality or area with a significant proportion of Maori population which takes steps to elect a Maori Welfare Committee for the purposes of this Act.

(2) Upon the passing of this Act the New Zealand Maori Council of Tribal Executives constituted under section 13E of the Maori Social and Economic Advancement Act 1945 (as enacted by section 7 of the Maori Social and Economic Advancement Amendment Act 1961) shall become the New Zealand Maori Council for the purposes of this Act.

(3) Upon the passing of this Act each District Maori Council of Tribal Executives constituted under section 13 of the Maori Social and Economic Advancement Act 1945 (as substituted by section 2 of the Maori Social and Economic Advancement Amendment Act 1961) shall become a District Maori Council for the purposes of this Act.

(4) Upon the passing of this Act every Tribal Executive Committee under the Maori Social and Economic Advancement Act 1945 and every Tribal Committee upon which the powers of a Tribal Executive Committee have been conferred under section 7 of the Maori Purposes Act 1948 shall become a Maori Welfare Group Committee for the purposes of this Act.

(5) Upon the passing of this Act every other Tribal Committee under the Maori Social and Economic Advancement Act 1945 shall become a Maori Welfare Committee for the purposes of this Act.

(6) Subject to any special or general directions by the Minister, the boundaries of each Maori Welfare Committee’s area shall from time to time be determined by the appropriate District Maori Council after consultation with the members for the time being of any Committee or Committees affected, and until they are so determined the Proclamations declaring tribal districts under section 6 of the Maori Social and Economic Advancement Act 1945 shall be deemed to define them.

(7) Upon the determination or revision of any Maori Welfare Committee's area under subsection (6) of this section the District Maori Council shall cause maps to be prepared showing the boundaries of all the Maori Welfare Committee areas within its district and shall supply a copy of each such map to each Maori Welfare Group Committee and Maori Welfare Committee within its district, to the appropriate Registrar of the Maori Land Court and to the Secretary for Maori Affairs.

5. Elections—(1) The term of office of all members of Maori Welfare Committees in office at the commencement of this Act and of any members of such committees who may be elected after the passing of this Act but before the last day of February 1964 shall be deemed to expire on the last day of February 1964 notwithstanding the term for which any such member was originally appointed.

(2) Subject to any regulations under this Act and to any provisions contained therein as to resignations, removals, deaths and extraordinary vacancies, elections to Maori Welfare Committees shall be held as near as possible to the last Saturday in February in the year 1964 and every three years thereafter and the persons so elected shall hold office for a period of three years from the first day of March in the year of their election.

(3) Each Maori Welfare Committee shall consist of such number of persons not less than five and not more than eleven as shall be elected at a general meeting of the Maori residents in the Committee's area. The persons so elected may include non-Maoris.

(4) The term of office of all members of Maori Welfare Group Committees in office at the commencement of this Act and of any members of such committees who may be appointed after the passing of this Act but before the last day of March 1964 shall be deemed to expire on the last day of March 1964 notwithstanding the term for which any such member was originally appointed.

(5) During the month of March in each year in which the triennial elections are held in respect of Maori Welfare Committees, each newly elected Maori Welfare Committee shall hold a meeting at which it shall appoint representatives to be members of the District Maori Council for its district for the ensuing three years, expiring on the last day of March. The number of such representatives shall be three for each Maori Welfare Committee where there are fewer than four Maori Welfare Committees in the Group Committee's area, but shall be two in all other cases; provided always that where a Maori Welfare Group Committee has no functioning Maori Welfare Committees in its area, the Group Committee shall be elected in the same manner as Maori Welfare Committees.

(6) The term of office of all members of District Maori Councils in office at the commencement of this Act and of any members of such councils who may be appointed after the passing of this Act but before the last day of April 1964 shall be deemed to expire on the last day of April 1964 notwithstanding the term for which any such member was originally appointed.

(7) During the month of April in each year in which the triennial elections are held in respect of Maori Welfare Committees, each newly elected Maori Welfare Group Committee shall hold a meeting at which it shall appoint a representative or representatives to be a member or members of the District Maori Council for its district for the ensuing three years, expiring on the last day of March. The number of such representatives shall be two for each Maori Welfare Group Committee where there are fewer than ten Maori Welfare Group Committees in the District Maori Council's area but shall be one in all other cases.

(8) The term of office of all members of the New Zealand Maori Council in office at the commencement of this Act and of any members of such council who may be appointed after the passing of this Act but before the last day of May 1964 shall be deemed to expire on the last day of May 1964 notwithstanding the term for which any such member was originally appointed.

(9) During the month of May in each year in which the triennial elections are held in respect of Maori Welfare Committees, each newly appointed District Maori Council shall hold a meeting at which it shall appoint three representatives to be members of the New Zealand Maori Council for the ensuing three years expiring on the last day of May.

6. Officers and Procedures—(1) Immediately following the election of any Maori Welfare Committee, or as soon thereafter as may be practicable, the Committee shall meet to appoint its Chairman and Secretary and such other officers as it thinks fit.

(2) At the first meeting after the triennial appointment of members of Maori Welfare Group Committees, of District Maori Councils and of the New Zealand Maori Council, the bodies concerned shall appoint a Chairman and a Secretary and such other officers as they think fit.

(3) Upon the making of such appointments the Secretary of each Committee and Council shall notify in writing to the Secretary for Maori Affairs and to the Committee or Council to which it is immediately responsible the full names and addresses of the Chairman and Secretary.

(4) Subject to any regulations under this Act, every committee and council under this Act may regulate its procedure as it thinks fit.

(5) The powers of any committee or council under this Act shall not be affected by any vacancy in the membership thereof, or because any person may have continued to act as a member after he ceased to be a member, or because of any defect or illegality in the election or appointment of any member.

7. Councils and Group Committees to be Bodies Corporate—The New Zealand Maori Council, every District Maori Council and every Maori Welfare Group Committee under this Act shall be a body corporate with perpetual succession and a common seal.

8. General Functions of Maori Councils and Committees—(1) Each committee and council under this Act shall carry out its functions in accordance with this Act and any regulations made under this Act, and subject thereto each such body shall act in accordance with the policies or decisions communicated to it by any Council or Group Committee under this Act having jurisdiction over a wider area including the area of the body concerned.

(2) Subject to the foregoing provisions of this section the general functions of the New Zealand Maori Council, the District Maori Councils, the Maori Welfare Group Committees and the Maori Welfare Committees, shall be—

(a) To prompt, encourage, guide and assist members of the Maori race—

(i) To conserve, improve, advance and maintain their physical, economic, industrial, educational, social, moral and spiritual well-being;

(ii) To assume and maintain self-reliance, thrift, pride of race and such conduct as will be conducive to their general health and economic well-being;

- (iii) To accept, enjoy and maintain the full rights, privileges and responsibilities of New Zealand citizenship;
 - (iv) To apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and
 - (v) To preserve, revive and maintain the teaching of Maori arts, crafts, language, genealogy and history in order to perpetuate Maori culture:
- (b) To collaborate with and assist State Departments and other organizations and agencies in—
- (i) The placement of Maoris in industry and other forms of employment;
 - (ii) The education, vocational guidance and training of Maoris;
 - (iii) The provision of housing and the improvement of the living conditions of Maoris;
 - (iv) The promotion and improvement of health and sanitation amongst the Maori people;
 - (v) To foster respect for the law and law-observance amongst the Maori people;
 - (vi) The prevention of excessive drinking and other undesirable forms of conduct amongst the Maori people; and
 - (vii) The assistance of individual members of the Maori race in the solution of any difficulties or personal problems:
- (3) Each District Maori Council shall undertake the administration of any works and perform any duties which may be delegated to it by the New Zealand Maori Council and each Maori Welfare Group Committee and Maori Welfare Committee shall undertake the administration of any works and perform any duties which may be delegated to it by the District Maori Council for its district.
- (4) Each District Maori Council shall control, advise and direct the activities and functions of Maori Welfare Group Committees and the Maori Welfare Committees within its district and shall receive and consider at regular intervals reports from such committees, and subject to a right of appeal to the New Zealand Maori Council may disband any Committee which is not functioning satisfactorily or may require any members of any Committee to resign their office if they have failed to carry out their duties satisfactorily or have for any reason become unfitted to continue to hold office.
- (5) Each District Maori Council shall submit an annual report on its activities to the New Zealand Maori Council.

9. Members not Personally Liable—No member of any Council or Committee under this Act shall be personally liable for any act done or omitted by the body of which he is a member or by any member thereof if the body or member has acted in good faith in pursuance or in intended persuance of the powers and authority of such body.

10. Power to Acquire Land—The New Zealand Council or any District Council or Maori Welfare Group Committee may acquire any land or interest in land, whether by way of purchase, lease, or otherwise, for any purpose associated with its functions, and may sell, lease, sublease, mortgage or otherwise dispose of any such land or interest so acquired. Where an interest is so acquired in Maori freehold land, the instrument of alienation shall not be effective until it is presented to the appropriate Registrar of the Maori Land Court for the endorsement of a certificate that it has been recorded in the title records of the Court, but

no such instrument shall require to be confirmed under Part XIX of the Maori Affairs Act 1953. Any interest in land which was, at the passing of this Act, held by a Tribal Executive Committee under the Maori Social and Economic Advancement Act 1945 shall thereafter vest in the District Maori Council for the district to be held on trust for the purposes of the appropriate Maori Welfare Committee.

11. Mode of Contracting—(1) Any contract which, if made between private persons, must be by deed, shall, if made by a Maori Welfare Committee, be in writing signed on its behalf by three of its members, and if made by a Maori Welfare Group Committee, a District Maori Council or the New Zealand Maori Council, be in writing under the seal of that body affixed in the presence of not less than two members.

(2) Any contract which, if made between private persons, must be in writing, may be made in accordance with subsection (1) of this section or may be in writing signed by two members of the Committee or Council concerned.

(3) Any contract which, if made between private persons, may be made orally without writing may, if the amount involved does not exceed twenty pounds, be similarly made on behalf of a Committee or Council by any of its members.

(4) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of a Committee or Council shall be invalid by reason only that it was not made in the manner provided by this section if it was made pursuant to a resolution of that body or to give effect to such a resolution.

(5) Every instrument or document purporting to be executed in accordance with the provisions of this section shall, in the absence of proof to the contrary, be deemed for all purposes to have been duly executed.

12. Funds of Committees and Councils—(1) All moneys received by any Council or Committee under this Act shall, as and when received, be paid to the credit of that body in a bank or in the Post Office Savings Bank.

(2) Upon the passing of this Act all funds in any account in a bank or in the Post Office Savings Bank or with the Maori Trustee to the credit of any body constituted under the Maori Social and Economic Advancement Act 1945 and its amendments shall thereafter be held on behalf of the corresponding body under this Act in accordance with section 4 hereof and the name of the account shall on request be amended accordingly.

