INQUIRY INTO REMAINING HISTORICAL CLAIMS:

SOUTHERN NORTH ISLAND AND SOUTH ISLAND CLAIMS (REGION 1)

WAI 2800

Claim Assessment for the Standing Panel:

The Descendants of Priscilla Muriwai Dennison claim (Wai 2236)

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1. Introduction

The Descendants of Priscilla Muriwai Dennison claim (Dennison claim), registered on 23 December 2009, alleges changes to land legislation allowed non-Māori spouses to succeed to Māori land, thereby, breaching the Treaty of Waitangi and its principles.[1] The claimants say the descendants of Priscilla Muriwai Dennison suffered prejudice because the land of their tupuna was alienated from Māori ownership in this manner.

On 11 December 2019, Chief Judge Wilson Isaac directed that the Dennison claim was eligible for inclusion into Region 1 of the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims[2] (referred to as the 'Remaining Historical Claims Inquiry').

Map of the included inquiry districts[3]

[1] Awhina Muriwai Hill, statement of claim received 26 August 2008 (Wai 2236, #1.1.1)
[2] Chief Judge W W Isaac, memorandum-directions of Chief Judge W W Isaac concerning eligibility of claims, 11 December 2019 (Wai 2800, #2.5.5), p 6
[3] Chief Judge W W Isaac, Appendix A: Map of the included inquiry districts, 6 September 2018 (Wai 2800, #2.5.1(a)).

Region 1 comprises:

- Taranaki;
- Whanganui;
- Te Whanganui a Tara/Wellington;
- Te Tau Ihu/Northern South Island;
- Southern South Island; and
- Rekohu/Chatham Islands.[4]

This document has been prepared by the research services team of the Waitangi Tribunal Unit to provide advice to the standing panel. It is an assessment of existing secondary sources relating to the claims issues raised in the statement of claim for the descendants of Priscilla Muriwai Dennison claim (Wai 2236). This assessment does not include any primary research. Where possible, it does include reference to primary sources that appear most relevant, should further evidence be required.

2. Methodology

This claim assessment summarises the allegations raised in the Descendants of Priscilla Muriwai Dennison statement of claim (Wai 2236). It then assesses and summarises existing evidential coverage of the claim issues in Waitangi Tribunal reports, other available secondary research and primary records. It notes that some clarification from claimants could be sought on additional material filed in support of the statement of claim (this is discussed further in section 4). It concludes by advising that Dennison claim issues appear to be sufficiently addressed by existing primary and secondary sources but does identify some areas for further clarification, which could potentially be addressed by the claimants or counsel.

This claim assessment includes:

[4] Chief Judge W. W. Isaac, memorandum of the Chairperson appointing a standing panel to inquire into remaining historical claims in the south-western North Island, the South Island and the Chatham Islands, 6 September 2018 (Wai 2800, #2.5.1), p 4; Chief Judge W. W. Isaac, Appendix A: Map of the included inquiry districts, 6 September 2018 (Wai 2800, #2.5.1(a))

- A summary of the Dennison claim, including claimant information, claim allegations, and claim amendments;
- A procedural summary of the Dennison claim's inclusion into the Remaining Historical Claims Inquiry;
- A summary of evidence filed in support of the statement of claim;
- A summary of other evidence, research, and records pertinent to the Dennison claim; and
- Overall summary and potential areas for further clarification.

3. The Descendants of Priscilla Muriwai Dennison claim (Wai 2236)

This section summarises the Dennison claim, including claimant information, claim allegations, and claim amendments.

The claimants

The original named claimant for Descendants of Priscilla Muriwai Dennison claim (Wai 2236) was Awhina Muriwai Hill of 'Rangitane iwi', and the descendants of Priscilla Muriwai Dennison (née Flutey).[5] In August 2008, when the claim was registered, Ms Hill listed her home address as Blacktown, Sydney, Australia.[6] On 15 April 2019, claimant counsel advised Ms Hill had passed away. A signed authority from the Hill whānau sought leave for Peter Hill, husband of Awhina Muriwai Hill, to be added as the named claimant.[7] The Waitangi Tribunal registrar accepted this amendment on 2 May 2019.[8]

Claim allegations

The statement of claim was filed by Waitangi Tribunal staff on 26 August 2008, and was subsequently registered on 23 December 2009 as Wai 2236. The Dennison claim alleges:

> …[the claimants] are likely to be prejudicially affected by the ***change of Law around 1973 which allowed spouses who are not of Maori Heritage to succeed to Maori land*** And we claim that these matters are contrary to the principles of the Treaty of Waitangi. We will submit evidence to show that our Grandmother Priscilla Muriwai Dennison married Charles Dennison and on her death Charles Dennison was given Ownership of Maori Land originally as the administrator, then sole ownership. Charles Dennison has since passes [sic] away and left no provision in his will for the return of the Maoris Land to Priscilla's Descendants. We believe

[5] 'Flutey' is spelt 'Fluerty' in the whakapapa chart appended to the statement of claim
[6] Awhina Muriwai Hill, statement of claim received 26 August 2008 (Wai 2236, #1.1.1)
[7] Memorandum of Counsel for claimants for Wai 2336, 15 April 2019, (Wai 2236, #1.1.1(a))
[8] Memorandum-Directions of Deputy Chairperson, 2 May 2019 (Wai 2236, #2.2.1).

> this to be wrong as our Grandmother had 3 children who survived her and no consideration had been given to them in regards to the land.[9]

The statement of claim explicitly identifies the Māori land subject of claimant allegations as Hawkesbury Block I section 56 (located on the east coast, north of Dunedin) and Lords River Block X section 11 (located on Rakiura/Stewart Island), as well as 'further lands to be named'. While no amendments to the statement of claim or further submissions have been submitted to identify other lands pertinent to the claim, several Māori Land Court records (summarised in section 4) concerning specific blocks were filed in support of the original statement of claim. It is unclear from the material presented whether this land formed part of Priscilla Muriwai Dennison's estate, or whether the land is also the subject of claimant allegations. It is also not specified which legislation is the subject of the claimants pleadings. Clarification from the claimants during the inquiry process, in relation to these issues may be able to help elucidate matters.

The statement of claim further notes that the claimants are seeking the return of 'the land under the Tribunal's binding powers and such other relief as the Tribunal considers appropriate'.[10]

In summary, the Dennison claim primarily raises the following primary issue:

> What was the legislation introduced 'around 1973' that allegedly provided for non-Māori spouses to succeed to Māori land compliant? Did this legislation breach with the Treaty of Waitangi and its principles?

The Dennison claim also raises the following secondary issue:

> What was the legislation that enabled Charles Dennison, as administrator, to vest Priscilla Muriwai Dennison's estate in himself as sole owner? Was this process compliant with the Treaty of Waitangi and its principles?

