WAI 2800

INQUIRY INTO REMAINING HISTORICAL CLAIMS:

SOUTHERN NORTH ISLAND AND SOUTH ISLAND CLAIMS (REGION 1)

Claim Assessment for the Standing Panel:

The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324)

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1. Introduction

The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Geary Whānau claim), received on 4 August 2008, alleges the Geary Whānau were prejudicially affected by the Crown's failure to grant their tūpuna land under the Middle Island Half-castes Crown Grants Act 1877.[1] On 11 December 2019, Chief Judge Wilson Isaac directed that the Geary Whānau 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] Neil Jury, statement of claim, 1 August 2008 (Wai 2324, #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 claim issues raised in the statement of claim for the Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim (Wai 2324). Primary research has not been undertaken in the preparation of this assessment. Where possible, reference to primary sources that appear most relevant to the claim has been included, should further evidence be required.

2. Methodology

This claim assessment summarises allegations raised by the Geary Whānau claimants. It then assesses and summarises existing evidential coverage of the claim issues in Waitangi Tribunal reports, other secondary research and primary sources that are relevant to the claimants' pleadings. It concludes by summarising that the Geary Whānau claim issues appear to be sufficiently addressed by existing primary and secondary sources. Further clarification may be sought from the claimants in relation to a central claim issue.

[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))

This claim assessment includes:

- A summary of the Geary Whānau claim, including claimant information, claim allegations, and claim amendments;
- A procedural summary of the Geary Whānau claim's inclusion into the Remaining Historical Claims Inquiry;
- A summary of legislation, research, and records pertinent to the Geary Whānau claim;
- An overall summary and potential areas for further clarification.

3. The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim

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

The claimants

The statement of claim was filed by Neil Jury, of 'NgaMahanga' descent, on behalf of the Geary Whānau. At the time the claim was registered, Mr Jury listed his home address as 20 Pungarehu Road, Pungarehu, Taranaki, and records his occupation as 'branch manager of Taranaki Farmers'.[5]

Claim allegations

The statement of claim alleges that the Crown did not provide the claimants' tūpuna (John Geary, William Geary, and Thomas Geary) with the grants (10 acres per man) prescribed by the Middle Island Half-castes Crown Grant Act 1877. The claimants say this omission was contrary to the Treaty of Waitangi and its principles.[6]

[5] Neil Jury, statement of claim, 1 August 2008 (Wai 2324, #1.1.1)
[6] Neil Jury, statement of claim, 1 August 2008 (Wai 2324, #1.1.1)

The claimants seek 'relief and compensation for the land not granted. It should be in the order of what the land's present-day value could be, and the loss of earnings from it since 1877.' The claimants also invite the Waitangi Tribunal to consider whether the original grants were 'fair'. Further, the claimants seek an apology for the alleged hardship and intergenerational prejudice caused to the Geary Whānau.[7]

The claimants requested that the Waitangi Tribunal commission a researcher to report on the Middle Island Half-castes Crown Grant Act 1877. Additionally, the claimants note they wish for their claim to be heard at the Portobello Hall, Portobello, Otago Peninsula.[8]

In summary, the Geary Whānau claim raises the following primary issue:

> Was the Middle Island Half-castes Crown Grant Act 1877 compliant with the Treaty of Waitangi and its principles?

4. The Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim's inclusion into the Remaining Historical Claims Inquiry

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

The Geary Whānau claim was registered on 4 August 2008.[9] 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, termed the 'Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800)'. A preliminary list of claims,

[7] Neil Jury, statement of claim, 1 August 2008 (Wai 2324, #1.1.1)
[8] Neil Jury, statement of claim, 1 August 2008 (Wai 2324, #1.1.1)
[9] Memorandum Directions of the Deputy Chairperson, 4 April 2011 (Wai 2324, #2.1.1)

including the Geary Whānau claim, was assessed for eligibility. On 1 October 2018, Chief Judge Isaac sought submissions from parties concerning the preliminary list.[10]

On 4 October 2018, Crown counsel filed a memorandum in response to the preliminary list. Crown counsel submitted the Geary Whānau claim was not eligible for inclusion because historical elements of the claim (that concerned allegations before 21 September 1992) were fully settled by the Taranaki Iwi Claims Settlement Act 2016. Crown counsel also argued that while the Geary Whānau claim was not specifically listed in the the Taranaki Iwi Claims Settlement legislation, information in the Geary Whānau statement of claim suggested it was a historical claim on behalf of settled group.[11]

On 28 December 2018, counsel for the Geary Whānau claim responded to the Crown memorandum, submitting the was claim 'eligible to participate' in the Remaining Historical Claims Inquiry. Claimant counsel posited 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.[12]