(3) No moneys shall be drawn from any such bank account except by a cheque or on receipt of a withdrawal form signed by two members of such body or by one member and the Secretary thereof:

Provided that the Minister if he thinks fit may in any case require that all cheques or withdrawal forms shall be countersigned by a person from time to time nominated by him.

(4) Any local authority or other public body, corporation sole, company or other corporate body, trustee or trustees (including the Maori Trustee), or any other person may, unless expressly prohibited by any Act or by any instrument of trust, make to the New Zealand Maori Council, or to a District Maori Council or to a Maori Welfare Committee, donations or gifts of money for the purpose of augmenting its funds.

(5) The funds of a committee or council under this Act may be applied by it for the normal operating expenses of such body and for the physical, economic, educational, social and moral benefit and advancement in life of Maoris within its district or area, either generally

or specially, and for such other purposes as are contemplated by this Act or as the Minister may from time to time in writing authorise or approve, but not otherwise.

(6) Any committee or council under this Act may pay to its members such travelling expenses and allowances in respect of attendance at meetings or travelling on the business of such body as may be prescribed by regulations under this Act, or, if there are no regulations prescribing such expenses and allowances, that at such rates and subject to such conditions as may be approved by the District Maori Council in respect of Maori Welfare Committees and the Council and by the New Zealand Maori Council in other cases.

(7) Any funds which are not immediately required for current expenditure may be invested in any of the classes of security enumerated in section 4 of the Trustee Act 1956.

13. Books of Account—(1) Every Council and committee under this Act shall cause books to be provided and kept, and true and regular accounts to be entered therein of all moneys received and paid, and of the several purposes for which such moneys have been received and paid.

(2) Any member of any such body may at any reasonable time inspect the books free of charge and take copies of or abstracts from them.

(3) The books and accounts shall be kept in such manner as may be prescribed by regulations under this Act or if there be no such manner prescribed by regulations then in such manner as may be determined by the Secretary for Maori Affairs.

(4) On or before the last day of April in each year each council and committee under this Act shall prepare a proper statement showing all its financial transactions during the financial year ended on the last day of the previous month, together with a statement of all the assets and liabilities of the body at the end of that year.

(5) Such yearly statements shall be audited by a registered public accountant appointed by the Council or Committee concerned or by some other suitable person approved by the Secretary for Maori Affairs.

(6) A copy of the duly audited statements of each Maori Welfare Committee and Maori Welfare Group Committee shall be submitted to the appropriate District Maori Council, and a copy of the duly audited statements of each District Maori Council and of the New Zealand Maori Council shall be submitted to the Secretary for Maori Affairs together with a report as to the operations of each council concerned for the preceding year.

14. Subsidies—(1) Subject to any regulations under this Act, the expenditure by any Maori Welfare Committee or any Maori Welfare Group Committee under this Act upon projects of a capital nature approved by the Minister for subsidy purposes may be subsidised out of moneys appropriated by Parliament for the purpose.

(2) The amount payable by way of subsidy upon any approved project under this section shall not exceed the amount which the committee has expended out of its own revenues upon the project.

15. Expenses of District Maori Councils and the New Zealand Maori Council—The New Zealand Maori Council may require each District Maori Council to make such contributions as may from time to time be required towards the cost of running the New Zealand Maori Council (including the reasonable travelling expenses of its members), and each District Maori Council and Maori Welfare Group Committee may require each Maori

Welfare Committee in its district to make such reasonable contributions as may be required towards the cost of running the District Maori Council (including its proportion of the running expenses of the New Zealand Maori Council) or the Maori Welfare Group Committee as the case may be.

16. Disposal of Assets on Dissolution—(1) If any Maori Welfare Committee or Maori Welfare Group Committee shall cease to function, the District Maori Council shall notify the Secretary for Maori Affairs, who shall cause a notice of the dissolution of the Committee to be published in the *Gazette*. Upon such publication the assets of the Committee which has been so dissolved shall vest in the District Maori Council which shall meet all the dissolved Committee's liabilities so far as the assets will extend and shall hold the residue for such purposes for the benefit of Maoris in the Committee's area as it thinks fit or it may pay the same to the Maori Education Foundation.

17. Prevention of Riotous Behaviour—(1) Any Maori who, whether in a Maori village or elsewhere—

- (a) Disturbs any congregation assembled for public worship, or any public meeting, or any meeting for any lecture, concert, or entertainment, or any audience at any theatre, whether or not a charge for admission has been made, or interferes with the conduct of any religious service in any church, chapel, burial ground, or other public building or place; or
- (b) In or in view of any public place as defined by section 40 of the Police Offences Act 1927, or within the hearing of any person therein, behaves in a riotous, offensive, threatening, insulting, or disorderly manner, or uses any threatening, abusive or insulting words, or strikes or fights with any other person—

shall be deemed to have committed an offence under this Act and may be dealt with in accordance with the procedure to be prescribed by regulations under this Act.

(2) Nothing in this section shall be construed to prevent a penalty being imposed on any person under the Summary Proceedings Act 1957 in respect of an offence committed against section 3 of the Police Offences Act 1927 but no person shall be punished twice for the same offence.

18. Maori Wardens—(1) For the purposes of this Act the Minister may from time to time by notice in the *Gazette* appoint as Maori Wardens such persons as he thinks fit.

(2) Maori Wardens so appointed may exercise such powers and authorities and carry out such duties as are authorised by or under this Act.

(3) No Maori Warden shall be eligible for election as a member of any Maori Welfare Committee at an election held while he holds office as a Maori Warden.

(4) Each Maori Warden shall be under the control and authority of the Maori Welfare Committee for the area in which he is resident and may be assigned such duties within the Committee's area as the Committee may approve.

(5) Notwithstanding that a Maori Warden may be assigned duties in a particular Maori Welfare Committee's area, he may perform such duties in the area of any other Maori Welfare Committee by arrangement with the committees concerned or when requested so to do by the Maori Welfare Group Committee or the District Maori Council for the district.

(6) The Minister may at any time remove any Maori Warden from office.

(7) A Maori Welfare Committee may, subject to any regulations under this Act, in its discretion pay out of its funds to any Maori Warden appointed and exercising his functions in the whole or any part of its area such remuneration or allowances for his services as it may determine.

19. Prevention of Drunkenness—(1) A Maori Warden may at any reasonable time enter any licensed premises in any area where he is authorised to carry out his duties and warn the licensee or any servant of the licensee to abstain from selling or supplying liquor to any Maori who in the opinion of the Warden is in a state of intoxication, or is violent, quarrelsome, or disorderly, or is likely to become so, whether intoxicated or not. If after such warning has been given the licensee or any servant of the licensee on the same day supplies liquor to that Maori, the licensee and the servant (if the servant had been warned by the Warden) shall each be liable to a fine not exceeding twenty pounds.

(2) A Maori Warden may at any reasonable time enter any licensed premises in any area where he is authorised to carry out his duties and order any Maori who appears to be intoxicated or partly intoxicated, or who is violent, quarrelsome, or disorderly, whether intoxicated or not, to leave the premises. If the Maori refuses or fails to leave the premises, he commits an offence and the Warden may request any constable to expel the Maori from the premises and the constable may do so with or without the assistance of the Warden.

(3) Any person, whether a Maori or not, who is under the influence of intoxicating liquor in any Maori meeting house or church or other building or meeting place where Maoris are assembled and who refuses to leave the same when requested so to do commits an offence and may in like manner be expelled by any constable.

(4) Every person, whether a Maori or not, who having the control or management of any dance, meeting, tangi, hui, or other gathering of Maoris being held in any marae, supplies intoxicating liquor to any person within the bounds of the marae or permits any such liquor to be taken into or consumed within the bounds of the marae, commits an offence.

(5) Every person, whether a Maori or not, who, while a dance, meeting, tangi, hui, or other gathering of Maoris is being held in a marae, drinks any intoxicating liquor within the bounds of the marae, or has any such liquor in his possession or control within the bounds of the marae or in the vicinity of the marae, or supplies intoxicating liquor to any person in the marae, commits an offence. For the purposes of this subsection intoxicating liquor shall be deemed to be in the vicinity of a marae where a gathering of Maoris is being held if it is shown that the liquor was in the possession or control of any person attending or proceeding to attend the gathering, or was consumed or intended for consumption by any person so attending.

(6) Any constable or Maori Warden who has reason to suspect that there is any breach by any person of the provisions of subsections (4) or (5) of this section in or in the vicinity of any marae where a gathering of Maoris is taking place may without warrant enter the marae or any place in the vicinity thereof, and examine the same and search for intoxicating liquor therein and may seize and remove any such liquor found therein and the vessels containing the liquor. Any intoxicating liquor so seized in respect of which any person is convicted of an offence under this section shall, together with the vessels containing the liquor, be forfeited to the Crown.

(7) Nothing in this section shall apply to prohibit the supply to any person of intoxicating liquor or the drinking or possession of any such liquor in any case where—

- (a) The liquor is *bona fide* required for medicinal purposes on the authority of a registered medical practitioner:
- (b) The liquor is *bona fide* required for religious purposes: or
- (c) The liquor has been taken to and consumed in a marae in accordance with a permit given under this section.

(8) Nothing in subsections (3) to (6) of this section shall apply in relation to any liquor consumed in any dwellinghouse by persons for the time being resident therein or to any liquor in any licensed premises or shall be deemed to confer upon any constable or Maori Warden the power to enter without warrant any dwellinghouse unless the person in lawful occupation consents to such entry.

(9) A Maori Welfare Committee for any area in which a marae is situated may with the consent of the trustees (if any) appointed by the Maori Land Court in respect of the marae issue a written permit for the introduction of intoxicating liquor into the marae for the purpose of being consumed in the marae at any gathering of Maoris other than a gathering for the purposes of a tangi or dance. Any such permit shall prescribe the nature and place of the gathering and may contain such conditions as the Maori Welfare Committee thinks fit in respect of the supply and the consumption of liquor, including the maximum quantity that may be so supplied or consumed. A copy of every such permit shall be supplied to the officer in charge of the Police for the area and the permit shall not have any effect until the copy is so supplied.

(10) Nothing in this section shall be construed to prevent a penalty being imposed on any person under the Summary Proceedings Act 1957 in respect of an offence committed against section 59 of the Statutes Amendment Act 1939, but no person shall be punished twice for the same offence.

20. Prohibition Orders Against Maoris—(1) The provisions of Part VI of the Licensing Act 1908 shall apply to Maoris in all respects as they apply to persons who are not Maoris.