Other issues which also appear relevant for context include:

[9] Awhina Muriwai Hill, Statement of claim received 26 August 2008 (Wai 2236, #1.1.1), emphasis added
[10] Awhina Muriwai Hill, statement of claim received 26 August 2008 (Wai 2236, #1.1.1)

- What were the circumstances of the original land awards that are the subject of claimants' allegations? Was all of the Māori land that formed part of Priscilla Muriwai Dennison's estate awarded under the South Island Landless Natives Act 1906?

- To what extent were Māori consulted about the development and implementation of legislation affecting the administration of Māori land and intestate successions?

- What legislation governed Charles Dennison's will following his death? And, was he required to leave Priscilla Muriwai Dennison's land to her children?

- What is the contemporary administrative status of the blocks that are the subject of claimants' allegations?

4. The Descendants of Priscilla Muriwai Dennison claim's inclusion into the Remaining Historical Claims Inquiry

This section discusses the procedural history of the Dennison claim and its inclusion into the Remaining Historical Claims Inquiry.

The Dennison claim was registered on 23 December 2009. In her memorandum-direction, Judge C M Wainwright, Deputy Chairperson of the Waitangi Tribunal, acknowledged the claimants sought the return of alienated Māori land under the Tribunal's binding powers. Judge Wainwright clarified that because the land in question is in private ownership, the Tribunal 'may not recommend that this land be returned to Māori ownership'. Judge Wainwright suggested the claimants obtain legal advice as to whether sections 8A to 8HJ of the Treaty of Waitangi Act 1975 applied to their claim.[11]

Judge Wainwright noted the claimants should be aware that there are some matters that the Tribunal is unable to inquire into, including any Bill introduced to parliament or any historic claim already settled. Similarly, she also noted the claim fell within the Southern South Island district – an area the Tribunal had already inquired into and issued a report. Further, Judge

[11] Memorandum-Directions of the Deputy Chairperson, 23 December 2009 (Wai 2236, #2.1.1)

Wainwright observed that the Ngāi Tahu Claims Settlement Act 1998 may have removed aspects of the Dennison claim from the Tribunal's jurisdiction. Judge Wainwright commented:

> the Tribunal does not make settlements. After the Tribunal has completed an inquiry into claims, it writes a report making recommendations to the Crown. It cannot tell the Crown what to do; it may only recommend that the Crown acts to address the negative consequences of its breaches of the principles of the Treaty. [12]

On 6 September 2018, Chief Judge Isaac appointed a standing panel to inquire into claims with historical grievances that remained within the Waitangi Tribunal's jurisdiction in six inquiry districts. Chief Judge Isaac appointed himself as presiding officer and directed the registrar of the Waitangi Tribunal to establish a new combined record of inquiry, named the 'Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800)'. A preliminary list of claims, including the Dennison claim, was assessed for eligibly. On 1 October 2018, Chief Judge Isaac sought submissions from parties concerning the preliminary list.[13]

On 4 October 2018, counsel for the Dennison claim responded to the memorandum, arguing the claim had been 'correctly identified as a claim eligible to participate' in the Remaining Historical Claims Inquiry. Claimant counsel also submitted the claim was not part of any current or past Waitangi Tribunal inquiry, had not been settled by legislation, and was not included in the mandate of any groups currently negotiating with the Crown to settle their historic claims.[14]

On 21 December 2018, Crown counsel filed a memorandum in response, submitting the Dennison claim appeared fully settled, however, 'further clarification may be required from the claimants'. Crown counsel recommended the Waitangi Tribunal seek further information claimants to 'make an effective assessment of whether it has jurisdiction to inquire into these claims.' Crown counsel suggested that as it is a claim relating to Rangitāne, the Dennison claim was most likely settled by the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014. Further, Crown counsel commented the land subject of the Dennison claim was transferred under the South Island Landless Natives Act 1906 (SILNA) scheme.[15]

[12] Memorandum-Directions of the Deputy Chairperson, 23 December 2009 (Wai 2236, #2.1.1)
[13] Memorandum of the Chairperson, 6 September 2018 (Wai 2800, #2.5.1); Memorandum-Directions of Presiding Officer, 1 October 2018 (Wai 2800, #2.5.2), pp 1-3
[14] Memorandum of Counsel for claimants for Wai 2236, 4 October 2018 (Wai 2800, #3.1.1), p 3
[15] For more information on the South Island Landless Natives Act 1906 (SILNA) scheme see Brittany Whiley, 'Wai 2800 Claim Assessment for the standing panel: The Southland Forests Claim (Wai 158), March 2022

Consequently, the Crown submitted SILNA land claims that relate to contemporary forestry policy should be explored in the future Economic Development Kaupapa inquiry. [16]

On 11 December 2019, Chief Judge Isaac considered claimant and Crown submissions in his memorandum-directions. He firstly noted that the Dennison claim was not specifically listed in the Ngāti Apa kite Ra To, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014. Further, Chief Judge Isaac commented that legislation settling historical claims were typically 'whakapapa-linked, customary rights-based and area specific'. He said that there were other claims, however, that were made by Māori with a 'different commonality', such as the 'shared experiences as members of the armed forces'. In Chief Judge Isaac's view, the Dennison claim was 'not brought on behalf of a particular hapū or iwi, nor is it based on rights arising from the claimant's membership in a particular hapū or iwi'. Rather, Chief Judge Isaac opined:

> The [Dennison] claim relates to the law of succession and its impact on the transfer of title to Māori land, which is a generic, national issue. It therefore does not appear to be a claim that is settled by the legislation settling the claims of Rangitāne o Wairau.[17]

Consequently, Chief Judge Isaac directed the Denison claim would be included in the Remaining Historical Claims Inquiry.[18]

On 17 January 2020, the Crown responded by reserving its position in relation to the Dennison claim's inclusion in the Remaining Historical Claims Inquiry.[19]

[16] Memorandum of Counsel for the Crown, 21 December 2018 (Wai 2800, #3.1.3), pp 1–12
[17] Memorandum-Directions of Chief Judge WW Isaac, 11 December 2019 (Wai 2800, #2.5.5) paras 23-29
[18] Memorandum-Directions of Chief Judge WW Isaac, 11 December 2019 (Wai 2800, #2.5.5) paras 23-29
[19] Memorandum of Counsel for the Crown, 17 January 2020 (Wai 2800, #3.1.17), p 3

5. Summary of evidence filed in support of the Dennison claim

This section summaries the 18 documents filed in support of the Dennison claim, including a whakapapa chart and various Māori Land Court records.[20] These documents are:

1. A whakapapa chart that records Priscilla Muriwai Dennison's (née Fluerty[21]) first husband as Gordon Cook. The couple had three children: Douglas Waipapa Cook, Katherine Muriwai Cook, and Raymond Cook. Ms Hill, the original named claimant, is identified as the as the daughter of Katherine Muriwai Cook. Further, Charles Dennison is recorded as Priscilla Muriwai Dennison's second husband – according to the chart, the couple had no children;

