OFFICIAL

IN THE WAITANGI TRIBUNAL

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Whanganui Inquiry – **WAI 903**

AND

IN THE MATTER of a claim brought by Heeni Jayne Ranginui and Jenny Ranginui-Tamakehu for and on behalf of Te Wai Nui a Rua and the descendants of Heeni Matene and Pokairangi Ranginui.

WAI 2157

AMENDED STATEMENT OF CLAIM
DATED 18 AUGUST 2010

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MAY IT PLEASE THE TRIBUNAL

The claimants

1. This amended statement of claim is filed on behalf of the following claimants:

    1.1 Jenny Ranginui-Tamakehu and Heeni Jayne Ranginui

2. The claimants are grandchildren of Heeni Matene alias Heeni Tunganekore; Heeni Manson ("Heeni") and Pokairangi Ranginui alias Pokairangi Tamaikuku; Po Ranginui ("Pokairangi") of Te Wai Nui a Rua within whose traditional rohe the claim area - Matahiwi and surrounds- is located.

3. The claim area does not purport to constitute the tribal boundaries of the claimant group or the hapu to which they belong, but is a boundary solely for the purposes of the Whanganui Inquiry.

The claim

4. The claimants say they have been, are, or are likely to be prejudicially affected by the ordinances, Acts, regulations, proclamations, notices and other statutory instruments, and the policies, practices, actions or omissions of the Crown as further set out in this statement of claim.

5. The claimants further claim that all of the Acts, regulations, orders, policies, practices and action taken, omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of the Treaty of Waitangi.

Generic pleadings adopted

6. The claimants adopt the following submissions filed in this Inquiry:

    6.1 Generic closing submissions on vested lands - #3.3.053.

First Cause of Action.

7.1 **The Crown failed to protect the interests of the owners of the Ohotu block- including the tupuna of the claimants- by failing to ensure inalienable reserves were created for the owners.**

Particulars:

7.1.2 The owners of the Ohotu Block signed a contract with the Crown vesting their lands. The terms of the deed vesting included:

Provision to lay off up to 500 acres as Native Townships; and 'To reserve and render inalienable such further portions of the land which may be required for the occupation and support thereof, or for eel pas, eel weirs, fishing grounds, or as reserves for the protection of Native birds, or the conservation of timber and fuel for the future use of the Maori owners'[1].

There was no authority given to sell the land, and most owners struck out the provision in the vesting deed allowing perpetual leasing.[2]

7.1.3 The Native Minister promised the owners of Ohotu block that 5,000 acres would be reserved for their use and occupation.[3]

7.1.4 The Aotea Maori Land Council originally proposed setting aside 4750 acres as papakainga in 1905;[4] however the amount set aside was

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[1] #A101-para 32

[2] ditto para 33

[3] #A101- para 174

[4] #A101 table 7 page 91-92

substantially less- around 2903 acres was recorded as being rented to some of the Maori owners of the block under 'occupation licenses' as at 1920[5]

7.1.5 In 1912 Te Whatahoro spoke for a deputation that appeared before the Native Minister regarding vested lands. Whatahoro asked that papakainga "be made wholly inalienable". The request was refused.[6]

7.1.6 Tupuna of the Claimants several times petitioned the government to re-vest the land they were living on- Reneti Te Kaponga and Ngaone Reneti wrote to Sir Maui Pomare, the MP for Western Maori on 4th January 1921:

'We holders of occupation licenses for Papakainga herein, apply to you and to the Native Minister to recommend to the Board of the Aotea to make our holdings permanent as provided for in section 96 and 101 of the Amending Act of 1913... this portion which we occupy, we occupied long before this block passed under control of the Board'[7]

This request was also rejected.

7.1.7 Horan says similar requests were made by other owners over the years, but she found no evidence that any Papakainga lands were made inalienable.[8]

Second Cause of Action

7.2 The Crown failed to protect the interests of the Maori owners by ensuring they were offered equitable rental terms for the land they occupied.

Particulars

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[5] #A101- table 8 page 96

[6] #A101(v) para 35

[7] Horan #A101 (c) – p 118 - The reply is not in Horan's document bank.