(2) The police shall render such assistance as they are able to any Maori who applies for a prohibition order against himself or to any other person authorised by this section to apply for a prohibition order against a Maori.

(3) A prohibition order may be made against a Maori under section 212(1) of the Licensing Act 1908 on the application of any constable, any relative of the Maori, any Maori Warden, any Welfare Officer under the Child Welfare Act 1925, or any other Act, a member of a Maori Welfare Committee under this Act or a member of a School Committee established under Part IV of the Education Act 1914 for the school district in which the Maori is ordinarily resident.

(4) Every person who knowingly gives or supplies intoxicating liquor to any Maori during the currency of a prohibition order against the Maori shall be liable to a fine not exceeding ten pounds.

21. Retention of Car Keys—(1) Where any Maori Warden is of opinion that any Maori who is for the time being in charge of any motor vehicle is, by reason of physical or mental condition, however arising, incapable of having and exercising proper control of the motor vehicle, he may—

- (a) Forbid that person to drive the motor vehicle:

(b) Require that person to deliver up forthwith all ignition or other keys of the motor vehicle in his possession:

(c) Take such steps as may be necessary to render the motor vehicle immobile or to remove it to a place of safety.

(2) A Maori Warden may also exercise the powers conferred upon him by subsection (1) of this section in respect of any person who is not a Maori where that person is present at or in the vicinity of any Maori village or marae or any other place where a gathering of Maoris is assembled for any lawful purpose.

(3) No Warden shall exercise his powers under this section unless he has reasonable grounds for believing that in all the circumstances of the case such exercise was necessary in the interests of the person concerned or of any other person or of the public.

(4) Every person commits an offence against this Act who fails to comply with any direction given to him under this section or does any act which is for the time being forbidden under this section.

22. Offences—(1) Every person, whether a Maori or not, who obstructs, hinders, impedes, resists, or opposes any constable, Maori Warden, or other person who is exercising or attempting to exercise any powers conferred on him by or pursuant to this Act commits an offence.

(2) Every person who commits an offence under this Act for which no other penalty is specifically provided shall be liable on summary conviction to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding one month.

(3) Any Maori who commits an offence under this section or under sections 17, 19, 20 or 21 of this Act may be fined by a Maori Welfare Committee by an amount not exceeding twenty pounds in accordance with procedure to be prescribed by regulations under this Act.

(4) No person who is fined by a Maori Welfare Committee shall be dealt with in any Court for the same offence, and no person who has been dealt with in any Court for any offence to which this section would apply shall be thereafter fined by a Maori Welfare Committee for the same offence.

23. Regulations—(1) The Governor-General may from time to time, by Order in Council, make such regulations as are contemplated by this Act or as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Any regulations under this Act may provide for penalties not exceeding twenty-five pounds for any breaches thereof.

(3) Any regulations under this Act may apply to the whole of New Zealand or to any part or parts thereof, or may make different provision for different parts of New Zealand.

(4) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section—

(a) Providing for the methods and procedure of electing members of Maori Welfare Committees:

(b) Prescribing rules for the representation of Maori Welfare Committees on Maori Welfare Group Committees and of Maori Welfare Group Committees on District Maori Councils:

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- (c) Prescribing rules for the representation of District Maori Councils on the New Zealand Maori Council:
- (d) Prescribing rules for procedure at meetings of Maori Welfare Committees, Maori Welfare Group Committees, District Maori Councils and the New Zealand Maori Council:
- (e) Prescribing the procedure for the imposition of penalties by Maori Welfare Committees:
- (f) Prescribing rules for the payment of travelling allowances and expenses of members of Maori Welfare Committees, Maori Welfare Group Committees, District Maori Councils and the New Zealand Maori Council:
- (g) Prescribing what books of account shall be kept by Maori Welfare Committees, Maori Welfare Group Committees, District Maori Councils and the New Zealand Maori Council and the manner in which they shall be kept:
- (h) Prescribing the conditions under which subsidies may be granted and approved under this Act:
- (i) Prescribing the duties of Maori Wardens and rules for the payment of their expenses.

24. Repeals—The enactments mentioned in the Schedule hereto are hereby repealed.

SCHEDULE

ENACTMENTS REPEALED

- 1945, No 43—The Maori Social and Economic Advancement Act 1945
- 1947, No 59—The Maori Purposes Act 1947: Sections 12 to 14 and subsections (4) and (5) of section 15.
- 1948, No 69—The Maori Purposes Act 1948: Sections 7 and 8
- 1949, No 46—The Maori Purposes Act 1949: Sections 12 to 15
- 1950, No 98—The Maori Purposes Act 1950: Section 10
- 1951, No 52—The Maori Social and Economic Advancement Amendment Act 1951
- 1955, No 106—The Maori Purposes Act 1955: Section 9
- 1957, No 81—The Maori Purposes Act 1957
- 1961, No 41—The Maori Social and Economic Advancement Amendment Act 1961.

APPENDIX III

THE MAORI WELFARE ACT 1962

ANALYSIS

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1962, No 133

An Act to provide for the constitution of Maori Associations, to define their powers and functions, and to consolidate and amend the Maori Social and Economic Advancement Act 1945 [14 December 1962]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Maori Welfare Act 1962.

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-three.

2. Interpretation—In this Act, unless the context otherwise requires,

‘Maori’ means a person belonging to the aboriginal race of New Zealand; and includes any descendant of a Maori:

‘Maori Association’ includes a Maori Committee, a Maori Executive Committee, a District Maori Council, and the New Zealand Maori Council:

‘Maori Warden’ means a person appointed a Maori Warden under this Act:

‘Meeting place’ means any church, meeting house, hall, dining hall, kitchen, or other building (other than a private dwellinghouse) used as a meeting place for Maoris and includes any land attached or appurtenant to and commonly used in connection with any such building:

‘Minister’ means the Minister of Maori Affairs:

‘Secretary’ means the Secretary for Maori Affairs:

‘Triennial election’ means an election of members of Maori Committees held under section 19 of this Act.

Administration

3. Act to be administered by Minister—This Act shall be administered by the Minister of Maori Affairs, and the powers conferred by this Act shall be under the general direction and control of the Minister.

4. Welfare Officers—For the purposes of this Act there shall be appointed under the State Services Act 1962 as officers of the Public Service (whether as permanent or temporary officers) and as officers of the Department of Maori Affairs, such Welfare Officers as may be necessary.

5. Honorary Welfare Officers—(1) The Minister may from time to time, by notice in the *Gazette*, appoint such honorary Welfare Officers as he thinks fit to exercise jurisdiction in such areas as may be prescribed in the notice.

(2) The provisions of the State Services Act 1962 shall not apply with respect to any person appointed under this section.

(3) Every appointment under this section shall be for such term, not exceeding three years, as the Minister thinks fit, and any person appointed may from time to time be reappointed:

Provided that any such person may be at any time removed from office by the Minister for incapacity, neglect of duty, or misconduct, or for the reason that, because of his change of residence or other sufficient cause, he is unable to carry out his functions efficiently, or he may resign his office by writing addressed to the Secretary.

(4) Every honorary Welfare Officer shall, within the area in respect of which he was appointed, have all the powers and functions of a Welfare Officer except so far as those powers and functions are limited by regulations under this Act or by direction of the Secretary.

(5) Every resignation and removal under this section shall be notified in the *Gazette*.

6. Functions of Welfare Officers—(1) The general functions of Welfare Officers shall be, under the control of the Secretary, to advise and assist the Maori people in respect of their general welfare and, in particular, in respect of their health, housing, education, vocational training, and employment.

(2) In the exercise of their functions, Welfare Officers shall collaborate with and give such assistance and advice to Maori Associations as may be necessary or helpful in the circumstances.

7. Maori Wardens—(1) For the purposes of this Act the Minister may from time to time, by notice in the *Gazette*, appoint as Maori Wardens such number of persons who are Maoris as he thinks fit who shall carry out duties in such areas as may be prescribed in the notice.

(2) Every Maori Warden shall perform such functions and exercise such powers as may be conferred on him by this Act or by regulations under this Act.

(3) The Minister may at any time remove any Maori Warden from office and a Maori Warden may at any time resign his office by writing addressed to the Secretary.

(4) Every resignation and removal under this section shall be notified in the *Gazette*.

(5) Subject to any regulations under this Act, a Maori Association may in its discretion pay out of its funds to any Maori Warden exercising functions in its area such remuneration or allowances for his services as it may determine.

(6) Any powers conferred on a Maori Warden by this Act shall be exercised only in the area in respect of which he was appointed:

Provided that on the request of a Maori Association a Maori Warden may exercise any such powers in the area or district of that Association for the purpose of assisting the Association on special occasions.

Maori Committees

8. Maori Committee areas—(1) Any area which, at the commencement of this Act, is declared a Tribal Committee area under section 14 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be a Maori Committee area.

(2) A District Maori Council may, by resolution, alter the boundaries of any Maori Committee area, or amalgamate two or more Maori Committee areas, or constitute a new Maori Committee area, within the district of the Council.

(3) Each District Maori Council shall assign a name by which each Maori Committee area within its district shall be described and known and may from time to time, by resolution, amend any such name.

(4) Every resolution under this section shall be notified to the Maori Committee concerned and to the Secretary.

9. Maori Committees—(1) For the purposes of this Act there shall be a Maori Committee for every Maori Committee area constituted under section 8 of this Act.

(2) Each Maori Committee shall consist of seven members elected in accordance with this Act.

(3) Notwithstanding the provisions of subsection (2) of this section, the members of every Tribal Committee in office at the commencement of this Act under section 15 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be members of the

Maori Committee for the Maori Committee area in respect of which those members were appointed or elected.

(4) Any alteration in the boundaries of a Maori Committee area shall not affect the membership of the Maori Committee elected in respect of that area and each member in office at the date of the resolution effecting the alteration shall, unless his office otherwise becomes vacant, remain in office until the next triennial election.

(5) Notwithstanding the provisions of subsection (2) of this section, where two or more Maori Committee areas are amalgamated, all the members of the Maori Committees elected in respect of the amalgamated areas and in office at the date of the resolution effecting the amalgamation shall, unless their offices otherwise become vacant, remain in office until the next triennial election.

(6) Where a new Maori Committee area is constituted, an election of members of the Maori Committee for the area shall be held as soon as practicable after the constitution of the area.

10. Functions of Maori Committees—(1) Each Maori Committee shall, in relation to the Maoris within its area, have the functions conferred on the New Zealand Maori Council by subsection (1) of section 18 of this Act.

(2) Each Maori Committee shall be subject in all things to the control of the Maori Executive Committee in whose area it operates and shall act in accordance with all directions, general or special, given to it by the Maori Executive Committee.

Maori Executive Committees

11. Maori Executive Committee areas—(1) Any area which, at the commencement of this Act, is declared a tribal district under section 6 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be a Maori Executive Committee area.