On 11 December 2019, Chief Judge Isaac considered claimant and Crown submissions in his memorandum-directions. Chief Judge Isaac noted that the Geary Whānau claim was not specifically listed in the Taranaki Iwi Claims Settlement Act 2016. Further, Chief Judge Isaac opined that the Geary Whānau claim was not brought on behalf of any iwi or hapū, nor was it based on rights arising from the claimant's membership in a particular iwi or hapū. Instead, the Geary Whānau claim is based on the applicant's descent from tūpuna who were identified as "half-castes" living in the South Island and promised allocations of land in legislation. Moreover, in Chief Judge Isaac's view, there did not appear to be any connection between this claim and the claimant's whakapapa to Ngā Mahanga, hapū of Taranaki iwi. Consequently, Chief Judge Isaac directed the Geary Whānau claim would be included in the Remaining Historical Claims Inquiry.[13]

[10] 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
[11] Memorandum of Counsel for the Crown, 21 December 2018 (Wai 2800, #3.1.3), (Wai 2800, #3.1.3), p 2
[12] Memorandum of Counsel for claimants for Wai 2324, 28 December 2018 (Wai 2800, #3.1.7), p 2
[13] Memorandum-Directions of Chief Judge WW Isaac, 11 December 2019 (Wai 2800, #2.5.5) p 5-6

On 17 January 2020, the Crown responded by reserving its position in relation to the Geary Whānau claim's inclusion in the Remaining Historical Claims Inquiry.[14]

5. Summary of legislation and research pertinent to the Geary Whānau claim

This section directly quotes the Middle Island Half-caste Crown Grants Act 1877, the statute that is most pertinent to the Geary Whānau claim. It also summarises subsequent amendments to the Act. This section also summarises Waitangi Tribunal reports and research relevant to the the Geary Whānau claim.

The Middle Island Half-caste Crown Grants Act 1877 came into force on 8 December 1877 (the background to the Act is considered below). The stated purpose of the Act was to 'Authorize the issue of Crown grants of Land in the Middle Island to certain Half-caste Natives'. The Act provided:

> WHEREAS heretofore certain promises were made in favour of certain half-caste families then residing in the Middle Island, that provision in land should be made for them as hereinafter provided: And whereas it is expedient that an Act should be passed for the purpose of giving effect to the arrangements so agreed upon:
>
> BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:
>
> 1. The Short Title of this Act shall be "The Middle Island Half- caste Crown Grants Act, 1877."
>
> 2. It shall be lawful for the Governor to fulfil and carry into effect the hereinbefore-mentioned promises in reference to the said half-caste families, whether such promises are evidenced by any writing or not.
>
> 3. For the purpose of carrying out the intention of the Act, it shall be lawful for the Governor from time to time, as he shall think fit, to execute Crown grants of such portions of the waste lands of the Crown situate within the Provincial Districts of Canterbury and Otago as may be selected or set apart by any person whom the Governor may authorize to select the same, in satisfaction of any promise as aforesaid to any half-caste claimants, being the persons named in the Schedules A and B hereto: Provided that the area so granted shall not exceed ten acres to each male and eight acres to each female.

[14] Memorandum of Counsel for the Crown, 17 January 2020 (Wai 2800, #3.1.17), p 3

> 4. The Governor is also hereby authorized and empowered to insert in any grants issued under the authority of this Act such terms, conditions, or restrictions on alienation as he may from time to time think fit.
>
> 5. On the execution of a Crown grant to any of the 'persons named in the Schedules aforesaid the said grant shall be deemed to be a final extinguishment of all claims and demands of the said grantee, or of any person claiming or entitled under or through him or them in respect of such promised provision in land.[15]

The Act also contained two schedules that recorded individuals identified as being entitled to receive land under the legislation. Schedule A was titled 'Provincial District Of Canterbury' and Schedule B was titled 'Provincial District Of Otago'. Both schedules included three columns: 'Name'; 'Married Name'; and 'Acres'. Schedule A included the details of 53 persons and Schedule B included the details of 118 persons. The claimants' three tūpuna were listed under schedule B (relating to the Canterbury district) as 'Geary, John', 'Geary, William' and 'Geary, Thomas', each were identified as being entitled to 10 acres.[16]

Three amendment Acts followed the original 1877 Act. The Geary Whānau claimants' tūpuna are not referenced in any subsequent Acts or schedules. The amendments to the 1877 Act are, therefore appear to be less relevant to the Geary Whānau claim.[17]

In summary, the Middle Island Half-caste Crown Grants Act 1883 added individuals to the schedules that had been mistakenly omitted. The 1883 Act also addressed issues raised by grantees concerning the standard and sufficiency of the land by enlarging the acreage allotted. The Middle Island Half-caste Crown Grants Act 1885 was designed to remedy further errors and omissions present in the previous Acts, and created an additional 'Schedule C' of grantees. The legislation also allocated land in the Waitaki Survey district, in the Provincial District of Canterbury, to persons previously listed in Schedules A and B. The last amendment in 1888 included further names omitted from previous Acts. That Act also included an additional clause allowing the Governor to impose certain restrictions on the alienation of granted land.[18]