2. A Māori Land Court minute (minute Book: 88 SI 143) that records some of the owners of Lords River Block X section 11. A search of the Māori Land Information System (MLIS) located two additional pages of associated minutes, dated 30 September 1999. At that hearing, the Court ordered the block be shared equally among the 47 listed names in accordance with 'Section 113 & 118/19' (the specific act is not identfied).[22] Significantly, the minute shows that Priscilla Muriwai Flutey's interests in Lords River Block X section 11 appear to have been succeeded by her children, Douglas Waipapa Cook, Katherine or Cassie Cook, and Raymond Cook (as opposed to Charles Dennison);

3. A schedule of ownership order, dated 20 February 1969, that records the interests of Priscilla Flutey in Lords River Block X section 11 (52 of 377.61875 shares or 13.7 per cent of the block) were transferred to Charles Jeffery Dennison as administrator. A subsequent entry records that on 3 July 1974, Charles Jeffery Dennison applied to transfer his shares in Lords River Block X section 11 be vested solely in himself. This transfer eventuated under section 213(4) (Act is not identified);

4. Schedule of ownership orders concerning the Rowallan Block XVI section 1, dated c.1970 (exact date illegible, possibly 1972). The schedule records Charles Jeffery Dennison as owning ¼ of shares (0.238090 shares) following the death of Ripini Waipapa Flutey. The other owners are identified as John Flutey, Queenie Flutey, and William Flutey (possibly the siblings of Priscilla Muriwai Dennison), all also getting ¼ shares each. The order was made under section 136/53 (the specific Act(s) is not identfied);

5. Duplicate of document 3;

6. A Court order concerning the application by Charles Jeffery Dennison for orders under section 213(4)/53 (Act not identified, but likely to have been the Māori Affairs Act 1953). The Court ordered that the estate of Priscilla Muriwai Dennison (deceased), which had been administered by Charles Jeffery Dennison be vested solely in Charles Jeffery Dennison on 24.6.1974. This vesting took place under sections 34(10), 53, 81, and 213(4) (the specific Act(s) is not identfied). The blocks explicitly identified in the

[20] Awhina Muriwai Hill, Statement of claim received 26 August 2008 (Wai 2236, #1.1.1), pp 2-19

[21] The whakapapa chart spells Priscilla Muriwai's maiden name as 'Fluerty', while the statement of claim uses 'Fluety'.

[22] Succession to Rebecca Lahee or Russell or Flutey (1999) 88 South Island MD 142 (88 SI 142)

Dennison statement of claim (Hakesbury Block I section 56, Lords River Block X section 11) are inlcuded in the list, along with 11 other blocks. These are Kaiata Reserve 33, Arahura Reserve 29, Arahura Maori Reserve 30, Arnold Reserve 34 (Kotukuwhakaoho), Greymouth Maori Reserve 31 (Mawhera), Hokitika Reserve 24 or Brown Lots 1-17 DP 545, Rowallan Block VIII Section 5, Section 781B Block XIV Bruce Bay Survey District, Bruce Bay 782 Bock situated in Block Bay XIV Bruce Bay Survey District, Orohaki Section 894B, Whataroa 21 and 22 Block). While these blocks are not identified in the Dennison statement of claim, they appear likely to have formed part of Priscilla Muriwai Dennison's estate;

7. An order solely vesting Section 781B Block XIV Bruce Bay Survey District, in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

8. An order solely vesting Hakesbury Block I section 56 in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

9. An order solely vesting Lords River Block X section 11 in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

10. An order solely vesting Arahura Maori Reserve 30 in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

11. An order solely vesting Greymouth Maori Reserve 31 (Mawhera) in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

12. An order solely vesting Arahura Reserve 29 in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

13. An order solely vesting Arnold Reserve 34 (Kotukuwhakaoho) in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

14. An order solely vesting Whataroa 21 and 22 Block in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

15. An order solely vesting Orohaki Section 894B in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

16. An order solely vesting Hokitika Reserve 24 or Brown Lots 1-17 DP 545 in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974;

17. An order solely vesting Kaiata Reserve 33 in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974; and

18. An order solely vesting Rowallan Block VIII Section 5 in Charles Jeffrey Dennison under section 213(4) of the Maori Affairs Act 1953, dated 3 July 1974.

6. Summary of other evidence, research, and records pertienent to the Dennison claim

6.1 Other relevant records relating to the estate of Priscilla Muriwai Dennison.

Several documents not filed in support of this claim, that relate to the Supreme Court order granting Priscilla Muriwai Dennison's estate to Charles Dennison as administrator were located at Archives New Zealand.[23] These documents include:

1. The Supreme Court order granting Priscilla Muriwai Dennison's estate to Charles Dennison as administrator, dated 3 May 1972;

2. The signed affidavit of Charles Dennison concerning Priscilla Muriwai Dennison's estate, dated 26 May 1972. Charles Dennison stated that Priscilla Muriwai Dennison had never been previously married, contradicting the whakakapapa chart, which identifies Gordon Cook, grandfather of the original named claimant, Awhina Hill, as Priscilla Muriwai Dennison's first husband. Charles Dennison did, however, acknowledge the existence of Priscilla Muriwai Dennison and Gordon Cook's children. Charles Dennison also stated that Priscilla Muriwai Dennison's estate was 'under the value of $2,500', and that he delayed making an application to succeed her estate as administrator because he was 'under the impressions that my wife was of Maori blood and I was not I could not succeed to any realty';

3. Auckland Supreme Court administration bond documents, dated 1 June 1972;

4. Letter of adminstration, dated 26 July 1972;

A search of the Archives New Zealand catalogue (Archway) also located the will of Charles Dennison, who died on 10 September 1991. Charles Dennison's will did not bequeath any of his estate to Priscilla Muriwai Dennison's children. He also makes no explicit mention of the land identified by the claimants in his final will.[24]

[23] Archway: https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE40408561 These documents are provided in associated document bank.
[24] Archway: https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE72118945 These documents are provided in associated document bank.

6.2 Relevant legislation

This section directly quotes legislation pertinent to the claimants' case without interpretation. As mentioned in section 3, the claimants do not explicitly identify the legislation that is the subject of their allegations. However, the Māori Land Court documents filed in support of the Dennison claim (summarised in section 1.3.3 of this paper) suggest the relevant legislation is sections 136 and 213(4) of the Maori Affairs Act 1953, and section 81 of the Maori Affairs Amendment Act 1967. Further, whilst not referenced in the documents filed in support of the Dennison claim, section 76 of the Maori Affairs Amendment Act 1967 appears to be pertinent as it prescribed that succession on intestacy should be determined in the same manner as if the deceased person were a European (this issue is also discussed in section 6.4 of this paper).