(2) A District Maori Council may, by resolution, alter the boundaries of any Maori Executive Committee area, or amalgamate two or more Maori Executive Committee areas, or constitute a new Maori Executive Committee area, within the district of the Council.

(3) Each District Maori Council shall assign a name by which each Maori Executive Committee area within its district shall be described and known and may from time to time, by resolution, amend any such name.

(4) Every resolution under this section shall be notified to the Maori Executive Committee concerned and to the Secretary.

12. Maori Executive Committees—(1) For the purposes of this Act there shall be a Maori Executive Committee for every Maori Executive Committee area constituted under section 11 of this Act.

(2) Each Maori Executive Committee shall consist of members appointed in accordance with this section by Maori Committees for Maori Committee areas within the Maori Executive Committee area.

(3) Where there are less than four Maori Committees in a Maori Executive Committee area, the number of members appointed as aforesaid shall be three for each Maori Committee and, in any other case, the number of members appointed shall be two for each Maori Committee.

(4) Notwithstanding the provisions of subsection (3) of this section, the members of every Tribal Executive Committee in office at the commencement of this Act under section 8 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be members of the Maori Executive Committee for the Maori Executive Committee area in respect of which those members were appointed or elected.

(5) Any alteration in the boundaries of a Maori Executive Committee area shall not affect the membership of the Maori Executive Committee appointed in respect of that area and each member in office at the date of the resolution effecting the alteration shall, unless his office otherwise becomes vacant, remain in office for the residue of the term for which he was appointed.

(6) Notwithstanding the provisions of subsection (3) of this section, where two or more Maori Executive Committee areas are amalgamated, all the members of the Maori Executive Committees appointed in respect of the amalgamated areas and in office at the date of the resolution effecting the amalgamation shall, unless their offices otherwise become vacant, remain in office for the residue of the term for which they were appointed.

13. Functions of Maori Executive Committees—(1) Each Maori Executive Committee shall, in relation to the Maoris within its area, have the functions conferred on the New Zealand Maori Council by subsection (1) of section 18 of this Act.

(2) Each Maori Executive Committee shall be subject in all things to the control of the District Maori Council in whose district it operates and shall act in accordance with all directions, general or special, given to it by the Maori District Council.

District Maori Councils

14. Maori Council districts—(1) The Minister may from time to time, by notice in the *Gazette*, declare any part of New Zealand defined in the notice to be a Maori Council district for the purposes of this Act and may assign a name by which the Maori Council district shall be described and known.

(2) Subject to the provisions of this section, all Maori Land Court districts shall be Maori Council districts for the purposes of this Act.

(3) The district defined at the commencement of this Act pursuant to subsection (4) of section 13 of the Maori Social and Economic Advancement Act 1945 in respect of the Auckland District Maori Council shall be a Maori Council district for the purposes of this Act.

(4) The Minister may from time to time, by notice in the *Gazette*, vary the boundaries of any Maori Council district.

15. District Maori Councils—(1) For the purposes of this Act there shall be a District Maori Council for every Maori Council district constituted under section 14 of this Act.

(2) Each District Maori Council shall consist of members appointed in accordance with this section by Maori Executive Committees whose areas are within the district of the Council.

(3) Each Maori Executive Committee shall appoint two members to the District Maori Council:

Provided that if the number of Maori Executive Committees in any Maori Council district is more than ten, each of those Committees shall appoint one member to the Council.

(4) Notwithstanding the provisions of subsection (3) of this section, the members of any District Council in office at the commencement of this Act under section 13 of the Maori Social and Economic Advancement Act 1945 shall be deemed to be members of the District Maori Council for the Maori Council district in respect of which those members were appointed.

16. Functions of District Maori Councils—(1) Each District Maori Council shall, in relation to the Maoris within its district, have the functions conferred on the New Zealand Maori Council by subsection (1) of section 18 of this Act.

(2) Each District Maori Council shall be subject in all things to the control of the New Zealand Maori Council and shall act in accordance with all directions, general or special, given to it by the New Zealand Maori Council.

(3) Each District Maori Council shall advise, direct, and generally supervise each Maori Committee and Maori Executive Committee within its district and shall consider all representations and reports from each such committee.

(4) Each District Maori Council shall submit an annual report of its activities to the New Zealand Maori Council.

New Zealand Maori Council

17. New Zealand Maori Council—(1) For the purposes of this Act there shall be a New Zealand Maori Council.

(2) The members of the New Zealand Maori Council shall consist of members appointed in accordance with this section by District Maori Councils.

(3) Each District Maori Council shall appoint three members to the New Zealand Maori Council.

(4) The members of the New Zealand Maori Council of Tribal Executives established under section 13E of the Maori Social and Economic Advancement Act 1945 in office at the commencement of this Act shall be deemed to be members of the New Zealand Maori Council.

18. General functions of the New Zealand Maori Council—(1) The general functions of the New Zealand Maori Council, in respect of all Maoris, shall be—

- (a) To consider and discuss such matters as appear relevant to the social and economic advancement of the Maori race:
- (b) To consider and, as far as possible, give effect to any measures that will conserve and promote harmonious and friendly relations between members of the Maori race and other members of the community:
- (c) To promote, encourage, and assist Maoris—
 - (i) To conserve, improve, advance and maintain their physical, economic, industrial, educational, social, moral, and spiritual well-being;
 - (ii) To assume and maintain self-reliance, thrift, pride of race, and such conduct as will be conducive to their general health and economic well-being;
 - (iii) To accept, enjoy, and maintain the full rights, privileges, and responsibilities of New Zealand citizenship;

- (iv) To apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and
 - (v) To preserve, revive and maintain the teaching of Maori arts, crafts, language, genealogy, and history in order to perpetuate Maori culture:
- (d) To collaborate with and assist State Departments and other organisations and agencies in—
- (i) The placement of Maoris in industry and other forms of employment;
 - (ii) The education, vocational guidance, and training of Maoris;
 - (iii) The provision of housing and the improvement of the living conditions of Maoris;
 - (iv) The promotion of health and sanitation amongst the Maori people;
 - (v) The fostering of respect for the law and law-observance amongst the Maori people;
 - (vi) The prevention of excessive drinking and other undesirable forms of conduct amongst the Maori people; and
 - (vii) The assistance of Maoris in the solution of difficulties or personal problems.
- (2) The New Zealand Maori Council shall advise and consult with District Maori Councils, Maori Executive Committees, and Maori Committees on such matters as may be referred to it by any of those bodies or as may seem necessary or desirable for the social and economic advancement of the Maori race.
- (3) In the exercise of its functions the Council may make such representations to the Minister or other person or authority as seem to it advantageous to the Maori race.

Elections

19. Elections of Maori Committees—(1) On the last Saturday in February in the year nineteen hundred and sixty-four and on the corresponding day in every third year thereafter an election of members of Maori Committees shall be held.

(2) Notwithstanding the provisions of subsection (1) of this section, if in any year it is not practicable to hold an election in any Maori Committee area on the day prescribed in that subsection, the election shall be held in that area on a day not earlier than seven days before the prescribed day and not later than fourteen days after the prescribed day.

(3) All Maoris over the age of twenty-one years ordinarily resident in a Maori Committee area shall be entitled to vote at elections for members of the Maori Committee for that area.

(4) Any person over the age of twenty-one years, whether or not he is a Maori, ordinarily resident in the Maori Committee area shall be eligible for election.

(5) All elections under this section shall be held in accordance with regulations under this Act.

20. Provisions as to retirement after elections—(1) The term of office of every member of a Maori Committee shall expire with the day of the election on which his successor is elected.

(2) Subject to the provisions of this Act, the term of office of every member of a Maori Executive Committee shall expire with the thirty-first day of March in each year in which a triennial election is held.

(3) Subject to the provisions of this Act, the term of office of every member of a District Maori Council shall expire with the thirtieth day of April in each year when a triennial election is held.

(4) Subject to the provisions of this Act, the term of office of every member of the New Zealand Maori Council shall expire with the thirty-first day of May in each year when a triennial election is held.

21. Appointment of members of Maori Associations—(1) During the month of March in each year in which a triennial election is held, every Maori Committee shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the Maori Executive Committee for its Maori Executive area.

(2) During the month of April in each year in which a triennial election is held, every Maori Executive Committee shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the District Maori Council for its Maori Council district.

(3) During the month of May in each year in which a triennial election is held, every District Maori Council shall hold a meeting at which it shall appoint the appropriate number of its members to be members of the New Zealand Maori Council.

(4) Notice of all appointments under this section shall be given to the Secretary, who shall compile a list of members of the various Maori Associations and publish the list in the *Gazette*.

(5) Any member appointed to a Maori Executive Committee or a District Maori Council or the New Zealand Maori Council shall cease to be a member of the body to which he was appointed if he ceases to be a member of the body by which he was appointed and, in any such case, the appointing body may by resolution appoint another member in place of the person ceasing to be a member to hold office for the residue of the term for which that person was appointed.

(6) Notwithstanding the provisions of this Act, where pursuant to this Act the number of Maori Committees, Maori Executive Committees, or District Maori Councils in any area or district is altered, each member of any Maori Executive Committee or District Maori Council or of the New Zealand Maori Council in office at the date of the alteration shall, unless his office becomes vacant otherwise than pursuant to the alteration in number as aforesaid, remain in office for the residue of the term for which he was appointed.

22. Vacancies in membership—With respect to vacancies in the membership of Maori Associations, the following provisions shall apply:

- (a) Any member of any Maori Association may be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister or he may resign his office by notice in writing to the Secretary for Maori Affairs:
- (b) Any vacancy in the membership of any Maori Association shall be filled in the same manner in which the election or appointment of the member whose office has become vacant was made:
- (c) Any person elected or appointed to fill a vacancy under this section shall be elected or appointed to hold office for the unexpired term of his predecessor, and shall be eligible for reappointment:

- (d) The powers of any Maori Association shall not be affected by any vacancy in the membership thereof, or because of any person continuing to act as a member of any such body after he has ceased to be a member, or because of any defect or illegality in the appointment of any member.

23. Meetings—With respect to meetings of Maori Associations, the following provisions shall apply:

- (a) Each Maori Association shall meet at such times and at such places as the Association or the Chairman thereof shall appoint:
- (b) At its first meeting each Maori Association shall elect one of its members to be Chairman:
- (c) The Chairman shall preside at all meetings of the body of which he is Chairman at which he is present, and in the absence of the Chairman from any meeting the members present thereat may elect one of their number to be the Chairman of that meeting:
- (d) In case any member of any Maori Association is unable to attend a meeting of that Association, the Association by which he was appointed may appoint another of its members as his proxy at that meeting:
- (e) No business shall be transacted at any meeting of any Maori Association unless a quorum of not less than half its members is present:
- (f) All questions coming before any Maori Association shall be decided by a majority of the votes of the members present at the meeting, and in the case of an equality of votes the Chairman shall have a casting vote as well as a deliberative vote:
- (g) All proceedings, decisions, and resolutions of any Maori Association shall be recorded in a minute book kept for the purpose:
- (h) Subject to the provisions of this Act and of any regulations under this Act, every Maori Association may regulate its procedure in such manner as it thinks fit.