[15] The Middle Island Half-caste Crown Grants Act 1877 is included in document bank
[16] The Middle Island Half-caste Crown Grants Act 1877 is included in document bank
[17] The amendments to the 1877 Act are included in document bank
[18] The amendments to the 1877 Act are included in document bank

The Ngāi Tahu Report (Wai 26), Volume II (1991)

The *Ngāi Tahu Report* considered the 'half-castes grants legislation' at length and made a finding relevant to the Geary Whānau case. The report noted that prior to 1840, there was considerable intermarriage between Ngāi Tahu women and European sealers and whalers.[19] However, Ngāi Tahu of mixed ancestry were not provided for in the reserves resulting from the Murihiku purchase of 1853.[20] The Crown acquired title to the seven million-acre Murihiku Block (located in modern-day Southland) for £2600, and reserved only 4875 acres in seven reserves.[21]

When Rakiura (Stewart Island) was acquired by the Crown in 1864, the deed of purchase provided that a portion of the land at 'the Neck' was to be reserved for the 'half-castes' residing there. However, this allocation of land quickly proved insufficient. Consequently, the Public Petitions Committee of the Legislative Council considered a petition concerning the state of landlessness experienced by 'half-castes' in 1869, demonstrating the Crown's cognisance of the issue. The Public Petitions Committee commented:

> Your Committee have the honour to report, that, in connection with this petition, they have necessarily taken into consideration the general question of the obligation on the part of the Crown to make provision out of the lands ceded by the Natives in the Ngaitahu and other Blocks in the southern portion of the Middle Island for the half-caste families resident thereon at the time of cession ; and are of opinion that, inasmuch as it has been proved to the Committee that, for reasons of policy as well as of justice and humanity, such promises were made on the part of the Crown by the Commissioner for the purchase of these lands, such obligation does exist, and that the honor of the Crown is concerned in its faithful and immediate discharge.[22]

The Public Petitions Committee's report was referred to the Native Minister, Alexander Mackay. In response, in December 1869, Mackay advised his under-secretary that in addition to the landless 'half-caste' Ngai Tahu at Rakiura, there were also similar mixed-heritage

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[19] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, (Wellington, GP Publications 1991), p 640-641

[20] Of the land that was excluded for Ngāi Tahu as part of the Murihiku purchase, the Ngāi Tahu report found that the land was insufficient for an economic base for Ngāi Tahu, and did not provide reasonable access to their mahinga kai.

[21] The block was located from Tokata Point, followed the south eastern boundary of the Otakou purchase, ran to Kaihiku and from there in a straight line to Milford Sound. The purchase included all the land south of this line. However, Rakiura and the Titi Islands were excluded; see Waitangi Tribunal, *The Ngai Tahu Report,* Volume I, (Wellington, GP Publications 1991), p 99

[22] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, p 641; Report of the Select Committee upon the Petition of Andrew Thompson, Journals of the Legislative Council, 1869, D-no 20, enclosure 2 in no 1

families leaving near the Bluff, in Southland. Mackay suggested a block of approximately 1000 acres should be provided near Oraka for the Rakiura and mainland 'half-caste' Ngai Tahu.[23]

The *Ngāi Tahu Report* noted that on 5 September 1871, Mackay again contacted his under-secretary, observing that of the 187 'half-caste' Ngai Tahu, 91 had been born on Rakiura. A further 93 had been born at various places on the mainland, again demonstrating that exisitng reserves for 'half-castes' were insufficent.[24] The Stewart Island Grants Act 1873 recited that the area of land reserved at the Neck was insufficient for all the half-castes living there. The 1873 Act also made further land available and enabled the governor to grant that land on Rakiura or the neighbouring mainland to Ngāi Tahu of mixed ancestry. Such grants were not to exceed ten acres for each male and eight acres for each female.[25]

The *Ngāi Tahu Report* explained that Mackay's inquiries into the issue eventually led to the passing of the Middle Island Half-Caste Crown Grants Act 1877. The *Ngāi Tahu Report* observed:

> On 8 December 1877 the Middle Island Half-Caste Crown Grants Act was passed. It referred to certain promises having been made in favour of certain half-caste families then living in the South Island. Their names were listed in two schedules to the Act. The first schedule named 53 people living in Canterbury and 118 in Otago (which included Southland). The Act authorised a grant of ten acres to be made to each male and eight acres to each female. Such grants were to be deemed to be a final extinguishment of all claims of such people in respect of the promised provision of land. By later amendments various errors and omissions were corrected, the last being in 1888.[26]