Section 116, Maori Affairs Act 1953 (succession on intestacy)

> (1) Except as otherwise expressly provided in this Act, the persons entitled on the complete or partial intestacy of a Maori to succeed to his intestate estate whether real or personal, and the shares in which they are so entitled, shall, so far as the estate consists of property other than beneficial freehold interests in Maori land or other than an interest in a trust fund to which section four hundred and fifty-six hereof applies, be determined in the same manner as if he were a European and as if all the persons living at the death of the intestate who, if they had then attained the age of twenty-one years, would take an absolutely vested interest in any part of the estate, had then attained that age: Provided that the right of any person to succeed to any property in accordance with this subsection shall not be affected by the fact that he or any person through whom his claim is derived is or was illegitimate.
>
> (2) Notwithstanding that all or any of the persons entitled in accordance with subsection one hereof to. succeed to any part of an intestate estate may not in fact have attained the age of twenty-one years at the death of the intestate, they shall take an absolutely vested interest in the estate in accordance with their several shares, and the estate shall be distributed accordingly.
>
> (3) Except as otherwise expressly provided in this Act, the persons entitled on the complete or partial intestacy of a Maori or the descendant of a Maori to. succeed to his intestate estate so far as it consists of beneficial freehold interests in Maori land, and the shares in which they are so entitled, shall be determined by the Court in accordance with Maori custom.
>
> (4) The persons entitled on the complete or part partial intestacy of a Maori or the descendant of a Maori to. succeed to his intestate estate so far as it consists of an interest in a trust fund to which section four hundred and fifty-six hereof applies shall be determined in accordance with the provisions of that section.
>
> (5) Where, in the administration of the intestate estate of any person, any conflict arises between this 1123 Act and the Administration Act 1952, the rules for the distribution of the estate prescribed by this Act shall prevail.

Section 136, Maori Affairs Act 1953 (beneficial freehold interests)

(1) When the Court has ascertained the beneficiaries and has defined their several shares and interests in accordance with section one hundred and thirty-five hereof, it shall, without further application, proceed to dispose of the beneficial freehold interests of the deceased owner in accordance with the following provisions of this section or in accordance with section one hundred and thirty-seven hereof, as the case may require.

(2) In the disposition of any beneficial freehold interest in accordance with this section the Court, subject to the provisions of section one hundred and thirty-seven hereof, may exercise with respect to the whole or any part of that interest any jurisdiction which it would have authority to exercise under any of the provisions of this Act if application had been duly made in accordance with this Act or' with Rules of Court. Every disposition made by the Court in the exercise of its jurisdiction under this subsection shall be given effect to by a vesting order.

(3) For the purpose of giving effect to any agreement or arrangement made between the persons concerned, the Court may in its discretion make an order vesting the share of any beneficiary, in whole or in part, in any other beneficiary or vesting the share of any beneficiary in any other person who is beneficially interested in any land in which the deceased owner had an interest. Any such agreement or arrangement may, in the case of a beneficiary who is a person under disability, be entered into or made on his behalf by his trustee, if a trustee has been appointed under Part X hereof, and, if no such trustee has been appointed, may be entered into or made by any other responsible person.

(4) After making such dispositions (if any) as in its discretion it thinks fit to make in accordance with the foregoing provisions of this section, the Court, subject to the provisions of section one hundred and thirty-seven hereof, shall make orders vesting the remaining bene- ficial freehold interests of the deceased owner in the beneficiaries severally entitled thereto.

(5) Where any freehold interest in land has been devised by the will of the deceased owner to a trustee, other than a bare trustee, the trustee shall, for the purposes of this section, be deemed to be the beneficiary. In any case to which this subsection applies, the existence of the trust shall be set forth on the face of the order by reference to the will of the deceased.

Section 213, Maori Affairs Act 1953 (vesting order transferring interests in Māori land)

(1) For the purpose of giving effect to any arrangement or agreement made between the persons concerned the Court may, in its discretion, make a vesting order for the transfer of any interest, whether legal or equitable, in any Maori freehold land (whether owned by a Maori or a European) to a Maori or to the descendant of a Maori or to a body corporate of owners established under Part XXII hereof.

(2) A vesting order under this section may be made on the application of the intending alienor or alienee or of any other person interested.

(3) On the hearing of an application under this section the Court shall take into consideration, as far as applicable, the several matters that it would be required to take into consideration if the application for a vesting order were an application for the con- firmation of an instrument of alienation for the transfer of the same interest by the same alienor to the same alienee, and

shall not make a vesting order unless in like circumstances it would have confirmed such an instrument of alienation.

(4) If on the hearing of an application under this section it appears to the Court that some modification in favour of the owners should in justice be made in the terms of the arrangement or agreement, the Court may, with the consent of the alienee, modify the terms of such arrangement or agreement.

Section 76, Maori Affairs Amendment Act 1967 (succession on intestacy)

The persons entitled, on the complete or partial intestacy of a Maori or descendant of a Maori who dies after the commencement of this Act, to succeed to his estate, whether real or personal, and the shares in which they are so entitled, shall be detennined in the same manner as if the deceased person were a European. Provided that the right of any person to succeed to any property of a Maori pursuant to this section shall not be affected by the fact that that person or any person through whom his claim was derived, is or was illegitimate.

Section 81, Maori Affairs Amendment Act 1967 (vesting Māori land in an administrator)

(1) This section shall apply to the beneficial freehold interests in Maori freehold land comprised in the estate of any person who dies after the commencement of this Act.

(2) On application by the administrator of an estate comprising interests to which this section applies, the Registrar may make an order vesting those interests in the administrator.

(3) An application to the Registrar under subsection (2) of this section shall be dealt with by the Registrar without notification or appearance of any party, and, subject to the provisions of this section, the Registrar shall make the order sought as a matter of course.

(4) Any order made by the Registrar under subsection (2) of this section shall take effect and may be registered under the Land Transfer Act 1952 as if it were an order of the Court.

It appears the legislation that governed non-Maori or European intestate succession from 1952 to 1974 was the Administration Act 1952 (Part III), the Administration Amendment Act 1965, and the Administration Act 1969 (section 77).[25]

[25] This legislation is provided in the associated document bank.