[8] #A101(v)- para 35

7.2.1 The rentals charged for occupation licences in the Pukehinau Reserve at Matahiwi were higher than were charged in leases of adjacent sections to settlers:

7.3.2 In 1911 the Aotea Maori Land Board created a papakainga reserve on section 3 Block VII Tauakira Survey District, (Pukehinau Reserve) and granted 18 occupation licenses to Maori owners: [9] Maehe Ranginui (Father of Pokairangi Ranginui) was awarded an occupation license for lots 5 (238 acres 3 roods) and 5A (103 acres 1 rood 32 perches) in this Reserve.[10]

7.2.3 The rentals for the occupation licenses in the Pukehinau Reserve of 1500 acres include:[11]

Lot 1 Parete Wareta and others 111a 2r 24p for £4/4/- p.a -a rate of 9d per acre per annum (p.a)

Lot 1A Pita Te Koru and others 79a 2r 11p for £3 p.a – a rate of 9d per acre p.a

Lot 2 Ngaone Reneti and others 135a 1r 13 r for £5/2/- p.a – a rate of 9d per acre p.a

Lot 5 Maehe Ranginui and others 238a 3r for £ 9 p.a - a rate of 9d per acre p.a

Lot 5A Maehe Ranginui and others 103a 1r 32p for £3/18/- p.a- a rate of 9d per acre

Lot 8 Rihari Pakatua and others 79a 2r 11p for £3 p.a – a rate of 9d per acre p.a

Lot 10 Hami Te Kee and others 238a 3r for £9 pa – a rate of 9d per acre p.a

7.2.4 Horan says low rents were charged to the Maori owners for the licenses to occupy[12] -however the rate charged by the Board to Native owners at Pukehinau was higher than the rental charged to settlers on the adjoining lots:

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[9] Horan S.D #A101(c) p 166- list of representative owners for each licence and rental.

[10] ditto

[11] ditto

[12] #101(g)- para 33.

Section 1 of Tauakira Blk VII.1644 acres was leased to Annie Bartrum for £41/ 2/- p.a a rate of 6d per acre p.a

Section 2 of Tauakira Blk VII 1452 acres was leased to her husband George Bartrum for £45/ 6/- p.a a rate of 7 ½d per acre p.a;

Section 4 of Tauakira Blk VII 1120 acres was leased to A.M Campbell £28 p.a – a rate of for 6d per acre p.a.[13]

7.2.5 Pukehinau Reserve on Section 3 BLK VII Tauakira was surveyed in 1931 and a new plan issued- DP 10245. Sixteen new leases were issued for the Pukehinau Reserve- however with the new survey the boundaries of the properties were redrawn. The new leases were for different acreages from the occupation licenses[14]

7.2.6 Pokairangi Ranginui was issued with a lease for lot 22 DP 10245- of 180a 2r 26p.[15] The lease which was issued in 1929 was for a term of 21 years with no right of renewal. The rental rate was 1/- per acre p.a.

7.2.7 Heeni Matene was issued a lease for lots 16, 17 & 18 DP 10245 –of 15a 1r 10.1 p for 15/4d per acre p.a – a rate of 1/- per acre. p.a

7.2.8 The standard rate of increase of rental across the Reserve indicates there was no valuation of the individual occupation license – suggesting little difference in the improvements made to each of the farms.

Third Cause of Action

7.3 **The Crown failed to protect the interests of the owners of the Ohotu Block in applying different terms to the 'occupation licences" for the Maori owners, to those included in leases to settlers.**

Particulars

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[13] Horan SD #A101(c) p 166.

[14] #A51(a)- p133-151 List of leaseholders and lease details

[15] #A51 (a) -p 147

7.3.1 The Board created a number of Papakainga reserves in the Ohotu block between 1911 and 1914; and issued 'occupation licences" to Maori owners to use that land.

7.3.2 Unlike the leases issued to settlers the 'occupation licences" contained no provision for compensation for improvements.

7.3.3 The 'occupation licences' did not have the legal standing of the settler leases, and despite having a right of renewal the Board decided to discontinue the licences.[16]

7.3.4 Rihari Pakatua- a licensee in the Pukehinau Reserve wrote to Pomare in September 1928 requesting that compensation for improvements was included in the contracts between the Board and the Maori owners. Pomare passed the request on to the Native Department- who sought clarification from the Board. The registrars response confirmed the occupation licenses did not provide for compensation for improvements, and that the Board proposed to cancel the licences and issue leases to the licence holders:[17] The new lease- would allow compensation for improvements.-however the native leases still used a different printed forms to that used for the settler leases.[18]

Prejudice

7.3.5 The owners would have been reluctant to develop the land and establish buildings without provision they were compensated for improvements.