The Ngāi Tahu claimants ultimately argued that grants of 18 acres to a married couple in the 1870s did not provide sufficient land to be a 'viable unit'. The Ngāi Tahu Tribunal also heard that by the 1850s, the sufficiency of 50 or even 100 acres for farming purposes was being challenged by European settlers. Further, much depended on the quality, location, and accessibility of the land. The *Ngāi Tahu Report* commented:

> it must have been well known to the Crown that such an allocation would provide, at best, no more than bare subsistence and at worst prove totally inadequate even for that. It is difficult to reconcile its actions with good faith on the part of the Crown.[27]

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[23] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, pp 640-641
[24] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, p 640-641
[25] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, p 640-641
[26] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, p 641
[27] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, p 642

The *Ngāi Tahu Report* found that the allocation of ten acres for male 'half-castes' and eight acres for female 'half-castes', as provided by the 1877 Act, was insufficient to meet Māori needs, thereby, breaching 'the Crown's Treaty obligation to ensure that adequate provision was made for these people.[28]

The *Ngāi Tahu Report* did not consider the Geary Whānau claim allegation that the Crown failed to actually allocate land granted under the Middle Island Half-Caste Crown Grants Act 1877.

In/visible Sight: The Mixed-Descent Families of Southern New Zealand (2009)

Angela Wanhalla's book, titled *In/Visible Sight* published in 2009, examines the 'plight' of mixed-descent families during the nineteenth century in the South Island. Wanhalla considers Crown attitudes to the children of inter-racial marriages during the mid-nineteenth century, surmising that interracial marriages were never legally prohibited in New Zealand. Instead, such marriages were encouraged as a biological component of the state's racial amalgamation policy of the economic, cultural, and physical integration of Māori into British colonial society.[29] However, Wanhalla notes this tolerance by the colonial authorities did not include children conceived outside of wedlock. Colonial officials were, therefore, keen to regulate extramarital intimacy, evidenced by political debate and legislative activity in the 1840s and 1850s.[30] Furthermore, official acceptance resulted in complicated legal issues concerning property rights of Māori woman, and their non-Māori spouses, as well as their mixed-descent children.[31]

Wanhalla explains that colonial officials first recognised the rights of mixed-descent children in 1844, when Frederick Tuckett, a surveyor, suggested setting land aside for their maintenance at Moeraki. Four years later, Walter Mantell, Crown land purchase agent, visited the settlement at Moeraki and observed the 'wretched position' of mixed-descent children living there. Consequently, to avoid abandoned or illegitimate mixed-descent people from

[28] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, pp 640-642
[29] Angela Wanhalla, *In/visible Sight: The Mixed-Descent Families of Southern New Zealand,* (Wellington, Printlink 2009), p 87-89
[30] Wanhalla, *In/visible Sight,* p 93
[31] Wanhalla, *In/visible Sight,* p 86

becoming a burden on the state, the Crown attempted to reward men who entered into legal marriages with Māori women with land grants, to ensure the welfare of mixed-descent children.

The colonial government was also concerned by the uncertainty of 'half-castes' loyalty and cultural values. In 1856, a board of inquiry was appointed to investigate the state of native affairs and recommended that land rights, often in the form of trusteeship arrangements, should be prioritised to secure the loyalty of mixed-descent children to the Crown.[32]

According to Wanhalla, prior to 1864, land purchases in Canterbury, Otago, and Southland were made without consideration for mixed-descent children, of which there was a growing community. However, under the terms of the Rakiura Purchase of 1864, mixed-descent families were to be provided with land at 'The Neck', on Stewart Island, 'in order to save the descendants of the early white settlers from eviction and poverty'. Wanhalla notes that actually giving effect to the terms of the Rakiura Purchase was a lengthy process, resulting in a petition by Andrew Thompson on behalf of his 'half-caste' wife and children in 1869. The petition instigated a series of official investigations concerning the mixed-descent population of southern New Zealand.[33]

A select committee reporting on Thompson's petition found the Crown was obliged to set aside land within purchase blocks 'for half-caste families resident thereon at the time of cession'.[34] In 1870, the Native Land Reserves Commissioner, Alexander Mackay, reported to the Native Department that large blocks of Crown land, separate from reserves, should be set aside for families to be allocated individual sections.[35] Wanhalla notes that numerous petitions and pressure from Ngāi Tahu leaders resulted the Middle Island Half-Caste Crown Grants Act 1877, to provide South Island 'half-castes' with an economic base, while also adhering to promises made under the Rakiura Purchase. According to Wanhalla:

> By then, Mackay had made it clear that those promises were to be extended to 'half-castes' who were not born on Stewart Island, but were deemed equally entitled to land because of their mixed-descent status.[36]

[32] Wanhalla, *In/visible Sight,* pp 90-92
[33] Wanhalla, *In/visible Sight,* p 101; p 101
[34] Wanhalla, *In/visible Sight,* p 101; 'Survey of Native Reserves in the Provinces of Otago and Southland', AJHR, D-20, 1870, p 3
[35] Wanhalla, *In/visible Sight,* p 101; AJHR, D-20,1870, p 4
[36] Wanhalla, *In/visible Sight,* p 103