6.3 Relevant Waitangi Tribunal Reports

Te Tau Ihu O Te Waka A Maui: Report on Northern South Island (Wai 785), Volume III (2008)

The *Te Tau Ihu Report* considered a discrete claim (Wai 956) that alleged a non-Māori spouse succeeded her deceased husband's Māori land interests in 1973. The deceased, David Rawiri Stephens, had no children or surviving parents. The claimants submitted succession legislation 'disinherited the nearest kin of the deceased by that line of descent through which the deceased's right to the land was derived'. The report noted the circumstances of the succession were consistent with the statutory law of the time, namely section 76 of the Maori Affairs Amendment Act 1967 (quoted in section 5.2 of this paper), which provided that when any person died intestate on or after 1 April 1968, succession to their property was to be determined as if the deceased person was a European.[26]

The report also noted this provision concerning succession was altered by the Māori Affairs Amendment Act 1974. The report quoted Professor Boast QC, who observed '…a very complex situation with regard to intestate successions between April 1968 and January 1975'. The *Te Tau Ihu Report* found that section 76 of the Maori Affairs Amendment Act 1967 was contrary to the principles of the Treaty. It also found that the Maori Affairs Amendment Act 1974 remedied further breaches.[27]

The Ngāi Tahu Ancillary Claims Report (Wai 27), (1995)

The *Ngāi Tahu Ancillary Claims Report* considered a discrete claim (Wai 95) that alleged the Maori Affairs Amendment Act 1967 detrimentally affected Māori landowners by allowing multiply owned land to be willed to individuals, and pass from Māori family control. The report did not review the operation of the 1967 Act, nor conclude that this legislation was in breach of the Treaty. The report noted, however, that the 1967 Act was amended to create whānau trusts to enable families to have 'better control' over their fragmented interests (the specific

[26] Waitangi Tribunal, *Te Tau Ihu O Te Waka A Maui: Report on Northern South Island*, Volume III (Wellington, Waitangi Tribunal 2008), pp 1330-1331.
[27] Waitangi Tribunal, *Te Tau Ihu O Te Waka A Maui,* pp 1330-1331.

Act is not identified but likely the 1974 amendment). Further, the report observed that unspecified amendments also gave increased effect to the 'principle of retaining land in Maori ownership'.[28]

The Hauraki Report (Wai 686), Volume II (2006)

The *Hauraki Report* discussed the legislative regime governing the rules of succession to Māori estates from the 1860s. According to the report, nineteenth century courts established that non-Māori could not succeed to Māori land that had not passed through the Native Land Court. However, land that was the subject of a court title could be passed by will to persons outside the lineage of the deceased, including non-Maori. In the case of intestate succession, interests of the deceased were divided among their children or other kin from the same descent line, rather than spouses.[29] The report observed:

> Maori were generally happy with this arrangement and from time to time, provided the children of the deceased did not object, widows were also made administrators of their deceased husbands' estates. But Maori generally remained strongly opposed to admitting into the title itself the widows or half-brothers of the deceased 'not being from the source of the land', that is from the primary group of customary owners.[30]

The report also considered the legislative regime governing twentieth century succession at length (section 18.5).[31] While the Maori Affairs Act 1953 received limited attention, the Maori Affairs Amendment Act 1967 was examined in detail. According to the report, the 1967 Act was developed in response to the Hunn report of 1961 and the Prichard–Waetford report of 1965. The 1967 Act repealed all restrictions on Māori disposing their land by will and Māori wills came under the same provisions of law as European wills. Similarly, intestate succession would also be determined in the same manner as if the deceased were a European. The *Hauraki Report* commented:

> The new regime created a significant 'window' during which various people, but particularly wives and de facto partners of deceased Māori, received interests previously debarred to them. This included absolute interest, not merely life interest, in Māori estates. The window lasted in respect of devolution by will until 1993, and by claim under the Family Protection Act for the same period. It lasted in respect of intestacy until 1975. Professor Sutton noted that

[28] Waitangi Tribunal, *Ngai Tahu Ancillary Claims report* (Wellington, Brooker's Ltd 1995), p 339
[29] Waitangi Tribunal, *The Hauraki Report,* Volume II (Wellington, Legislation Direct 2006), p 771
[30] Waitangi Tribunal, *The Hauraki Report,* Volume II, p 881
[31] Waitangi Tribunal, *The Hauraki Report,* Volume II, p 881-883

> 'As a result, we have been told, many Pakeha now have an indelible share in Māori freehold land, inconsistent with Māori custom.[32]

Ultimately, the report agreed with the claimants and found that the Crown had caused the patrimony of the hapū to be eroded by legislative provisions relating to wills, causing significant injury in the 1880s and 1890s, and between 1909 and 1974. The report also found that the Maori Affairs Amendment Act 1967 prejudicially impacted Māori, with some losing their interest in ancestral land.[33] The *Hauraki Report* also noted:

> ..there was a genuine conflict of principle or values between the rights of children and others in the bloodline, and the rights of spouses . Under some twentieth century legislation, in intestate succession children and kin were favoured but in the case of land passed by wills, spouses not of the ancestral line (including non-Maori) could succeed . This conflict was resolved in 1993 in favour of retaining Maori freehold land in the bloodline, in both testate and intestate succession. This resolution undoubtedly reflects considered Maori contemporary opinion.[34]

He Maunga Rongo: Report on Central North Island Claims (Wai 1200), Stage 1, volume 2 (Part 3) (2008)

The *He Maunga Rongo Report* examined share fractionation, individualisation, and succession in relation to Māori land.[35] The report also considered Māori land title and administration during the twentieth century and described the Maori Affairs Act 1953 as the 'cornerstone of the National Party's Maori affairs policy'.[36] The National Government's Minister for Maori Affairs, Ernest Corbett, also commented that the 1953 Act was based on three principles:

> that the land should remain in Maori ownership; that multiple ownership should continue; but that the number of owners in the title should be reduced so that only major owners remained. Owners with small interests were to be progressively removed from the titles. The outcome would be a better position for the 'average Maori landowner' trying to farm his land.[37]

[32] Waitangi Tribunal, *The Hauraki Report,* Volume II, p 886
[33] Waitangi Tribunal, *The Hauraki Report,* Volume II, p 888
[34] Waitangi Tribunal, *The Hauraki Report,* Volume II, p 888
[35] Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claims, Stage 1, volume II (Part 3) (Wellington, Waitangi Tribunal 2008), p 724
[36] Waitangi Tribunal, *He Maunga Rongo*, Stage 1, Volume II (Part 3), p 745
[37] Waitangi Tribunal, *He Maunga Rongo*, Stage 1, Volume II (Part 3), p 745

The report examined the extent of Māori consultation and consent concerning the development of the 1953 Act and found:

> the Crown was anxious to let Maori know what measures were proposed in its new [Maori Affairs] Bill, and took a range of appropriate measures for this purpose. It took care to consult with the land court judges and their registrars, and the Maori members ; and the publicity it gave the measure resulted in important representations from some tribal areas which resulted in at least two major changes to the legislation. While there was no systematic consultation in tribal areas, some tribes made themselves heard, and were (at least to some extent) listened to. We note, however, that the Maori members, seeking further protection of Maori owners' small interests, backed down because they feared their opposition might actually make things worse. This is scant testament to their confidence in their ability to secure a good faith reception from the Minister. Nor did the Government depart from the principle of conversion of small interests.[38]