Financial Provisions

24. Contributions to funds—Any local authority or other public body, corporation sole, company, or other corporate body, trustee (including the Maori Trustee) or any other person may, unless expressly prohibited by any Act or by any instrument of trust, make to any Maori Association donations or gifts of money for the purpose of augmenting the funds of that Association.

25. Subsidies—(1) Subject to any regulations under this Act, any expenditure by a Maori Committee or a Maori Executive Committee may, with the approval of the Minister, be subsidised out of money appropriated by Parliament for the purpose at a rate not exceeding one pound for one pound.

(2) The provisions of subsection (1) of this section may be extended to any association or body of persons whether incorporated or not, approved by the Minister in that behalf, and having for its principal object or one of its principal objects the promotion of the welfare of the Maori people or of any portion of the Maori people.

26. Expenses of Councils and Committees—(1) The New Zealand Maori Council may from time to time require each District Maori Council to make such contributions as may

be required for the purpose of paying the costs and expenses of the administration of the New Zealand Maori Council, including the reasonable travelling expenses of its members.

(2) Each District Maori Council may require each Maori Executive Committee in its district to make such contributions as may be required for the purpose of paying the costs and expenses of the administration of the District Maori Council.

(3) Each Maori Executive Committee may require each Maori Committee in its area to make such contributions as may be required for the purpose of paying the costs and expenses of the administration of the Maori Executive Committee.

27. Money to be paid into bank—With respect to all money received by a Maori Association, the following provisions shall apply:

(a) The money shall, as and when received, be paid into a bank or the Post Office Savings Bank to the credit of the Maori Association by which it was received:

(b) No money shall be drawn from any such bank except by cheque or withdrawal form signed by two members of the Maori Association or by one member and the Secretary of the Association:

Provided that the Minister if he thinks fit may in any case require that all cheques and withdrawal forms shall be countersigned by a person from time to time nominated by him.

28. Books of account—With respect to the books of account of Maori Associations, the following provisions shall apply:

(a) Every Maori Association shall cause books to be provided and kept, and true and regular accounts to be entered therein of all money received and paid, and of the several purposes for which any such money has been received and paid:

(b) Any member of any Maori Association may at any reasonable time inspect the books of the Association free of charge and take copies of or extracts from them:

(c) The books and accounts shall be kept in such manner as may be prescribed by regulations under this Act or, in the absence of any such regulations, as may be determined by the Secretary for Maori Affairs:

(d) As soon as reasonably practicable after the end of each financial year every Maori Association shall prepare a statement showing its financial operations for that year and its assets and liabilities at the end of that year:

(e) Every such statement shall be audited by a registered public accountant appointed by the Maori Association concerned or by some other person approved in that behalf by the Secretary for Maori Affairs:

(f) The New Zealand Maori Council and each District Maori Council shall submit a copy of its audited statement to the Secretary for Maori Affairs and each Maori Committee and Maori Executive Committee shall submit a copy of its audited statement to the District Maori Council in whose district it operates.

29. Disposal of assets on dissolution—(1) If any Maori Committee is dissolved or ceases to function, the Maori Executive Committee for the area in which the Maori Committee operated shall notify the appropriate District Maori Council and the Secretary.

(2) If any Maori Executive Committee is dissolved or ceases to function, the District Maori Council for the district in which the Committee operated shall notify the Secretary.

(3) Any notification under subsection (1) or subsection (2) of this section shall be published in the *Gazette* by the Secretary for Maori Affairs.

(4) Upon the publication of any such notice in the *Gazette* the assets of the body to which it relates shall vest, in the case of a Maori Committee, in the Maori Executive Committee for the area in which the Maori Committee operated and, in the case of a Maori Executive Committee, in the District Maori Council for the district in which the Maori Executive Committee operated.

(5) The body in which any assets become vested under subsection (4) of this section shall discharge the liabilities of the body in which the assets were formerly vested so far as the assets will extend and shall hold any residue for such purposes as may be authorised by this Act for the benefit of Maoris in its area or district.

Prevention of Unruly Behaviour

30. Prevention of riotous behaviour—(1) Any Maori who—

(a) Disturbs any congregation assembled for public worship, or any public meeting, or any meeting for any lecture, concert, or entertainment, or any audience at any theatre, whether or not a charge for admission has been made, or interferes with the conduct of any religious service in any church, chapel, burial ground, or other public building or place; or

(b) In or in view of any public place as defined by section 40 of the Police Offences Act 1927, or within the hearing of any person therein, behaves in a riotous, offensive, threatening, insulting, or disorderly manner, or uses any threatening, abusive or insulting words, or strikes or fights with any other person—

commits an offence against this Act.

(2) Nothing in this section shall be construed to prevent a penalty being imposed on any person under the Summary Proceedings Act 1957 in respect of an offence committed against section 3 of the Police Offences Act 1927, but no person shall be punished twice for the same offence.

31. Prevention of drunkenness—A Maori Warden may at any reasonable time enter any licensed premises in any area where he is authorised to carry out his duties and warn the licensee or any servant of the licensee to abstain from selling or supplying liquor to any Maori who in the opinion of the Warden is in a state of intoxication, or is violent, quarrelsome, or disorderly, or is likely to become so, whether intoxicated or not, and if the licensee or any servant of the licensee thereafter on the same day supplies liquor to that Maori, the licensee and, if the servant had been warned by the Warden, the servant, commits an offence against this Act.

32. Maori may be ordered to leave hotel—(1) A Maori Warden may at any reasonable time enter any licensed premises in any area where he is authorised to carry out his duties and order any Maori who appears to be intoxicated or partly intoxicated, or who is violent, quarrelsome, or disorderly, whether intoxicated or not, to leave the premises.

(2) If the Maori refuses or fails to leave the premises when ordered to do so as aforesaid, he commits an offence against this Act and the Warden may request any member of the

Police to expel the Maori from the premises and that member may do so with or without the assistance of the Warden.

33. Disorderly behaviour at Maori gatherings—(1) Any person, whether a Maori or not, who is under the influence of intoxicating liquor in any Maori meeting house or church or other building or meeting place where Maoris are assembled and who refuses to leave the same when requested so to do commits an offence against this Act.

(2) Every person, whether a Maori or not, who having the control or management of any dance, meeting, tangi, hui, or other gathering of Maoris being held in any meeting place supplies intoxicating liquor to any person within the bounds of the meeting place or permits any such liquor to be taken into or consumed within the bounds of the meeting place, commits an offence against this Act.

(3) Every person, whether a Maori or not, who, while at a dance, meeting, tangi, hui, or other gathering of Maoris is being held in a meeting place, drinks any intoxicating liquor within the bounds of the meeting place, or has any such liquor in his possession or control within the bounds of the meeting place or in the vicinity of the meeting place or supplies intoxicating liquor to any person in the meeting place commits an offence against this Act.

(4) For the purposes of subsection (2) of this subsection intoxicating liquor shall be deemed to be in the vicinity of a meeting place where a gathering of Maoris is being held if it is shown that the liquor was in the possession or control of any person attending or proceeding to attend the gathering, or was consumed or intended for consumption by any person so attending.

(5) Any member of the Police or Maori Warden who has reason to suspect that there is any breach by any person of the provisions of this section in or in the vicinity of any meeting place where a gathering of Maoris is taking place may without warrant enter the meeting place or any place in the vicinity thereof, and examine the same and search for intoxicating liquor therein and may seize and remove any such liquor found therein and the vessels containing the liquor. Any intoxicating liquor so seized in respect of which any person is convicted of an offence under this section shall, together with the vessels containing the liquor, be forfeited to the Crown.

(6) Nothing in this section shall apply to prohibit the supply to any person of intoxicating liquor or the drinking or possession of any such liquor in any case where

- (a) The liquor is bona fide required for medicinal purposes on the authority of a registered medical practitioner; or
- (b) The liquor is bona fide required for religious purposes; or
- (c) The liquor has been taken to and consumed in a meeting place in accordance with a permit given under this section.

(7) Nothing in this section shall apply in relation to any liquor consumed in any dwellinghouse by persons for the time being resident therein or to any liquor in any licensed premises or shall be deemed to confer upon any member of the Police or Maori Warden the power to enter without warrant any dwellinghouse unless the person in lawful occupation consents to the entry.

(8) A Maori Committee for any area in which a meeting place is situated may, in respect of the meeting place, issue a written permit for the introduction of intoxicating liquor into the meeting place for the purpose of being consumed therein at any gathering of Maoris other than a gathering for the purposes of a dance. Any such permit shall prescribe the

nature and place of the gathering and may contain such conditions as the Maori Committee thinks fit in respect of the supply and the consumption of liquor. A copy of every such permit shall be supplied to the senior member of the Police for the area and the permit shall not have any effect until the copy is so supplied.

(9) Nothing in this section shall be construed to prevent a penalty being imposed on any person under the Summary Proceedings Act 1957 in respect of an offence committed against section 59 of the Statutes Amendment Act 1939, but no person shall be punished twice for the same offence.

34. Prohibition orders against Maoris—(1) Except as otherwise provided by this section, the provisions of Part VI of the Licensing Act 1908 shall apply to Maoris in all respects as they apply to persons who are not Maoris.

(2) No prohibition order against a Maori shall be made under Part VI of the Licensing Act 1908 otherwise than on the application of

- (a) A member of the Police;
- (b) A relative of the Maori;
- (c) A Maori Warden;
- (d) A Welfare Officer appointed under this Act;
- (e) A Welfare Officer under the Child Welfare Act 1925;
- (f) A member of a Maori Committee;
- (g) A member of a School Committee established under Part IV of the Education Act 1914 for the school district in which the Maori is ordinarily resident;
- (h) Any Maori who desires that a prohibition order shall be made against himself.

(3) Without limiting the provisions of Part VI of the Licensing Act 1908, every person who gives or supplies intoxicating liquor to any Maori during the currency of a prohibition order against the Maori commits an offence against this Act.

35. Retention of car keys—(1) Where any Maori Warden is of the opinion that any Maori who is for the time being in charge of any motor vehicle is, by reason of physical or mental condition, however arising, incapable of having and exercising proper control of the motor vehicle, he may—

- (a) Forbid that Maori to drive the motor vehicle; or
- (b) Require him to deliver up forthwith all ignition or other keys of the motor vehicle in his possession; or
- (c) Take such steps as may be necessary to render the motor vehicle immobile or to remove it to a place of safety.