Wanhalla summarises the provisions and operation of the Middle Island Half-Caste Crown Grants Act 1877, and its subsequent amendments. As noted in the Waitangi Tribunal's Ngāi Tahu Report, the 1877 Act awarded Crown grants of 10 acres for men and 8 acres for women. Further, grants were awarded to 'half-castes' only, with restrictions preventing alienation without approval from the Native Land Court, which had to be persuaded the 'natives possessed other lands' conducive to their maintenance. These restrictions sought to ensure 'half-caste' sellers would not become dependent on the state.[37]

Wanhalla explains that the 1877 Act provided individuals with Crown waste lands within the Provincial Districts of Canterbury and Otago. An 1883 amendment issued Crown grants to 'half-castes' who were entitled under the 1877 Act, but had been omitted. Wanhalla identifies several areas in Otago that were designated as half-caste land: Hawksbury, North Harbour, Blueskin, Clarendon (south of the Taieri River), and Moeraki. However, the majority of the land grants were in Southland, particularly near areas where the mixed-descent population was concentrated, including Longwood, Patersen Inlet, Anglem, Jacob's River Hundred, Pourakino, the Invercargill Hundred, Fortrose Town and the Otara District.[38]

Wanhalla comments that most of these lands were located near existing native reserves and often relied on the willingness and cooperation of local authorities to actually be established. In 1878, for example, the Otago Land Board refused Mackay's application to have certain waste land set aside for mixed-descent families, despite the application already having the support of the Commissioner of Crown Lands.[39]

The 1883 amendment to the Act allowed for the enlargement of original sections granted to individuals under the 1877 Act in recognition that those lands were of 'inferior quality' and 'not sufficient' to support the grantees. Wanhalla summarises that the subsequent 1885 Act was largely an attempt to remedy errors and omissions made under the 1877 and 1883 Acts. In particular, Crown officials had experienced difficulties defining the term 'half-caste'. Further, Crown agents claimed they were often unable to contact the individuals concerned to actually issue the grants. In 1885, the Chief Draughtsman claimed:

[37] Wanhalla, *In/visible Sight,* pp 103-104
[38] Wanhalla, *In/visible Sight,* pp 103-104
[39] Wanhalla, *In/visible Sight,* p 104

> …the Schedule of Titles for Halfcaste claims was commenced long since but could not be completed on account of the difficulty in identifying the names given in the Act with those furnished by the Surveyor arising probably from changing their names and marriage. There are town lists of the Clarendon claim sent in by the Surveyor at different times which do not agree with each other.[40]

The final Act in the series was passed in 1888, after an official commission examining cases of people excluded from earlier legislative schedules. Wanhalla acknowledges that the four Acts appear to demonstrate that 'a great deal of activity went into providing for the 'half-caste' population in the South Island'. However, Wanhalla argues that contemporary parliamentary debates on the legislation weakens this assessment, and instead concludes:

> The slow pace of implementing the grants made under these Acts reflects wider government lethargy in fulfilling promises made to Ngai Tahu in respect of Crown land purchases between 1844 and 1864, as outlined in the report of the Smith-Nairn Commission of 1879-80 and the 1886 Report of the Royal Commission into Middle Island Claims.[41]

'Transgressing Boundaries: a History of the mixed descent families of Maitapapa, Taieri, 1830-1940', (2004)

Angela Wanhalla's PhD thesis traverses much the same content as her subsequent book. Wanhalla provides an additional example of poor-quality land provided for a small group of grantees under the Half-Caste Crown Land Grant Acts at the Clarendon Block, Taieri. The allocation of the sections became the subject of complaint by the grantees because of the deficient state of the land. The grantees wrote to their local member of the House of Representatives, W. J. Stewart, on several occasions. In 1883, the amendment Act granted larger sections of individuals in recognition that all the original lands granted were of 'inferior quality' and 'not sufficient for support'.[42]

Wanhalla also explains that very few of the Clarendon claimants at Taieri actually had their sections surveyed or secured certificates of title, because of associated costs. Wanhalla concludes:

> The lapse of five years between the passage of the 1877 Act and that of the 1883 Act suggests there was little urgency attached by officials to the fulfilment of promises of land for 'half-caste' families.[43]

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[40] Wanhalla, *In/visible Sight,* p 105
[41] Wanhalla, *In/visible Sight,* p 105
[42] Angela Wanhalla, *Transgressing Boundaries: a History of the mixed descent families of Maitapapa, Taieri, 1830-1940,* (PhD Thesis, University of Canterbury), p 160 from: https://ir.canterbury.ac.nz/handle/10092/946 (retrieved 04/02/2022)
[43] Angela Wanhalla, *Transgressing Boundaries: a History of the mixed descent families of Maitapapa, Taieri, 1830-1940,* (PhD Thesis, University of Canterbury), p 162 from: https://ir.canterbury.ac.nz/handle/10092/946 (retrieved 04/02/2022)