7.3.6 With no compensation allowed for improvements, and without secure tenure, the Native owners would have found it impossible to raise finance to develop the land.

7.3.7 The owners were also prejudiced in the way rentals were set in the leases for the next 21 years. Whereas the settlers' farms were given a depressed land value because of the method of valuing the improvements, the farmland

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[16] #A101(v) para 36

[17] #A101(d) p 17

[18] ditto -p24

covered by occupation licenses was without substantial improvements, and the rental rate would have been determined on actual land values.

Particulars:

(a) The rentals in the Pukehinau Reserve went from 9d an acre p.a for Maehe Ranginui under the occupation license issued in 1911, to 1/- an acre p.a for Pokairangi Ranginui under the lease issued in 1929. In comparison the rentals on leases to settlers dropped over 50% across the district in lease renewals which began in 1927.[19]

Fourth Cause of Action:

7.4 The Board established a township reserve at Matahiwi. A number of sections in the township were awarded to the Maori owners.[20] Other sections in the township were leased to settlers[21]. The Crown failed to protect the interests of the owners by not ensuring the sections leased to Maori owners were made inalienable:

Particulars:

7.4.1 Ramari Moetu was issued leases for 2 sections in Matahiwi township-section four of 6a 0r 20p and section seven of 6a 3r 20p. Wi Katene Kerehoma was awarded a lease for section six of 10a 0r 20p in the Township block.[22]

7.4 .2 These three sections were transferred to Heeni Matene;[23] and new leases issued to her for 21 years from the 1st July 1935.[24]

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[19] #A51-para 3.54

[20] #A140 - Southern cluster map book. DP 5595 – plate 43

[21] ditto- plate 44

[22] Horan SD #A101(c) p 168 list of lessees

[23] Recorded on Certificate of Title WN299/186

[24] #A51 (a) – p 139

7.4.3 The leases were reissued to Heeni for 21 years from the 1st July 1956. There was a right of renewal.

7.4.5 Upon transfer of the vested lands to the Maori Trustee a new title was issued for Matahiwi Township-C2/676 issued 2 June 1964. Heeni Matene's leases are recorded on the new title

7.4.6 A new title was issued for amalgamated vested lands when they were transferred to Atihau-Whanganui Incorporation. ("Atihau"). Title WN7D/391- was issued 26 January 1970. Previous CT no.C2/676 is noted as being included in the new Atihau title.

7.4.7 The two leases to Heeni are not recorded on the Atihau title WN7D/391; although a new title was issued for the area her leases cover they are not recorded on that title (WN8A/68)

7.4.8 In 1999 Atihau granted a lease to Paul Hatata and Shayne Ranginui over all the land which Heeni and Pokairangi had previously leased.(CIR 55450) This happened without consultation with the administrators of Heeni and Pokairangi's estate, and without consultation with the descendants of Heeni and Pokairangi.

Fifth Cause of Action

7.5 The Crown failed to protect the interests of the Maori owners by allowing the Board to charge them high rentals for living on their own land in the Township Reserve:

Particulars

7.5.1 The rates charged to Maori for leasing land in the Matahiwi township Reserve were not peppercorn rentals. **Ramari Moetu** leased 13 acres at £4.1.3d pa – a rate 6/3d per acre p.a; **Wi Katene Kerehoma** leased 10a 0r 20p for £3/16/- p.a – a rate of 7/6d per acre p.a.; **Te Ori Rauna** leased 10 acres for £3 p.a – a rate of 6/- per acre p.a. The leases ran from the 1st July 1914 for 21 years.[25]

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[25] #A101(c) – p 168

7.5.2 By comparison the rentals charged to Settlers leasing township lots varied depending on the sites. The riverbank sections in block 1 fetched high rentals; while the sections across the road on the hillside were substantially less.[26]

The Riverbank sections- lots 2,3,4 of Block 1 were leased to Todd & Wilson- for 16/6d per acre p.a; while the hillside lots 1 & 2 were leased to Alice Campbell for 3/ 4¼d per acre p.a[27]

Sixth Cause of Action:

7.6 **Matahiwi Marae:** The Crown failed to protect the interests of the owners of Ohotu 1C1 in failing to issue a new title to the owners of Ohotu 1C1 when the land was revested in the owners in 1936.