While the report did not consider the issue of intestate succession to Māori land by non-Māori spouses, it did make several general findings concerning succession and conversion as governed by the Māori Affairs Act 1953. The *He Maunga Rongo Report* found that provisions for the conversion of land that applied on the death of an owner (in part XII of the Act) vesting the interests of the owner in the Māori Trustee, rather than the owner's successors, was a failure of the Crown's duty of active protection and breached Article 2 of the Treaty of Waitangi. Further, the report found provisions of the 1953 Act that offered interests by the Māori Trustee to 'any Maori' ignored the importance of ancestral rights and kinship. The report also found this power to be coercive and discriminatory to Māori property rights, resulting in a breach of Article 3 of the Treaty of Waitangi.[39]

The report also discussed the Prichard–Waetford report 1965, which was directed to investigate:

> What measures should be adopted to overcome the difficulties inherent in the system under which Maori freehold land is held in common ownership; to improve the existing state of the ownership; and to make for the better use of the land.[40]

[38] Waitangi Tribunal, *He Maunga Rongo*, Stage 1, Volume II (Part 3), pp 754-755
[39] Waitangi Tribunal, *He Maunga Rongo*, Stage 1, Volume II (Part 3), p 773
[40] Waitangi Tribunal, *He Maunga Rongo*, Stage 1, Volume II (Part 3), p 749

The Prichard–Waetford report is useful as it provides an understanding of contemporary policy considerations that informed the subsequent development of the Maori Affairs Amendment Act 1967.[41]

The *He Maunga Rongo Report* also considered the Maori Affairs Amendment Act 1967 in detail but did not address the issue of succession to Māori land by non-Māori spouses. More generally, the report found that the 1967 Act was similarly coercive. With respect to the provisions that altered the nature of incorporations, changing the status of land from Māori to general land, and transforming the interests of owners in land into shares in the incorporation, the report found the 1967 Act breached Article 2 rights, and of the Crown's duty of active protection. Further, because of the discriminatory nature of these provisions, the 1967 act was also in breach of Article 3 of the Treaty of Waitangi.[42]

He Kura Whenua ka Rokohanga: Report on Claims about the Reform of the Te Ture Whenua Maori Act 1993 (Wai 2478), (2016)

The *He Kura Whenua Ka Rokohanga Report* provides a useful overview of pre-colonial Māori customary land tenure, as well as Māori land laws from 1862 to 1993. The report also detailed the provisions of the Maori Affairs Act 1953 and the Maori Affairs Amendment Act 1967. While the report did not consider the issue of intestate succession by non- Māori spouses to Māori land, it did address the more general 'problem' of succession and crowded titles, as perceived by the Crown. The report quoted Ernest Corbett, the Minister of Māori Affairs, who argued that a primary principle of the Maori Affairs Act 1953 was to reduce the number of owners in a title. The report also noted the 1953 Act gave the Māori Land Court wide compulsive powers to help achieve the Government's programme of title improvement.[43] The report explained:

> A crucial and controversial measure aimed at reducing the number of owners on a title was 'conversion'. When the owner of a freehold interest in Māori land died, the court was given power to vest 'uneconomic' interests in the Māori Trustee instead of the beneficiaries. An 'uneconomic' interest was defined in the Act as one which, in the court's opinion, did not exceed £25 in value. In 1957 the court's options for dealing with the freehold interests of Māori owners at succession were expanded. For instance, the court could vest all of the deceased's interests in one or more beneficiaries, excluding others without their consent (or compensation, unless their interest exceeded £10 in value). Belgrave et al described these

[41] Waitangi Tribunal, *He Maunga Rongo*, Stage 1, Volume II (Part 3), p 773
[42] Waitangi Tribunal, *He Maunga Rongo*, Stage 1, Volume II (Part 3), p 773
[43] Waitangi Tribunal, *He Kura Whenua ka Rokohanga: Report of Claims about the Reform of the Te Ture Whenua Māori Act 1993* (Wellington, Waitangi Tribunal 2016), pp 37-38

measures as 'particularly draconian and they certainly would never have been tolerated in Pākehā society'.[44]

The report also discussed the Maori Affairs Amendment Act 1967. Again, while the issue of intestate succession by non-Māori spouses to Māori land was not considered, provisions of the 1967 Act that attempted to address title fragmentation and multiple ownership are examined.[45] The report made no findings concerning the Maori Affairs Act 1953 and the Maori Affairs Amendment Act 1967.

Tauranga Moana 1886-2006: Report on the Post-Raupatu Claims (Wai 215), Volume I

The *Tauranga Monana Report* provides a convenient timeline of Māori land legislation, as well as summaries of significant provisions, that governed the alienation of Māori land from 1886-2006, including the Maori Affairs Act 1953 and the Maori Affairs Amendment Act 1967.[46] The report did not consider the issue of intestate succession in any detail.

6.4 Other Relevant Secondary Research

'Succession to Māori Land 1900–52', (1997)

Succession to Māori Land 1900–52, by Tom Bennion and Judi Boyd for the Rangahaua Whanui Series, provides a detailed discussion of early twentieth century succession law. While Bennion and Boyd do not specifically address the Maori Affairs Act 1953 or the Maori Affairs Amendment Act 1967, they do examine relevant native custom (including the ohaaki[47], akin to a customary or oral will), English common law, and Native Land Court and Māori Land Court precedent in relation to succession.

According to Bennion and Boyd, English common law applied in New Zealand from 1840 provided that estates in land or real property be passed to the eldest son. This rule of 'primogeniture' was adopted in in eleventh and twelfth centuries to consolidate estates in Europe. However, if a written will had been made, the property of the deceased (both real and personal) passed according to the will. If a will had not been made, a personal

[44] Waitangi Tribunal, *He Kura Whenua ka Rokohanga, p* 38
[45] Waitangi Tribunal, *He Kura Whenua ka Rokohanga, p* pp 45-48
[46] Waitangi Tribunal, *Tauranga Moana 1886-2006: Report on the Post-Raupatu Claims,* Volume I (Wellington, Legislation Direct 2010), pp 152-156
[47] Tom Bennion, Judi Boyd, *'Rangahaua Whanui National Theme P: Succession to Māori Land, 1900–52'* (Wellington, Waitangi Tribunal, 1997), p 40

representative of the deceased would apply for the letters of administration, which had the same basic effect as a grant of probate.[48] Bennion and Boyd note that there was no systematic attempt to understand Māori customary law concerning successions. Consequently, it was left to the Native Land Court to determine Māori custom in relation to successions. [49]

Bennion and Boyd trace the origin of the precedent affecting early twentieth century succession to the *Papakura Decision* in 1867. That Native Land Court case concerned a Māori male who had been awarded title to 1,120 acres, who died intestate. The man's widow subsequently applied to the court to succeed on behalf of herself and her three children. Ultimately, Judge Fenton awarded the land in favour of all the children equally, noting that in this case primogeniture would not reconcile with 'native ideas of justice or Maori custom'.[50] Bennion and Boyd comment that Judge Fenton's decision was crude attempt to apply English common law, while making some small concession to Māori sensibilities.[51]