'Murihiku Block' (1987)

A technical report concerning the Murihiku block was commissioned by the Ngāi Tahu Māori Trust Board in 1987 for the Ngāi Tahu Inquiry. The report, authored by Professor James McAloon, considers Crown land grants to 'half-castes' from 1869 to 1888. Much like the other research, McAloon notes Ngāi Tahu of mixed ancestry were not provided for in the reserves resulting from the Murihiku purchase. The Crown attempted to rectify this by providing grants to the people of Murihiku and Rakiura (Stewart Island) from 1869-1889, following several petitions made to the Legislative Council.[44]

McAloon observes that before 1881, the principal grievance relating to such grants was the smallness of the allotments, citing evidence that eighteen acres (the amount of land granted to a married couple) could not viably sustain its occupiers. McAloon cites evidence that 40-60 acres was necessary to support a family.[45] McAloon notes that during the 1880s, the introduction of refrigeration, fertilisation, and the double-furrow plough resulted in smaller farms becoming more feasible. Nevertheless, significant capital was required to ensure the viability of such units. McAloon contends that from approximately 1877-1890, legislators generally encouraged settlement on farms of up to 320 acres, which required first class land and capital. Further, evidence from the New Zealand and Australian Land Company demonstrated that the average size of farms during the 1880s was between 100 and 250 acres. Consequently, McAloon deduces that 18 acres granted to 'half-caste' couples was 'simply laughable, especially when no additional capital was provided'.[46] Moreover, McAloon quotes Alexander Mackay, Commissioner for Native Reserves, demonstrating the Crown's cognisance of the issue in 1881:

> The small quantity of land also held per individual viz .. fourteen acres, and in some cases the maximum quantity is less – together precludes the possibility of the Natives raising themselves above the position of peasants. A European farmer finds even a hundred acres too small to be payable, and is frequently compelled by circumstances to have recourse to the money-lender, and probably in the end loses his farm through inability to meet his engagements. This is by no means an isolated case, and demonstrates forcibly that small holdings in the present state of New Zealand are not conducive to prosperity, even when managed to the best advantage; which is not the case with land occupied by the Natives.[47]

[44] James P McAloon, 'Murihiku Block' (1987) (Wai 27, doc E1), pp [93]-[97]
[45] McAloon, 'Murihiku Block' (Wai 27, doc E1) pp [94]-[95]; see also supporting papers to evidence of James P. McAloon re Murihiku Block (Wai 27, doc E2) p [441]-[447]
[46] McAloon, 'Murihiku Block' (Wai 27, doc E1) pp [93]-[96]
[47] McAloon, 'Murihiku Block' (Wai 27, doc E1) pp 60-62

McAloon notes that by 1891, 102 Ngāi Tahu 'half-castes' had been promised land, amounting to 522 acres in unknown localities under the Half Caste Grants Acts, but did not receive any land.[48] McAloon provides extensive supporting documents, including several reports from the appendices to the Journals of the House of Representatives relating to 'Middle Island Native' and 'Half-caste' claims.[49] In one document, titled 'Middle Island Half-Caste Claims: (Return of): Those Settled and Those Still Unprovided for', tabled before the House of Representatives in 1881, there is reference to the Geary Whānau claimants' tūpuna. The three Gearys are recorded as being entitled to 10 acres of land each under the 1877 Act, but not having received a grant of land. Significantly, the claimants' tūpuna are also recorded as: 'Belong[ing] to North Island'.[50]

OTAGO.

1877	Bates, William ..	10		1877	Karatu, Pepe ..	10	
"	" James ..	10		"	Moss, John	10	
"	" Mary Ann ..	8	Mrs. John Lee.	"	" Elizabeth ..	8	Mrs. W. Joss.
"	Davis, Mary Ann ..	8	Mrs. Kumupohatu.	"	" Polly.. ..	8	Mrs. J. Davis.
"	" Joseph ..	10		"	Pratt, David ..	10	
"	Emanuel, Betsy ..	8	Mrs. McLeod.	"	Parker, John ..	10	
"	Friday, Betsy ..	8	Mrs. T. Grey.	"	Robertson, George ..	10	
"	Geary, John ..	10		"	Rahui, Tera Tureti ..	10	
"	" William ..	10	Belong to North Island.	"	Stone, Sarah ..	8	Mrs. Ihaia Potiki.
"	" Thomas ..	10		"	Spencer, William ..	10	
"	Howell, Sarah Ann ..	8		"	Whitelock, Caroline ..	8	Dead. Mrs. Rita Taiwhenua.
"	Hannah	8	Dead.	"	Wixon, Margaret ..	8	
"	Joyce, William ..	10		"	" Rose ..	8	
"	Koroko, John ..	10	Dead.	"	" Andrew ..	10	