Particulars

7.6.1 Ohotu 1C was partitioned in 1919- Blocks 5 and 8 of DP 5595 were given the designation Ohotu 1C1. The land had 36 owners- including Heeni Matene and Pokairangi Ranginui. The plan which accompanies the Court order shows part of the land as a 'commonage reserve' and part as a 'papakainga reserve'

7.6.2 On February 13th 1936 the Native Land Court made an order under section 353 Native Land Act 1931 revesting Ohotu 1C1 in the 36 Maori owners;

7.6.3 Section 353 (1) Native Land Act 1931 states:

..upon the making of such order the land therein included shall cease to be vested in the Board and shall become vested in the person whose name is set out in such order.

Section 353 (3) Native Land Act 1931 says:

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[26] #A140- plate 44

[27] ditto

The District Land Registrar is authorized to register such order against the relative title, without production of the outstanding certificate of title, and may cancel the register of such land as to the whole or part, as the case may require, and issue a new certificate of title for the estate and to the persons named in the order of the court, subject to the existing valid leases, licenses, mortgages or charges.

7.6.4 The District Land Registrar failed to register the order against the relative title –CT no 299/186; and the Lands and Deeds Registry failed to issue a new Certificate of Title for the revested block to the persons named in the order.

7.6.5 As a consequence Ohotu 1C1 remained under the titular ownership of the Aotea Maori Land Board.

7.6.6 The Court had made 2 orders on February 13th 1936- the other order established the block as a Native Reservation under section 298 Native Land Act 1931. This order was registered on the relative Certificate of Title.

7.6.7 The order creating the land a Maori Reservation was gazetted on 17th December 1936. The gazette notice states the reservation encompasses the land revested in the Maori owners under section 353 Native Land Act 1931.[28]

7.6.8 A new Certificate of Title for the land was issued in 1964. The Marae reservation- Ohotu 1C1 is now shown as being owned in fee simple by the Maori Trustee[29].

7.6.9 Ohotu 1C1 was then included in the title for Atihau Whanganui land in 1970 and is recorded as being owned in fee simple by the Proprietors of Atihau -Whanganui.[30]

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[28] Gazette no. 91 17th December 1936 –p 2455

[29] WNC2/676

[30] WN7D/391

7.6.10 In the reorganization of the titles to Maori land- a joint project by Land Information N.Z and the Maori Land Court -which has taken place over the last few years- Ohotu 1C1, the Matahiwi Marae Reserve was finally given its own title- CT no 510525.

7.6.11 This title was issued 19 January 2010, showing the original proprietors as Ani Heri and 35 others; these were the listed owners at the creation of the block in 1919.

The legal description of the land is:

Part Ohotu No. 1C No. 1 Block and part Ohotu 1C No. 1 Block and part Ohotu 1C No. 1 Block.

7.6.12 This title CT no. 510525 was cancelled the same day it was issued and a new title created- CT no. 510526. The legal description of the land is the same; however the marae trustees are now recorded as the Proprietors.

7.6.13 An interest recorded on the current Certificate of Title is a mortgage to Bank of New Zealand. This is not a mortgage taken by the Marae trustees, but is the Atihau mortgage - which is said to affect the part of the land formerly in WN7D/391.

7.6.14 Land Information New Zealand have failed to recognise that the whole block was revested in Maori owners in 1936; and no part of Ohotu 1C1 should ever have been included in the Atihau title.

7.6.15 As a consequence the Rangatiratanga of the owners of Ohotu 1C1 has been gravely affected:

(a) They have not been recognised as owners of their land until a Certificate of Title was issued in January 2010- some seventy four years after the land was re-vested in them.

(b) The Marae lands are now subject to the mega-million Atihau-Whanganui mortgage- placing the Marae at some risk, and limiting the owners / trustees rights to deal with their land.

7.7 The Crown failed to protect the interests of the owners of Ohotu 1C1 by taking 1.5 acres from the block for a Native School:

Particulars:

7.7.1 In 1936 Ohotu 1 C1 was declared *a 'Native Reservation' for the common use of the owners thereof as a meeting place for the owners or for their common use in any other way*[31]

7.7.2 The land was designated a Native Reservation under section 298 of the Native Land Act 1931.

7.7.3 Section 298 (7) of that Act states that:

land included in a 'Native Reservation' shall be inalienable, whether to the Crown or to any other person..

7.7.4 Despite the land being inalienable the Crown took 1½ acres under the Public Works Act 1928 for a school.[32]

8 **Eighth Cause of Action- The Crown imposed a land tax which had an inequitable impact on the Maori owners of the vested lands**:

Particulars

8.1 While it is within the legitimate prerogative of the government to levy taxes; there is an obligation to ensure when Maori property was taxed the provisions of the tax applied equitably.