(2) The powers conferred on Maori Wardens by subsection (1) of this section may be exercised in respect of persons other than Maoris where any such person is in charge of a motor vehicle in or in the vicinity of a meeting place, or any other place where a gathering of Maoris is assembled for any lawful purpose.

(3) Every person who fails to comply with any direction given to him under this section or who does any act that is for the time being forbidden under this section commits an offence against this Act:

Provided that no person shall be deemed to have committed an offence under this section unless the Maori Warden had reasonable grounds for believing that in all the circumstances

of the case the direction or prohibition was necessary in the interests of the defendant or of any other person or of the public.

36. Imposition of penalties by Maori Committees—(1) If a Maori Committee is satisfied that an offence has been committed by a Maori against section 30, section 32, section 33, or section 35 of this Act, it may authorise proceedings to be taken in a summary manner under the Summary Proceedings Act 1957 in respect of the offence or it may, in its discretion, impose on the offender a penalty in respect thereof of such amount as it thinks fit, not exceeding ten pounds:

Provided that no penalty shall be imposed by a Maori Committee under this subsection if the person charged elects to be dealt with summarily under the Summary Proceedings Act 1957, and before imposing any penalty, the Committee shall make known to the offender his right of election and the nature of the charge against him.

(2) No person shall have a penalty imposed on him under this section for an offence in respect of which summary proceedings have been taken under the Summary Proceedings Act 1957 and no person shall have a penalty imposed on him under the Summary Proceedings Act 1957 for an offence for which a penalty has been imposed under this section.

(3) For the purpose of investigating any offence referred to in subsection (1) of this section and determining the amount of the penalty, a Maori Committee may, subject to any directions of the Minister, adopt such form of procedure as it may think suitable:

Provided that a Committee shall not impose any penalty on an offender without giving him a reasonable opportunity of being heard in his own defence.

(4) In any case where a person fails to pay any penalty duly imposed by a Maori Committee under this section, the amount of the penalty shall be recoverable in the Magistrate's Court as a debt due to the Committee by the person so failing to pay the penalty:

Provided that that person may defend the proceedings, and in any such case the matter shall be reheard by the Court which in its discretion may give judgment for the plaintiff for the amount of the penalty or such less amount as it thinks fit or may give judgment for the defendant.

(5) The amount of any penalties imposed by a Maori Committee under this section shall be paid to the Committee and shall form part of its funds.

(6) The amount of any penalty imposed under the Summary Proceedings Act 1957 pursuant to proceedings authorised in that behalf under this section, and the amount of any penalty so imposed on a person who has elected under this section to be dealt with summarily under that Act, shall be paid into the funds of the Maori Committee of the Maori Committee area within which the offence was committed:

Provided that there shall be deducted from the amount of any such penalty and credited to the Ordinary Revenue Account of the Consolidated Fund an amount equal to five per cent of the penalty.

Miscellaneous Provisions

37. Associations to be bodies corporate—Every Maori Association shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, and of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

38. Contracts by Associations—(1) Any contract which, if made between private persons, must be by deed shall, if made by a Maori Association, be in writing under the seal of the Association.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged thereby shall, if made by a Maori Association, be either under the seal of the Association or signed by two members of the Association on behalf of and by direction of the Association.

(3) Any contract which, if made between private persons may be made orally without writing may be similarly made by or on behalf of a Maori Association by any member thereof, but no oral contract shall be made involving the payment by the Association of a sum exceeding twenty pounds.

(4) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of a Maori Association shall be invalid by reason only that it was not made in the manner provided by this section if it was made pursuant to a resolution of the Maori Association or to give effect to a resolution of the Maori Association.

39. Authentication of documents—(1) All instruments or documents issued or authorised by a Maori Association shall, except as may be otherwise specially provided by this Act or by any regulations thereunder, be signed on behalf of the Association by at least two members thereof on behalf of and by direction of the Association and shall be sealed with the seal of the Association in their presence.

(2) Every instrument or document purporting to have been executed in accordance with the provisions of this section shall, in the absence of proof to the contrary, be deemed for all purposes to have been duly executed.

40. Associations may acquire land—Any Maori Association may, with the precedent consent of the Minister, acquire any land or interest in land, whether by way of purchase, lease, or otherwise, for any communal purposes, and may with the like consent sell, lease, sublease, mortgage, or otherwise dispose of any such land or interest so acquired.

41. Members of Maori Associations not personally liable—No member of a Maori Association shall be personally liable for any act done or omitted by the Association or by any member thereof in good faith in pursuance or in intended pursuance of the powers and authority of the Association.

42. Penalties—Every person who commits an offence against this Act for which no penalty is specifically provided shall be liable on summary conviction to a fine not exceeding twenty pounds.

43. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for elections of members of Maori Committees:
- (b) Prescribing procedures at meetings of Maori Associations:
- (c) Providing for the method of appointment of members and officers of Maori Committees, Maori Executive Committees, and District Maori Councils to the appropriate Maori Association under this Act:

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- (d) Providing for the payment of expenses and travelling allowances to members of Maori Associations:
- (e) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Any regulations under this Act may apply to the whole of New Zealand or any part or parts thereof, or may make different provision for different parts of New Zealand.

44. Repeals—The enactments specified in the Schedule to this Act are hereby repealed.

Section 44

SCHEDULE

ENACTMENTS REPEALED

- 1908, No 193—The Tohunga Suppression Act 1908. (1957 Reprint, Vol 15, p 651.)
- 1945, No 43—The Maori Social and Economic Advancement Act 1945. (1957 Reprint, Vol 9, p 131.)
- 1947, No 59—The Maori Purposes Act 1947: Sections 12, 13, 14, and subsections (1) to (4) of section 15. (1957 Reprint, Vol 9, p 160.)
- 1948, No 69—The Maori Purposes Act 1948: Sections 7 and 8. (1957 Reprint, Vol 9, p 161.)
- 1949, No 46—The Maori Purposes Act 1949: Part II. (1957 Reprint, Vol 9, p 161.)
- 1950, No 9B—The Maori Purposes Act 1950: Section 10. (1957 Reprint, Vol 9, p 162.)
- 1951, No 52—The Maori Social and Economic Advancement Amendment Act 1951. (1957 Reprint, Vol 9, p 162.)
- 1955, No 106—The Maori Purposes Act 1955: Section 9. (1957 Reprint, Vol 9, p 163.)
- 1957, No 81—The Maori Purposes Act 1957: Section 12. (1957 Reprint, Vol 9, p 163.)
- 1961, No 41—The Maori Social and Economic Advancement Amendment Act 1961.

This Act is administered in the Department of Maori Affairs.

APPENDIX IV

**THE MAORI COMMUNITY
DEVELOPMENT REGULATIONS 1963**

(SR 1963/87)

1. (1) These regulations may be cited as the Maori Community Development Regulations 1963.

(2) These regulations shall come into force on 1 July 1963.

2. In these regulations, unless the context otherwise requires,—

‘Act’ means the Maori Community Development Act 1962

Terms defined in the Act shall, when used in these regulations, have the meanings so defined.

3. (1) At least 2 weeks before the last Saturday in February 1964 and at least 2 weeks before the corresponding day in every third year thereafter, each functioning Maori Committee shall, by public notice in a newspaper circulating in its area or in such other or additional manner as it thinks will adequately inform the Maoris in its area, call a public meeting of Maori residents for the purpose of electing members of the Committee for the ensuing 3 years. The notice shall state the date, time, and place of the meeting.

(2) At any such meeting any person who is a Maori, who resides in the Committee’s area, and who is of the age of 20 years or upwards shall be eligible to vote.

(3) At any such meeting the chairman of the outgoing Maori Committee (if present) shall preside. If he is not present a chairman for the meeting shall be chosen by the members of the outgoing Maori Committee present or if no chairman is so chosen a chairman shall be elected by the meeting.

(4) Any person who is not a Maori may with the leave of the meeting attend and speak at the meeting but shall not be entitled to vote.

(5) Written nominations for election signed by the nominator and seconder and accepted by the nominee may be lodged with the Committee before the meeting and verbal nominations may be made and seconded at the meeting.

(6) If the number of nominations received does not exceed the number of persons required to be elected, those persons shall be declared to be elected.

(7) If more nominations are received than the number of persons required to be elected, a ballot shall be conducted amongst those present who are entitled to vote. At any such

ballot no person's vote shall be counted if he votes for more than the number of persons requiring to be elected but a vote for fewer than that number shall not be invalid.

(8) Where a ballot is held, the meeting shall appoint 2 adult persons present to be scrutineers to check and count the votes. Unless there are insufficient other adult persons present, no person who has been nominated for election and no wife or husband or civil union partner or de facto partner of any such person shall be appointed as a scrutineer.

(9) The nominees up to the number required to be elected who receive the highest number of votes shall be deemed to be elected. If there is an equality of votes amongst a group of nominees who could not all so be declared to be elected without exceeding the number of vacancies, a further ballot shall be taken amongst the members of that group to determine which of them shall be elected, and, if the second ballot does not result in a decision, the chairman of the meeting may exercise a second or casting vote.

(10) All other questions arising at any such meeting shall be decided by a majority of the votes of those present and entitled to vote. In the event of an equality of votes the chairman of the meeting shall have a second or casting vote.

(11) Where a new Maori Committee area is constituted or where any Maori Committee has ceased to function, any Maori in the area may apply to the appropriate Maori Executive Committee or District Maori Council to call a meeting of Maori residents for the purpose of electing a Maori Committee. The Maori Executive Committee or the District Maori Council shall call a meeting as requested. The Maori Executive Committee or the District Maori Council may also of its own motion call any such meeting.

(12) In any case to which subclause (11) applies the election shall be held as soon as practicable and the provisions of this regulation, as far as they are applicable and with the necessary modification, shall apply accordingly.

4. (1) As soon as a Maori Committee has appointed its representatives on the appropriate Maori Executive Committee in accordance with subsection (1) of section 21 of the Act, the secretary of the Committee shall notify the Maori Executive Committee of the name and address of each such representative.

(2) As soon as a Maori Executive Committee has appointed its representative or representatives on the appropriate District Maori Council in accordance with subsection (2) of section 21 of the Act, the secretary of the Committee shall notify the Council of the name and address of each such representative.

(3) As soon as a District Maori Council has appointed its representatives on the New Zealand Maori Council in accordance with subsection (3) of section 21 of the Act, the secretary of the District Maori Council shall notify the New Zealand Maori Council of the name and address of each such representative.