Bennion and Boyd observe that by the early twentieth century, precedent adopted by the Māori Land Court generally adhered to the *Papakura Decision* and was being consistently applied – in cases of intestacy, freehold land was equally divided among all children. It also appears that despite the tens of thousands succession orders made by the land court, very few were appealed or challenged by Māori.[52]

Bennion and Boyd comment that as a result of the repeated application of this principle, Māori land was becoming highly fragmented.[53] Indeed, by the 1960s, the number of successors added to titles in a single year was equivalent to 20 percent of the total Māori population Bennion and Boyd conclude that Māori consistently sought to retain an identity with hapū or iwi via Māori Land Court processes, despite that desire resulting in highly fragmented interests in customary land. Further, any attempts made by the Crown to force Māori to give up these fragmentated interests through various consolidation schemes was fiercely resisted.[54]

[48] Bennion, Boyd, *'Succession to Māori Land'*, p 1
[49] Bennion, Boyd, *'Succession to Māori Land'*, p 40
[50] Bennion, Boyd, *'Succession to Māori Land'*, p 6
[51] Bennion, Boyd, *'Succession to Māori Land'*, p 40
[52] Bennion, Boyd, *'Succession to Māori Land'*, p 40
[53] Bennion, Boyd, *'Succession to Māori Land'*, p 40
[54] Bennion, Boyd, *'Succession to Māori Land'*, p 42

'Crown Policy with Respect to Māori Land, 1953-1999', (2004)

Crown Policy with Respect to Māori Land, by Associate Professor Michael Belgrave, Anna Deason, Dr Grant Young, prepared for the Combined Central North Island Inquiry (Wai 1200), notes that by the mid-twentieth century the Crown perceived the Māori land title system as increasingly cumbersome, with individual blocks owned by increasing numbers of individuals because of succession and subdivision. Consequently, the Crown focused its policies and legislation to reduce the fragmentation of ownership by bringing Maori land under a single national system, resulting in the Māori Affairs Act 1953 and the 1967 Amendment Act.

With regard to succession and the Maori Affairs Act 1953, Belgrave, Deason, and Young note that the provision allowing the Māori Trustee to compulsorily purchase uneconomic interests at the point of succession, known as conversion, as the most controversial.

Belgrave, Deason, and Young discuss the background to the passing of the Māori Affairs Amendment Act 1967, including commentary from Māori organisations and individuals concerning the Bill when it was before the house of representatives. Belgrave, Deason, and Young note that organisations such as the Māori Council emphasised the preservation of kin-group estates in their submissions.[55]

Belgrave, Deason, and Young note that part V of the Maori Affairs Amendment Act 1967, which gave a Māori woman on the death of her husband the same rights as a Pākehā woman, resulted in Māori land being transferred to individuals without a direct whakapapa link.[56] Belgrave, Deason, and Young also observe the Māori response to the Māori Affairs Amendment Act 1967:

> By 1967 this approach had generated a strong and well-articulated reaction from Maori, who insisted that the policies should move the other way, towards collective structures of governance and management.[57]

According to Belgrave, Deason, and Young, following the passing of the Maori Affairs Amendment Act 1967, successive governments became increasingly aware that Māori wished to retain cultural connections with their ancestral land. Utilitarian approaches to land use and

[55] Associate Professor Michael Belgrave, Anna Deason, Dr Grant Young, 'Crown Policy with Respect to Maori Land, 1953-1999', September 2004 (Wai 1200, #A66), p 308
[56] Belgrave, Deason, Young, 'Crown Policy with Respect to Maori Land', p 154
[57] Belgrave, Deason, Young, 'Crown Policy with Respect to Maori Land', p 351

land ownership gave way to a greater recognition of the importance of Māori ownership and development of land by Māori. Although these ideas had their genesis in the 1970s, they were not formally recognised in a comprehensive Maori affairs policy until the enactment of Te Ture Whenua Maori Act 1993.[58]

The Native Land Court, 1888-1909, Volume 2 (2015) and T*he Native/Maori Land Court 1910-1953, Volume 3* (2019)

Richard Boast's commentary on intestate succession is limited in *The Native Land Court, 1888-1909.* With respect to intestate succession to 'native land', Boast quotes the Native Land Court Act 1866, which stipulated that the Court 'shall be guided by Native Custom or usage'. Boast also observes that there is 'no really adequate study' of Māori will-making in existence, which he considers would be fertile ground for any scholar will the appropriate linguistic and legal skills.[59]

Boast considers the *Papakura* decision in *the Native/Maori Land Court, 1919-1953,* noting its precedent affecting subsequent intestate successions to interests in Crown-granted land in Māori ownership. Boast surmises that the owner of the block, Ihaka Takanini Te Tihi, died intestate and his widow applied to the Native Land Court for a vesting order in favour of their three, legitimate children. This approach was opposed by a cousin of the deceased, as well as other members of the tribe. Their contention was that Ihaka held the land as a trustee for the tribe and that the land should, therefore, pass to the other customary owners, in accordance with Māori custom. A witness, named Heta Te Tihi, stated that if Ihaka had made a will, he would have left the land to his children, with some portions going to tribe.[60] Boast comments:

> The significance of the point at issue can be readily seen. At stake was the very nature of an interest in Crown-granted Maori land. To allow any claim on behalf of the customary owners would, in effect, circumvent the whole purpose of the Native Land Acts, which was to turn

[58] Belgrave, Deason, Young, 'Crown Policy with Respect to Maori Land', p 351
[59] Boast, Richard, *'The Native Land Court, 1888-1909, Volume 2'* (Wellington, Thomson Reuters New Zealand Ltd, 2015), p 14
[60] Boast, Richard, *'The Native/Maori Land Court, 1910-1953, Volume 3'* (Wellington, Thomson Reuters New Zealand Ltd, 2019), pp 242-244

> customary interests in Maori land into legal interests equivalent to freehold property rights. Fenton was in no doubt this could be allowed.[61]

Boast explains that the individualisation of the title would have involved the introduction of the English law of succession, which Judge Fenton likely considered was highly inconsistent with Māori customary law. Fenton opined that the 'evidence discloses no equities in favour of the tribe', meaning there was nothing to show that the deceased held the property in trust for other members of the iwi. However, Fenton was not prepared wholly to apply English succession law (when a person died intestate their property passed to their heir at law). Boast observes that Fenton, therefore, devised a rule that when a Māori died intestate, the interests should pass to all children (whether male or female) equally. Boast comments that this ruling was an attempt to reconcile English law and Māori customary law. Boast adds that this outcome could be circumvented as the decision had no application to succession by will.[62]

Boast also considers some Native Land Court legislation and precedent concerning succession after the *Papakura* decision, including the Intestate Native Succession Act of 1876 and 1881.[63] He does not consider the Maori Affairs Act 1953 and Maori Affairs Amendment Act 1967, the legislation most pertinent to the claimants' case.