8.2 A land tax was instituted by the government in the 19C.The rate of land tax was set each year by the government. The provisions of the land tax which applied in 1908 to Maori land were:

(a) Rate of land tax was 1 penny per pound on the unimproved value of the land; plus an extra amount on properties worth over £5,000

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[31] NZ Gazette 17 December 1936- p 2455

[32] Proclamation 3037 dated 18th December 1940.

according to graduated scale set out in the 1908 Land and Income Assessment Act.[33].

(b) There was no land tax on Maori land occupied by the owners;

(c) For Maori land occupied by other persons[34]

(i) Such land shall be liable to half ordinary land tax- but not graduated land tax

(ii) If Maori land was held by a trustee then tax was payable by the trustee;

(iii) In all other cases tax shall be paid by occupier.

8.3 This last provision was inequitable in making the lessees liable for the tax when the land was privately leased, but the owners liable when land was vested and the leasing was done by trustees.

8.4 The statutory conditions for payment of land tax contained exemptions for individuals. These exemptions and deductions from land tax payable were standard over the period that the tax was imposed- with the allowance levels increasing over the years-i.e in 1923:

(a) There were standard deductions in the tax payable for individuals whose freehold land was worth less than £2,500 or mortgaged land £8,000.[35]

(b) Widows with children suffering hardship were allowed a deduction up to £4,000.[36]

(c) Low income earners who were unable to earn a full income by reason of age, ill health or other disability, were allowed a deduction up to £2,500.[37]

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[33] Land and Income Tax Act 1908 –sec 2

[34] Ditto-sec 46

[35] Land and Income Tax Act 1923 sec 49 (1) (b); & 49(2)(b)

[36] ditto sec 50(2)

8.5 Because tax on the vested lands was levied on a block basis, rather than on an individual's share of the land, the exemptions did not apply to Maori owners of vested lands.

8.6 The Crown continued to increase the rate of the tax. In 1915 all land taxes (except over business premises) were subject to a 50% 'super land-tax' surcharge- as a wartime measure[38].

8.7 In 1917 the exemption which applied to Maori land of the graduated land tax on properties over £5,000 was discontinued.[39] While this change would affect few individuals Maori it greatly increased the land tax burden of the vested lands- especially the larger blocks such as Ohotu 1.

8.8 By 1922 Land tax was removing over half of the gross income from leases on the vested Ohotu blocks. In that year the Board paid £2044.5.2d for Land tax on the Ohotu blocks out of the total revenue of £3836.19.11d.[40]

8.9 In 1922 the rate of land tax began to drop with the ending of the wartime 'super land tax'[41], and a law change which restricted land tax on Maori land to 25% of the derived revenue.[42]

8.10 Although reduced from the very high levels of 1915-1922 land tax continued as a substantial burden on the vested lands. In 1929 the government introduced a special land tax which applied only to 'farm

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[37] ditto sec 50(1)

[38] Finance Act 1915-

[39] Finance Act 1917 – sec 26

[40] Horan SD #A101 (c) p 60

[41] Reduced to 10% in 1922- final year of imposition.

[42] Land and Income Tax Amendment Act 1922- sec 4

lands'.[43] Although this special land tax only lasted one year it was an added cost for the owners.

8.11 Judge Browne-President of the Aotea Land Board said in correspondence that as of March 31 1936 land tax had cost the owners £12,775. 12. 3d, with the next highest cost being £10,443.13. 5d for roading. [44]

8.12 The response of the Crown, to the situation which developed over the war years of very high land taxes affecting the Ohotu vested lands, was slow and inadequate, with action not being taken until 1922 by which time land tax was taking over half the gross income derived from the land.

8.13 In the following years despite the obvious ongoing inequitable cost of land taxes to Maori owners of vested lands, the Crown failed to take action to ameliorate the harm. Only in 1954 was the rate of land tax payable reduced to an equitable level- a maximum of 10% of derived income.[45] Land Tax was finally abolished as of April 1st 1992.[46]

9 Ninth Cause of Action-The Crown imposed an inequitable valuation method to determine compensation for improvements and to determine rental figures in the renewed leases.