In another supporting document provided by McAloon, John Geary, William Geary and Thomas Geary are recorded as being born in Otago, and residing at Taieri in 1853.[51] In other words, according to this piece of Crown documentation, the claimants' tūpuna were living outside of the Murihiku block (located in modern-day Southland) at the time of its purchase in 1853.[52]

'History of Kemp Block Reserves', (1988)

David Alexander's report, titled 'History of the Kemp Block Reserves', provides some commentary on the general provisions and operation of the Middle Island Half Caste Crown

[48] McAloon, 'Murihiku Block' (Wai 27, doc E1) pp 60-62
[49] Supporting papers to evidence of James P. McAloon re Murihiku Block (Wai 27, doc E2)
[50] Supporting papers to evidence of James P. McAloon re Murihiku Block (Wai 27, doc E2), p [489]
[51] This document is titled 'Enclosure 2 in No.15: Return of Half-Castes residing at Places outside the Ngaitahu and Murihiku Blocks at the date of those Purchases and subsequently, for whom Provision should be made'.
[52] Supporting papers to evidence of James P McAloon re Murihiku Block (Wai 27, doc E2), p [445]

Grants Act 1877, and its amendments of 1883, 1885, and 1888. According to Alexander, the grants provided by the 1877 Act were, in some cases, inaccurate or incomplete. Consequently, the Government attempted to rectify inconsistencies by introducing the Middle Island Half-caste Grants Act 1883. In conjunction, the Government quickly introduced the Special Powers and Contracts Act 1884, which enabled the Crown to find land to meet the needs of the grants. That Act specified that the Governor may, by notice in the Gazette, declare land to be subject to the provisions of the Middle Island Half-Caste Grants Act 1883.[53] Alexander notes that the Middle Island Half Caste Crown Grants Act 1883 provided grants of 590 acres. However, the sections listed in the Special Powers and Contracts Act 1884 listed approximately 354 acres. There was, therefore, an expectation that other land would need to be listed. Alexander also observes the 1885 Act removed the requirement for the Government to issue gazette notices before land could be allocated.[54]

Alexander comments that by 1888, there was a number of 'half-caste' grantees not provided for and provides an example of such an occurrence. He notes that Schedule C of the Middle Island Half-Caste Grants Act 1888 consisted of people who were to be allocated land in the Waimate district. Two rural sections, north-east of Glenavy, RS34375 and RS34376, had been withdrawn from sale to satisfy half-caste claims. The report comments:

> There must have been some hold-up in the allocation process as the sections were leased for grazing in 1892. The major part of RS34375 was partitioned in a survey dated 1900, but seems never to have been allocated because in 1926 the whole 313 acres of RS34375 was offered for sale by public auction. The 232 acres of RS34376 has never been partitioned.[55]

However, Alexander concedes that due to a lack of information, he is unsure about the accuracy of his findings with respect of RS34376 and RS34375.[56]

[53] David Alexander, 'History of Kemp Block Reserves', (Wai 27, doc O5), p 142
[54] Alexander, 'History of Kemp Block Reserves', (Wai 27, doc O5), p 142
[55] Alexander, 'History of Kemp Block Reserves', (Wai 27, doc O5), pp 146-147
[56] Alexander, 'History of Kemp Block Reserves', (Wai 27, doc O5), p 147

6. Overall summary and potential areas for further clarification

Prior to the signing of the Treaty of Waitangi in 1840, there was considersble intermarriage between Ngāi Tahu women and European sealers and whalers throughout the South Island. While children of mixed heritage were considered Ngāi Tahu, they were not explicitly provided for in the reserves resulting from large Crown purchases, such as the Murihiku purchase of 1853.[57]

The Crown's approach to 'half-castes' evolved in 1864, when the deed of purchase for Rakiura (Stewart Island) reserved a portion of land at 'the Neck' for mixed-heritage Ngāi Tahu already residing there. However, actually giving effect to the terms of the Rakiura purchase proved a lengthy process. As a result, several petitions concerning the state of landlessness experienced by 'half-castes' were presented to parliament.[58] A report by the Public Petitions Committee of the Legislative Council found the Crown was obliged to set aside land within purchase blocks 'for half-caste families resident thereon at the time of cession'.[59]

On 5 September 1871, the Native Minister, Alexander Mackay, reported to his under-secretary that of the 187 'half-caste' Ngāi Tahu, 91 had been born on Rakiura. A further 93 had been born at various places on the mainland. In other words, the land reserved at 'the Neck' was insuffcient for all 'half-castes' entitled to grants. The Stewart Island Grants Act 1873 empowered the governor to grant additional land on Rakiura or the neighbouring mainland to Ngāi Tahu of mixed ancestry. Such grants, however, were not to exceed ten acres for male and eight acres for female grantees.[60]