'He arotake i te āheinga ki ngā rawa a te tangata ka mate ana: Review of succession law: rights to a person's property on death', (2021)

The report by the Law Commission is a significant body of reform work concerning family property law in New Zealand. While the report does not specifically consider the Maori Affairs Act 1953 and Maori Affairs Amendment Act 1967, it does examine ngā tikanga Māori in relation to succession law.[64] It also suggests that state law should not determine the substantive question of succession to taonga, such as land connected to te ao Māori. Rather, succession to taonga should be determined by the tikanga of the relevant whānau or hapū.[65] The report comments:

[61] Boast,'*The Native/Maori Land Court, 1910-1953,* pp 242-244
[62] Boast,'*The Native/Maori Land Court, 1910-1953,* pp 244-245
[63] Boast,'*The Native/Maori Land Court, 1910-1953,* pp 245-250
[64] Law Commision, He arotake i te āheinga ki ngā rawa a te tangata ka mate ana: Review of succession law: rights to a person's property on death (2021), pp 57-66
[65] Law Commision, He arotake i te āheinga ki ngā rawa a te tangata ka mate ana, p 95

> We consider that it is crucial to treat taonga in such a way as to respect tikanga such as kaitiakitanga, whanaungatanga, mana, mauri and whakapapa in their true meanings grounded in mātauranga Māori. It flows from this conclusion that we consider tikanga Māori provides a framework for the succession to taonga and for resolving disputes over taonga. In our view, this approach is preferable to relying on trust law to resolve a whānau dispute over taonga, as happened in Biddle v Pooley.[66]

Chapter 7 of the report considers how estates should be distributed when a person died intestate. However, the intestacy rules that are considered begin with the Administration Act 1969 – legislation and a timeframe that is less relevant to the claimants allegations.[67]

Claimant counsel submissions in the Te Paparahi o Te Raki inquiry (Wai 1040) concerning succession

Claimant counsel in the Northland Inquiry filed detailed submissions concerning the issue of succession. Several claimants argue that English laws of succession, adopted in New Zealand, resulted in land blocks becoming highly fragmented. In turn, this fragmentation prompted alienations, given small parcels of land were too small to be economically utilised. The claimants reference Professor David Williams, who observed the application of English succession laws to Māori land in the nineteenth century was a case of equal treatment delivering unequal outcomes (as compared to Pakeha). The claimants assert that the failure of the Crown to take steps to remove the root cause of this fragmentation (the succession laws) was a breach of the Treaty principle of equity, as well as that of active protection. The claimants also submit that subsequent land legislation removed the reference to tikanga altogether. In particular, the Native Land Act 1909 prescribed that succession orders should be administered the same as they would be for a European. The claimants submit that this ongoing fragmentation as populations increased and remaining land dwindled worked in the Crown's favour.[68]

[66] Law Commision, He arotake i te āheinga ki ngā rawa a te tangata ka mate ana, p 96
[67] Law Commision, He arotake i te āheinga ki ngā rawa a te tangata ka mate ana, p 188
[68] Various claimant counsel submissions on succession for the Te Paparahi o Te Raki (Northland) inquiry (Wai 1040, #3.3.260, 3.3.335,3.3.341a)

6. Overall Summary and potential areas for further further clarification

Following the establishment of the Native Land Court in 1865, Māori typically preferred to maintain ownership in customary land with other members of their whānau, hapū or iwi. This preference manifested in the *Papakura* decision of 1867, which found in cases of intestacy, freehold land should be equally divided among the children of the deceased.[69] Whilst this precedent enabled Māori to maintain their connection to ancestral land, titles quickly became fragmented and crowded. Further, this manner of ownership following succession conflicted with English Common law, which preferred to vest land title solely, unless a will stipulated otherwise. By the mid-twentieth century, the Crown perceived multiply owned titles as the primary impediment to Māori land development.[70] Consequently, the Crown developed legislation intended to simplify titles and administer Māori land in the same manner as European or general land. The primary pieces of legislation that embodied this Crown approach were the Maori Affairs Act 1953 and Maori Affairs Amendment Act 1967.[71]

There appears to be sufficient material to provide context to the main allegations of the Dennison claim.

The nature of the claimants' allegations appears to require a consideration of discrete legislation, in particular section 76 of the Maori Affairs Amendment Act 1967. Such analysis could be informed by the *Te Tau Ihu O Te Waka A Maui: Report on Northern South Island Report,* which considered a similar claim concerning intestate succession. That report ultimately found section 76 of the Maori Affairs Amendment Act 1967 was contrary to the Treaty of Waitangi and its principles.[72] Other Waitangi Tribunal reports and secondary research summarised in section 6 also provides useful context to the allegations made by the Dennison claimants. While this material does not specifically consider intestate succession by non-Māori to Māori estates, it does analyse the broader policy objectives and operation of the Maori Affairs Act 1953 and Maori Affairs Amendment Act 1967. Several of these reports

[69] Boast, *'The Native/Maori Land Court, 1910-1953,* pp 242-245
[70] Bennion, Boyd, *'Succession to Māori Land*', p 42
[71] Belgrave, Deason, Young, 'Crown Policy with Respect to Maori Land', p 351
[72] Waitangi Tribunal, *Te Tau Ihu O Te Waka A Maui,* pp 1330-1331.

also found the Maori Affairs Act 1953 and the Maori Affairs Amendment Act 1967 were in breach of the Treaty of Waitangi and its principles (see section 6).

In order to provide more detailed context to the Dennison claim, the claimants could be asked to provide relevant Māori Land Court records concerning the estate of Priscilla Muriwai Flutey. Such records may address several questions posed in section 3 of this paper:

- What were the circumstances of the original land awards that are the subject of claimants' allegations? And, was all Māori land that formed part of Priscilla Muriwai Dennison's estate awarded under the South Island Landless Natives Act 1906?

- What legislation governed Charles Dennison's will following his death? And, was he required to leave Priscilla Muriwai Dennison's land to her children?

- What is the contemporary administrative status of the blocks that are the subject of claimants' allegations?

In addition, the following questions of clarification could be asked of the claimants or claimant counsel via legal submissions during the inquiry process:

- Is the unidentified legislation that is the subject of your allegations section 76 of the Maori Affairs Amendment Act 1967?

- Is all land identified in the various Māori Land Court records filed in support of the statement of claim also the subject of claimant allegations?

- Were John Flutey, Queenie Flutey, and William Flutey the siblings of Priscilla Muriwai Dennison?

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Waitangi Tribunal. *The Hauraki Report, Volume II,* Wellington, Legislation Direct 2006

Relevant Legislation

Maori Affairs Act 1953 (sections 116, 136, 213)

Maori Affairs Amendment Act 1967 (section 76, 81)

Administration Act 1952 (Part III)

Administration Amendment Act 1965

Administration Act 1969 (section 77)

See also the the primary sources provided in document bank.