Particulars

9.1 The rentals received by Maori owners of the vested lands were to drop by over 50% when the leases were renewed.[47]

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[43] Land and Income Tax (Annual) Act 1929 -

[44] #A51- para 3.109

[45] Land and Income Tax Act 1954 (75)((2)

[46] Land Tax Abolition Act 1990.

[47] #A51-para 3.54

9.2 Land taxes did not drop by a corresponding amount, because the Crown prescribed a different method to determine land value for the vested lands.

9.3 The settler leases incorporated the residue method of valuation- from the Government Valuation of Land Act of 1896.

'The unimproved value of the land, being the difference between the total capital value of the whole property, and the total capital value of all buildings and other improvements as aforesaid.[48]

Judge Browne –long-time President of the Aotea Maori Land Board described the application of this valuation method to the lease renewals on the vested lands 'as akin to confiscation'.[49]

9.4 The method of assessing the unimproved value of land described in the 1896 Act lasted only a short time- and was replaced in the Valuation of Land Act 1908 – which defined the unimproved value of land for determining land tax -and rates:

"Unimproved value" *of any piece of land means the sum which the owners estate or interest therein if unencumbered by any mortgage or other charge thereon, and if no improvements existed on that particular piece of land, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a reasonable seller might be expected to require.*[50]

9.5 This definition in the 1908 Act has continued to be used basically unchanged in the subsequent Valuation of Land Acts through the 20C[51] to the present legislation- the Rating Valuation Act 1998.

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[48] Government Valuation of land Act 1896 sec (5)(5)

[49] #A51 para 3.110

[50] Valuation of Land Act 1908 sec 2.

[51] Valuation of Land Act 1925, Valuation of Land Act 1951.

> *`**Land value**, in relation to any land, and subject to sections 20 and 21, means the sum that the owner's estate or interest in the land, if unencumbered by any mortgage or other charge, might be expected to realise at the time of valuation if—*
> *(a) Offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose; and*
> *(b) No improvements had been made on the land:*[52]

9.6 The residue method of valuation was only retained for selected National schemes where Maori were land owners and Europeans the lessees.

9.7 This method of valuation was also used in the Reserved Lands scheme in Taranaki, and with the Ngai Tahu Reserves in the South Island, where the leases were perpetual, with renewals every 21 years determined by the residue valuation method.

9.8 The Whanganui vested lands leases were designed by the Crown to be 'virtually perpetual' because of the strong opposition from the owners to that form of lease.

Senior Crown official Sheridan saying of the Whanganui vested lands leases:

"In fact I consider it a perpetual lease as it is beyond a doubt that Natives will not at end of 42 years be able to pay over £240,000 which would be value of improvements at that period."[53]

9.9 In 2004 -100 years after Sheridan said this more than half of the land that had been vested in the Aotea Maori Land Council still remained under the leasehold regime (55,000 acres) - the cost for the land to be resumed was estimated cost of $21 million.[54]

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[52] Rating Valuations Act 1998- sec 2.

[53] #A51-para1.367

[54] #A62 (b) - para 52- 53.

9.10 The claimants adopt the generic submissions on the vested lands. Mr Bennion when speaking to those submissions in week 16 said:

'We have got this residual approach where you take the capital value of the land, you minus the improvements which of course are huge and you are left with essentially nothing.[55]

9.11 The rental value in the renewed leases was set at 5% of 'essentially nothing' and some rentals in the Whanganui district fell by over 90%.

(a) The rental on Lara Andersons 3 leased properties at Ohakune fell::

(i) From £11.9.0d p.a in the first term to 5 shillings p.a - a drop of 98%;

(ii) From £19.8.2d to £2.18.0d p.a – a drop of 85%

(iii) From £33.8.10d to £3.4.0d p.a - drop of 90%.[56]

(b) The rental on Amy Aves leased properties in the Rarete Survey District also fell dramatically:

(i) from £51.6.0d p.a in the first term to £10.5.0d p.a – a drop of 80%;

(ii) from £45.6.0d to £6.0.0d p.a –a drop of 86%,

(iii) from £90.7.6d to £15.0.0d p.a - a drop of 83%.[57]

(c) An increased rental did apply in some cases -where there had been few improvements made to a property made and extrinsic circumstances such as an increasing demand for land, improved roading and public services, and inflation had increased the unimproved value of the land.

(d) Across the whole Aotea District the fall in derived revenue was around 54%.[58] The valuation system was broke, and the Crown did nothing to fix it.