(4) Any Maori Association may appoint 1 or more of its members to act as proxies for its representatives at meetings of the Maori Association to which those representatives are appointed, and the names and addresses of every such proxy shall be notified to the appropriate Maori Association.

(5) Where a representative of a Maori Association is unable to attend a meeting of the Association to which he was appointed, the appointing Association shall nominate one of the proxies appointed as aforesaid to attend the meeting and the proxy while so attending shall for all purposes be deemed to be a member of the Maori Association at the meeting of which he attends.

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5. (1) Notice in writing of the date, time, and place appointed for any ordinary meeting of a Maori Association shall be given to every member in sufficient time for the notice to reach him by the ordinary course of post at least 3 days before the member would, using the normal means of transport, have to leave his ordinary place of residence to attend the meeting:

provided that the initial meeting of a newly elected Maori Committee may be held immediately following or at a time arranged at the meeting of Maori residents at which it was elected.

(2) The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, any member shall not invalidate the proceedings at any meeting.

(3) Notwithstanding anything in subclause (1), an urgent special meeting may if necessary be called by telegram or telephone but every endeavour shall be made to give the members as much notice as is reasonably possible in the circumstances.

(4) If within 1 hour after the time appointed for a meeting, whether by notice as aforesaid or by adjournment from a previous meeting, a quorum is not present, the members present, or if no member be present, the secretary or other officer of the Maori Association concerned, may adjourn the meeting to such time and place as is thought fit; and if the meeting is not so adjourned the notice calling it shall be deemed to have lapsed.

(5) The chairman may, with the consent of the members present, adjourn any meeting from time to time or from place to place, but, unless notice is otherwise given under subclause (1), no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(6) The proceedings of every meeting of every Maori Association shall be recorded in a proper minute book and the minutes of each meeting shall be submitted for confirmation at the next ordinary meeting of the Association.

6. (1) The seal of any Maori Association shall have inscribed on it in legible characters the name of the Association, but shall otherwise be in such form of circular design as may be decided by the Association.

(2) The seal shall be kept in the custody of the secretary or other person appointed for the purpose.

(3) The seal shall not be affixed to any instrument or document except by the authority of a resolution of the Maori Association concerned and in the presence of 2 members thereof, and they shall sign every instrument or document to which the seal has been so affixed in their presence.

7. (1) Each Maori Association may from time to time appoint such officers as it may need to carry out its functions, including a secretary and a treasurer or a secretary-treasurer.

(2) Every appointment under subclause (1) and every change in the holders of any such offices shall in the case of District Maori Councils and the New Zealand Maori Council be notified to the Secretary for Maori Affairs. Any officer appointed under this regulation need not necessarily be a member of the Association which appoints him.

(3) The officers of a Maori Association shall have all such powers and duties as the Association shall from time to time determine, subject to the provisions of the Act, and shall at all times conform to the directions of the Association.

(4) Subject to subclause (1), any officer appointed by a Maori Association may be dismissed from that office and another person appointed in his stead.

(5) The secretary and other officers of a Maori Association may be paid such remuneration or travelling or other expenses out of the funds of the Association concerned as it may from time to time determine.

(6) Any member of a Maori Association who is required to travel more than 5 miles for the purpose of attending any meeting of the Association or on the business of the Association may be paid such remuneration or travelling allowances or other expenses out of the funds of that Association as it may from time to time determine:

provided that the rates and conditions of such payments shall not in any case be more favourable to the member than the corresponding rates and conditions for the time being approved under the Fees and Travelling Allowances Act 1951.

8. (1) Where in the opinion of a Maori Committee there is prima facie evidence of the commission of an offence by a Maori under sections 30, 32, 33, or 35 of the Act and the Committee decides to deal with the matter otherwise than under the Criminal Procedure Act 2011, the procedure under this regulation shall apply.

(2) The Committee shall serve or cause to be served upon the person concerned either personally or by prepaid registered post a notice of charge worded in accordance with the form of the Schedule or to the like effect.

(3) The notice of charge shall appoint a reasonably convenient time and place for the hearing of the charge before not fewer than 3 members of the Maori Committee, the time appointed being not earlier than 7 days after the date of service of the notice or the date on which the notice if served by registered post would have been delivered in the ordinary course of post.

(4) At the hearing of the charge the person charged shall be entitled to be heard and, if he wishes, to be represented, but, if he fails to appear at the time and place appointed, the charge may be adjudicated upon in his absence:

provided that no penalty shall be imposed unless the members of the Maori Committee are satisfied that the charge has been sufficiently proved.

(5) All evidence given before the members of the Committee shall be given on oath, and, for that purpose, the members of the Committee hearing the charge shall be deemed to be persons acting judicially within the meaning of the Oaths and Declarations Act 1957.

(6) Unless the person charged admits the charge, the procedure at the hearing shall as far as practicable be arranged in the following sequence:

- (a) the charge shall be read out:
- (b) the person prosecuting the charge shall open his case and lead whatever evidence he can produce in support of the charge:
- (c) the person charged or his representative may cross-examine each witness after he has given his evidence, and the person leading the evidence may re-examine the witness on any matters raised on the cross-examination:
- (d) the person charged may, if he wishes, call evidence or give evidence himself, with similar rights of cross-examination by the person prosecuting the charge and of re-examination by the person charged:
- (e) the final addresses and submissions. If the person charged has called or given evidence, he or his representative shall be heard first, but if he has not called or given evidence the person prosecuting the charge shall be heard first:
- (f) deliberation and adjudication by the members of the Committee.

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(7) No penalty imposed at a hearing under this regulation shall exceed \$20: provided that if the members of the Committee are not unanimous in their finding, the majority of them may impose a penalty not exceeding \$10.

(8) If a penalty is imposed in the absence of the person charged, advice of the imposition of the penalty shall be posted to him by prepaid registered post not later than the next working day following the date of the hearing.

(9) If a penalty imposed under this regulation is not paid within 14 days after the imposition thereof, a copy of the notice of charge with a certificate as to the penalty imposed upon the adjudication thereof, signed by the members of the Maori Committee who adjudicated thereon, may be transmitted to the appropriate office of the District Court for the district.

9. (1) The books of account required to be kept in accordance with section 28 of the Act shall consist of suitable stiff covered books with the name of the Maori Association concerned legibly inscribed on the cover or the spine of the books.

(2) Every Maori Association shall keep at least a cash book and a receipt book.

(3) Every Maori Association shall issue receipts for all money received and shall obtain receipts for all money paid. No money shall be paid except as authorised by the Maori Association concerned.

(4) Unless the Secretary for Maori Affairs otherwise directs in any case, the accounts may be kept by the single entry system.

(5) The vouchers, invoices, receipt copies, and other records relating to the accounts for any financial year shall be retained for a period of 6 years after the close of that financial year.

10. Subsidies—(1) Applications for subsidy shall be submitted to the Secretary for Maori Affairs on form MA 611 and shall be accompanied by a copy of such accounts or auditors' certificates or other particulars as the Secretary for Maori Affairs may require for the purpose of checking the application before its submission to the Minister.

(2) The Minister may approve the allocation of money appropriated by Parliament for subsidies at such rate or rates, not exceeding in any case \$1 for \$1, as he thinks fit.

(3) [*Revoked*]

11. (1) Maori Wardens shall exercise in their respective areas the powers and functions laid down in the Act.

(2) In carrying out their functions Maori Wardens shall work in close association with the Maori Committees and Maori Executive Committees and any subcommittees thereof having jurisdiction in their areas and shall assist any such Committees and their officers to the best of their ability.

(3) Maori Wardens shall also maintain close association with the Police and traffic officers having jurisdiction in their areas so as to ensure the maximum cooperation with all such officers.

(4) Maori Wardens shall endeavour to promote respect amongst Maori people for the standards of the community and to take appropriate steps where possible to prevent any threatened breach of law and order.

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12. Any notice, summons, suit, or other document required to be served on a Maori Association may be served by being left with the chairman or secretary of that body or by being sent through the post by prepaid registered letter addressed to the chairman or secretary at his last known address, and any notice, summons, suit, or other document so posted shall be deemed to have been served on the day next following that on which it would be delivered in the ordinary course of post.

13. The Maori Tribal Organisations Regulations 1948 (SR 1948/58) are hereby revoked.

SCHEDULE

NOTICE OF CHARGE

In the matter of the Maori Community Development Act 1962

To [*full name, occupation, full postal address*]

1 You are hereby summoned to attend a meeting of representatives of the [*specify*] Maori Committee to be held at [*name of building, full address*] at [*time*] on [*date*] to answer a charge against you that you have committed an offence under section [*specify*] of the Maori Community Development Act 1962 which provides as follows:

[*Set out the text of the section to which the charge relates.*]

2 The act or acts of commission or of omission with which you are charged is/are as follows: [*Set out particulars in sufficient detail to enable the person charged to know precisely what he is called upon to answer.*]

3 You are entitled to appear in person or to be represented at the hearing and to cross-examine the witnesses called in support of the charge and to call evidence on your own behalf. You are also entitled to make submissions on your own behalf after the evidence has been heard.

4 If you fail to appear at the time and place appointed for the hearing, the representatives of the Committee may adjudicate upon the matter in your absence. If you wish to admit the charge without appearing you may give notice accordingly to the Committee in writing together with any explanation you may wish to make.

5 If a penalty is imposed upon you for the offence complained of the amount of the penalty must be paid to the [*specify*] Maori Committee within 14 days of the date of the hearing. If it is not then paid a certificate of the imposition of the penalty will be filed in the District Court and enforced in the same way as a judgment for debt is enforced in that court, unless you defend the proceedings for enforcement in the District Court, in which case the District Court Judge will rehear the charge.

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Dated at: [*place, date*]

[*signature*]

Chairman/Secretary,

[*specify*] Maori Committee

This notice is served upon you by the [*specify*] Maori Committee whose address for service is at [*set out full address*].

T J Sherrard,

Clerk of the Executive Council.