Despite the introduction of the Stewart Island Grants Act 1873, sustained pressure from Ngāi Tahu leaders and others continued, often in the form of petitions. Ultimately, the Middle Island Half-Caste Crown Grants Act 1877 was passed. This is the statute most pertinent to the Geary Whānau claim. The Act attempted to provide South Island 'half-castes' with an economic base, while also adhering to promises made under Rakiura purchase. Mackay also commented that the Middle Island Half-Caste Crown Grants Act 1877 was to provide for 'half-

[57] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, (Wellington, GP Publications 1991), p 640-641
[58] Wanhalla, *In/visible Sight,* pp 103-104
[59] Wanhalla, *In/visible Sight,* pp 103-104
[60] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, (Wellington, GP Publications 1991), p 640-641

castes' who were not born on Stewart Island, but were equally entitled to land because of their mixed descent heritage.[61]

As noted in section 4, the Geary claimants' tūpuna were listed under schedule B the Middle Island Half-Caste Crown Grants Act 1877 as 'Geary, John', 'Geary, William' and 'Geary, Thomas'. Each were identified as being entitled to 10 acres. They were not referenced in any subsequent Acts or schedules.[62]

According to the research consulted for this claim assessment, the primary grievance raised by grantees quality and size of their grants. This allegation was shared by the Geary Whānau claimants. The Waitangi Tribunal's *Ngāi Tahu Report* found the allocation of ten acres for male 'half-castes' and eight acres for female 'half-castes', as provided by the 1877 Act, was insufficient to meet Māori needs, thereby, breaching 'the Crown's Treaty obligation to ensure that adequate provision was made for these people'.[63]

The other allegation made by the Geary Whānau claimants was that their tūpuna did not actually receive the grants prescribed by the 1877 Act. It is possible that this omission may have been because, as recorded, Crown officials believed the claimants' tūpuna resided outside of the Murihiku Block at the time of purchase, and that they 'Belong[ed] to North Island'.[64] McAloon also notes that by 1891, over 100 Ngāi Tahu 'half-castes' had been granted approximately 522 acres in unknown localities under the Half Caste Grants Acts, but did not receive any land.[65] Evidence provided by Alexander also demonstrates that land withdrawn from sale to satisfy half-caste claims was not actually allocated for this purpose. Moreover, most amendments to the Acts simply addressed errors made in preceding legislation, demonstrating the administrative issues the Crown encountered.[66]

Other grievances raised by grantees concerning the 1877 Act and its amendments, was that land provided was often outside of the grantees customary rohe, and that Crown agents could

[61] Wanhalla, *In/visible Sight,* pp 103-104
[62] The Middle Island Half-caste Crown Grants Act 1877 is appended to this document
[63] Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, (Wellington, GP Publications 1991), p 640-641; see also McAloon, 'Murihiku Block' (Wai 27, doc E1) pp 60-62
[64] Supporting papers to evidence of James P McAloon re Murihiku Block (Wai 27, doc E2), pp [441]-[447], [489]
[65] McAloon, 'Murihiku Block' (Wai 27, doc E1) pp 60-62
[66] Alexander, 'History of Kemp Block Reserves', (Wai 27, doc O5), p 147; see also Wanhalla, *In/visible Sight,* pp 103-104

not actually contact the grantees themselves to provide titles. These grievances were not, however, raised in the Geary Whānau statement of claim.

Most significantly, the Ngāi Tahu report found the Middle Island Half-Caste Crown Grants Act 1877, the legislation most pertinent to the Geary Whānau claim, breached the Treaty of Waitangi and its principles. The issue that appears to require closer consideration by the panel is where the claimants' tūpuna resided at the time the grants were allocated. This might establish whether the claimants' tūpuna were entitled to receive any grants, given evidence they may have resided outside of the Murihiku and Rakiura blocks at the time of purchase.

7. Bibliography

Alexander, David, 'History of Kemp Block Reserves', (Wai 27, doc O5)

McAloon, James, 'Murihiku Block' (1987) (Wai 27, doc E1)

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Wanhalla, Angela, 'Transgressing Boundaries: a History of the mixed descent families of Maitapapa, Taieri, 1830-1940', (PhD Thesis, University of Canterbury) from: https://ir.canterbury.ac.nz/handle/10092/946 (retrieved 04/02/2022)

Waitangi Tribunal, *The Ngai Tahu Report,* Volume II, (Wellington, GP Publications 1991)

Relevant Legislation

The Middle Island Half-caste Crown Grants Act 1877

Middle Island Half-caste Crown Grants Act 1883

The Middle Island Half-caste Crown Grants Act 1885

The Middle Island Half-caste Crown Grants Act 1888