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[55] Week 16 –day 3- session 2- #4.1.16- p 201

[56] #A51 (a)-p 133 - List of leased properties as at 1939.

[57] ditto

9.9 In the valuations and the rental determinations the Board acted in close concert with the Native Department. In the mid 1920s the upcoming lease renewals were the subject of much correspondence between Judge Browne and senior officials in the Native Department, with both parties endeavouring to achieve some fairness for the Maori owners- but being constrained by the lease terms and the legislation.[59]

9.10 For all intents and purposes the Aotea Maori Land Board functioned as- and was generally regarded as a Government Department. Supreme Court Justice Reed in a case between Aotea Maori Land Board and State Advances Corporation in 1927 decided in favour of the Board. When considering costs Justice Reed said:

As to costs, each party being a Government Department and being equally interested in the interpretation of the statute, there will be no order for costs.[60]

10 Tenth Cause of Action:

Despite having a treaty obligation to protect Maori interests the Crown enacted legislation which altered the terms of contracts already signed, and prejudicially affected the interests of the Maori owners.

Particulars

10.1 The 1909 Native Land Act removed existing protections over Maori lands, and allowed that vested lands could be sold by assembled meetings of owners.[61]

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[58] #A101 (f) - p 4 -Comparison of rentals in first and second terms across the Maori land districts containing vested lands.

[59] #A101 (d) 85- 98 Correspondence between Judge Browne, and G.A Shepherd and Undersecretary Jones of the Native Department May -Sept 1926.

[60] Aotea Maori Land Board v State Advances Superintendent [NZLR] 1928 1. 11

[61] 1909 Native Land Act- sec 346 (1) (g)

10.2 The Aotea Lessees Association was formed in 1910 and soon proved itself a highly successful political lobby group, which engaged at the highest level of government to advance the rights of the lessees over the Maori owners.

10.3 On October 18th 1911 The Native Affairs committee referred lessees petitions seeking the right to purchase the freehold of vested lands to the government for 'favourable consideration.'[62]

10.2 The lessees' petitions and a possible favourable response from the government caused such consternation among the owners of Ohotu that Maehe Ranginui and 118 others filed a counter petition which was referred to the government for mere 'consideration'.

10.3 As a result a number of legislative measures were introduced affecting the terms of the contracts between the owners representative and the lessees.

Particulars:

10.3.1 A number of changes were made in The Native Land Amendment act 1913. Individual Maori were enabled to sell their shares in the vested lands to the Crown.[63]

10.3.2 The Native Minister was later to speak of this change in the law: [64]

> *Sir Wm Herries said that the Native Legislation Act of 1913 was passed in order to give relief and to enable the Government to buy freehold from the Natives and then pass it over to the settlers for payment to be arranged. Unfortunately they had not been able to ascertain whether the Natives were willing to sell. If they were he saw no difficulty in the way of the Native Land Purchase Officers*

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[62] #A101 (c) p 315

[63] 1913 Native Land Amendment Act – sec 109(3)

[64] #A101 (d) –p 189 from record of a meeting between Aotea Lessees Association and senior Ministers on 6th August 1920.

commencing purchasing at once. Those present must understand, however that if they wish to purchase the freehold they must be prepared to put up the cash'

10.3.3 The 1909 Native Land act had allowed the lessees to mortgage the land without consent of the owners being required. However the freehold of the land was still protected, as a mortgagee could only appoint a Receiver to recover the charges through renting the land. The 1913 removed that protection of the freehold of the vested lands, allowing the mortgagee to sell the mortgaged land if the lessee defaulted.[65]

10.3.4 In the Supreme Court Justice Reed said: *'there can be no question that it was the intention of the Legislature to interfere to some extent, at all events with vested rights; the provisions of the statute are, in so many words, made applicable "in the case of any lease which has been granted by any Maori Land Board".*[66]

10.3.5 The rights of the lessees of the vested lands were hugely advanced by this provision, which broke new ground in Landlord / Tenant law- allowing a lessee to mortgage the freehold of the land without the knowledge of the owner.

10.3.6 The Crown also took upon itself at this time very broad powers in fixing the terms of the leases. This was stated to include the right to *make regulations prescribing the form of leases to be granted hereafter by any Maori Land Board..; and such regulations may provide for the mode of offering land for lease, for the fixing of an*

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[65] 1913 Native Land Amendment Act- sec 97.