APPENDIX V

**MĀORI WARDENS PROJECT CONTESTABLE
FUNDING PROGRAMME: TPK CRITERIA
FOR EVALUATING APPLICATIONS**

This following information is from 'Māori Wardens' Funding Programme – Guidelines for Regional Coordinators',
1 November 2009 (updated 1 June 2011) (Te Rauhuia Clarke, comp, papers in support of brief of evidence
(doc B14(a)), pp 123–124, 130–134, 137, 142, 144, 155–156, 175–177, 197, 200–203)

FUNDING CRITERIA FOR WARDENS' GROUPS APPLYING FOR CONTESTABLE FUNDING

	Operational Assistance Fund	National Event Fund	Capacity and Capability Fund
Be a legal entity or be able to access an 'umbrella' group who is a legal entity	Required	Required	Required
Have community support	Required	Required	Required
Have an effective governance structure	Required	Required	Required
Have sound financial accounts	Required	Required	Required
Have five or more warranted Māori Wardens	Required	Required	Required
Have met all previous TPK funding agreements	Required	Required	Required
Copy of certificate of incorporation or registration	Required	Required	Required
Copy of constitution or trust deed	Required	Required	Required
Copy of most recent annual accounts in accordance with terms of constitution or trust deed or prepared by a chartered accountant	Required	Required	Required
Two recent letters of support, including one from an independent community organisation	Required*		
Evidence of hours worked by wardens (ie, a duty roster or activity report)	Required*		
Support letters from all affiliating sub-associations	Required†		
Evidence of monthly meetings or of coordination of activities	Required†		
Support letters from participating branches or sub-associations of Māori Wardens		Required	Required
Budget information		Required	Required
Documentation relating to the project, ie plans, programmes, details of consultants		Required	Required

* Sub-associations only † District Wardens Associations only

Funding criteria for Wardens' Groups applying for contestable funding under the Māori Wardens Project,
first issued 1 November 2009 and updated 1 June 2011

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WHAIA TE MANA MOTUHAKE: PRE-PUBLICATION

CHECKLIST FOR TE PUNI KŌKIRI REGIONAL COORDINATORS

The following checklist is for Te Puni Kōkiri Regional Coordinators completing final assessments of applications for funding under the Māori Wardens Project Contestable Fund for Wardens' Groups.

Legal entity

- Certificate of Incorporation or Registration present,
- Deed or Constitution present,
- Online check to ensure that organisation has not been struck off Register of Incorporated Societies.

Community support

- Two letters, including one from a non-affiliated community group, signed within the previous 6 months,
- Groups' operations in the community witnessed by the Regional Coordinator.

Sound finances

- Budgeting and monitoring of expenditure,
- Monthly income & expenditure statement,
- Monthly bank reconciliation,
- End of year annual accounts,
- End of year audited accounts,
- No expenditure on capital items over \$2,000, wages/salaries, koha or gifts, alcohol, payment of fines, international travel.
- Cheque butts completed,
- Joint signatories,
- No cash withdrawals,
- No cash point cards.

Effective governance

- Roles and responsibilities are clear,
- Suitably skilled/experienced members,
- Executive members should not be related,
- Shared decision making,
- Decision making processes in use,
- Meeting procedures adhered to,
- Check minutes of meetings are on hand,
- Operating in terms of the deed or constitution (checks in the following areas: objectives; powers; registered office; Management Committee; Membership; Executive Committee; meetings; finances; signing documents; Common Seal),
- Operating in terms of policies and plans (check for Governance; Management; Finance; Administration; Business and Strategic Plan; Communications and Recruitment plan),
- Human resources: (check for qualified/experienced accountant; qualified auditor; experienced coordinator),

MĀORI WARDENS PROJECT CONTESTABLE FUNDING PROGRAMME Appv

- Planning for operations: (schedules; administration & logistics; management & leadership).

Five or more warranted wardens

- Check warrant expiry dates.

FUNDING GUIDELINES FOR REGIONAL COORDINATORS

The funding guidelines for Regional Coordinators also set out in detail the process which TPK must follow in assessing each funding application.

Prior to the receipt of funding applications from Māori Wardens' groups, Regional Coordinators must:

- ▶ prepare information sheets advertising the availability of funding and make them available to 'interested or eligible groups',
- ▶ hold regional funding workshops to ensure that key representatives of wardens' groups are familiar with funding application, and to carry out an exercise to model an application.

After receiving funding applications prior to the closing of annual funding deadlines, Regional Coordinators must:

- ▶ Make an initial assessment to check for missing information, with two workshops (internal to the project team) being held in Auckland and Palmerston North to work through all applications for this purpose,
- ▶ Send a letter acknowledging the receipt of each application and, if necessary, requesting that the group return missing information by a specified date,
- ▶ Complete a full assessment of each funding application. This should include 'a clear rationale on how the applicant meets the funding purpose' and must be 'informative and without personal bias',
- ▶ Each full assessment must be peer reviewed,
- ▶ Make a copy of each assessment and send the original to the Assessment Team at TPK Head Office.

After receiving a funding application from Regional Coordinators, TPK's Assessment Team must, within a six week timeframe:

- ▶ Check all warranted wardens off against the Māori Wardens database,
- ▶ Make a 'strategic appraisal' of each application on the basis of recommendations made by the Regional Coordinator. The decision may be to approve, decline or defer the application. Applications may only be declined 'due to the application not meeting the funding criteria'. The decision to defer the application may only be made 'where the assessment team has an issue with the application which cannot be resolved in the six week timeframe',
- ▶ In the case of approved applications, prepare funding agreement and obtain sign off by TPK legal services,
- ▶ Courier funding agreement directly to applicant group, with an additional copy of the agreement being sent to the Regional Coordinator.

After receiving notification from TPK's Assessment Team that a groups' application has been successful, Regional Coordinators must:

- ▶ Organise a meeting with the applicant group to explain and sign off agreements. Signatures must be witnessed by an individual other than the Regional Coordinator,
- ▶ Regional Coordinators to return signed funding agreements, original invoices, and bank deposit slips to Head office. All invoices must include a description of the service provided or the purpose towards which funding is to be put and, where relevant, the group's GST details. According to a sample invoice provided with funding guidelines, examples of descriptions of funding use might include activities such as 'To undertake street patrol'; to 'Provide Community support and advocacy' or 'Assist with local Marae hui and events'.

After receiving the signed funding agreement and invoices from Regional Coordinators, TPK Head office staff must:

- ▶ Process invoices and send confirmation of payment by no less than a calendar week after receipt. Under the Operational Assistance Fund and National Event Funds, payments are to be made in two instalments: with 90 percent of the grant paid out following the signing of the funding agreement, and the remaining 10 percent to be paid out upon the completion of an accountability and monitoring report. Multiple payment instalments are possible under the Capacity and Capability fund, depending upon project needs.

Following payment of a grant, successful applicant groups must:

- ▶ Towards the end of the financial year, applicant groups must supply a 'Group Accountability Report'. This must list the names of the applicant group and, if relevant, their umbrella group, cite the funding period, the purpose for which the funding was allocated, two 'funding outputs' and the activities carried out by the group that relate to those funding outputs, and explain how the groups' activities have benefited their local community.

Following payment of a grant, Regional Coordinators must:

- ▶ Formally monitor all groups who have received funding on a bi-monthly basis,
- ▶ Submit a 'Monitoring Report' after receipt of each applicant groups' Accountability Report'. Monitoring reports must 'Provide comment on the group's activities listed in their report' (including areas such as the group's strengths or weaknesses, potential opportunities and risks to the group) and 'Provide comment on the group's governance effectiveness and financial expenditure' (including compliance to group rules, regularity of meetings, expenditure of funds in accordance with MWP policy).

APPENDIX VI

**TE WHAKAPUAKITANGA O TE RUNANGA
WHAKAKOTAHI I NGĀ IWI O TE AO MO
NGĀ TIKA O NGĀ IWI TAKETAKE / UNITED
NATIONS DECLARATION ON THE RIGHTS
OF INDIGENOUS PEOPLES**

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter;

Affirming that indigenous peoples are equal to all other peoples, while recognising the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

- Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,
- Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,
- Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,
- Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,
- Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,
- Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,
- Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,
- Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,
- Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,
- Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,
- Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,
- Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,
- Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,
- Recognizing also* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES Appvi

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

GLOSSARY

In addition to evidence put before this inquiry, the definitions in this glossary were drawn from John C Moorfield, 'Te Aka: Māori-English, English-Māori Dictionary', Auckland University of Technology Te Ara Poutama, <http://www.maoridictionary.co.nz>, 2014.

<i>aroha</i>	love, compassion, affection
<i>aukati</i>	a line not to be crossed, prohibited entry
<i>hapū</i>	tribe, section of a tribe, descent group, clan
<i>hui</i>	meeting
<i>hūnuku</i>	community
<i>iwi</i>	tribe
<i>kaitiaki</i>	guardian
<i>katipa</i>	caliph
<i>kanohi ki te kanohi</i>	face to face
<i>kaumātua</i>	elder
<i>kaupapa</i>	matter for discussion
<i>kawa</i>	marae protocol
<i>kāwanatanga</i>	government, governorship, authority
<i>koata</i>	quarter
<i>komiti</i>	committee, marae village committee
<i>kōrero</i>	speech, to speak
<i>kuia</i>	female elder
<i>mahi</i>	work
<i>mana</i>	prestige, authority, reputation, spiritual power
<i>manaakitanga</i>	hospitality, kindness
<i>mana motuhake</i>	separate identity, autonomy
<i>māngai</i>	mouth, spokesperson
<i>marae</i>	courtyard before meeting houses and associated buildings
<i>mātauranga</i>	education, knowledge, wisdom
<i>mōrehu</i>	survivor, remnant, dispossessed
<i>motuhake</i>	separate, distinct
<i>papatupu</i>	ancestral land
<i>pāremata</i>	parliament
<i>rangatira</i>	noble, esteemed
<i>rangatiratanga</i>	chieftainship, leadership
<i>raruraru</i>	trouble, problems
<i>te reo, te reo Māori</i>	the Māori language
<i>rūnanga</i>	council
<i>tangata</i>	man, person
<i>tāngata</i>	men, people
<i>tangi</i>	funeral, to mourn

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<i>taonga</i>	treasure, anything prized
<i>tikanga</i>	custom, method, rule, law, traditional rules for conducting life
<i>tino rangatiratanga</i>	greatest or highest chieftainship; autonomy; full authority to make decisions
<i>tohunga</i>	priest, healer, expert
<i>wahine</i>	woman
<i>wāhine</i>	women
<i>wairua</i>	soul, spirit
<i>wātene</i>	warden, wardens
<i>whanaungatanga</i>	ethic of connectedness by blood; relationships, kinship; web of relationships embracing living and dead, present and past, human beings and natural environment

Tohu tō or macrons: The *tohu tō* or macron (a line above a vowel, indicating a long vowel sound) is important for the correct pronunciation and meaning of te reo Māori. The reader should note that this Tribunal has applied macrons extensively in the text of its report, including to the titles of Acts and other publications, organisations, and quotes, even where macrons were not present in the original. The general exception is personal names. The derivation of personal names, and therefore their meaning, is not always clear. Therefore, unless the person is a well-known historical figure, we have reproduced names as they were presented to us in evidence. We have also not introduced macrons to the text of the Treaty of Waitangi. While for the purpose of a Tribunal report it would have been useful to apply macrons to the Māori text of the Treaty, in consideration of its great significance and the likely discussion needed on this issue, we have not used macrons at this time.