[66] Aotea Maori Land Board v State Advances Superintendent NZLR [1928] 1. 6- Justice Reed.

upset rental, for compensation for improvements, for renewal, and otherwise howsoever..[67]

10.3.7 Further lobbying by the Association resulted in the government changing the law in 1920, again affecting contracts already signed, as regards compensation for improvements.[68]

The Taranaki Tribunal reported on a similar situation involving lease terms for the reserved lands in that District::

> The fact that the leases were imposed and unilaterally changed to accommodate the lessees has significance for the arguments that followed. It was often contended that because contracts are sacred covenants between parties they cannot be broken. There was nothing sacred about these contracts, however, at least as between the owners and the lessee, because they were not effected by the parties and the terms were not agreed between them. The lease terms were effected by statute.[69]

10.3.8 The government enacted legislation in the nineteen thirties, without consultation with the Whanganui owners of vested lands- which caused a further reduction in the income derived from the vested lands.

(i) The Native Purposes Act 1931 (section 115) - allowed lessees a reduction in rental:[70]

Herbert Duignan leased three sections- one in the Tauakira Survey District (S.D) and 2 in Karioi S.D. On renewal of the leases in 1927 the rental on the Karioi properties fell from £132.9.0d to £34.10.0d p.a- a drop of 74%; while the rental on the Tauakira S.D

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[67] 1913 Native Land Amendment Act – sec 98.

[68] #A101 (c)- p 143

[69] Taranaki Tribunal Report 1996 -para 9.3.4

[70] Horan S. D #A101(t) p 67

property increased from £50.5.0d to £64 p.a- an increase of 28%. Duignan applied to the Board under the rental relief provisions of this Act and the rent on the second property was reduced for 1 year from the 1st January 1932 from £64 to £32 p.a.[71]

(ii) The National Expenditure Reduction Act 1932 put in place a standard reduction of 20% on the rentals of all leases which had been renewed in the 5 years previous to 1st January 1930.[72]

Mary Marshall leased 267.75 acres in Tauakira S.D. The rental dropped from £29.14.6d to £4 p.a at lease renewal in 1929 and then another 20% under the provisions of this Act to £3.4.0d.[73]

(iii) The government enacted other legislation during the nineteen thirties which allowed lessees to apply to the Court for reductions in rentals beyond the standard 20% allowed under the National Expenditure Reduction Act - the criteria for that reduction focusing on hardship for the lessee.[74]

Robert Boyd leased 1391 acres in Tauakira SD. His rent went up from £69.10.0d p.a to £104.6.0d p.a on lease renewal in 1927, but dropped to £55 by 1939 -a drop of 47% under rental relief provisions.

James Ranger and George Sargent leased 878 acres in the Makotuku SD. The rent was set at £150.16.0d in 1925, and was reduced to £43.18.6d under rent relief- a drop of 71%.[75]

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[71] #A51(a)-p 137

[72] National Expenditure Reduction Act 1931 –sec 32

[73] #A51(a)- p 144

[74] #A101(t)

[75] #A51(a)- p 134 & 147

(iv) Of the 190 settler leases which were recorded as current in 1939; 122 had been granted rental relief- the majority a 20% reduction; and of the leases to Maori owners 11 of the 27 had been granted rental relief.[76]

11 Eleventh Cause of Action:

Despite an obligation to protect Maori interests the Crown engaged with representatives of the lessees to assist with purchasing the freehold of the vested lands.

Particulars

11.1 Departmental notes of the meeting between senior Ministers with the Aotea Lessees Association on 6th August 1920 record that the Prime Minister and the Native Minister had *'given a virtual promise that the lessees would, if possible, be enabled to purchase the freehold of their sections'.*[77]

11.2 The purchasing of the freehold of the vested land in the 1920s by the Native Land Purchase Dept. on behalf of the lessees foundered for one reason- that being the inability of the lessees to fund the purchase.[78]

11.3 The Crown engaged with the Board in the 1930s on behalf of the lessees to advance the possibility of purchasing the freehold, or changing the contractual terms and creating perpetual leases.

Twelfth Cause of Actions- Rates.

12 The Whanganui District Council ("Council") has not applied the proper statutory relief to rates levied on the Matahiwi Marae land; or on the lands owned by claimants' tupuna at Lismore.

Particulars.

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[76] From list of leases 1939- #A51 (a) - p 133- 151.

[77] Departmental memo to Native Minister 19 April 1921- Horan SD vol 3 p 100

[78] #A51 para 3.36

12.1 The Matahiwi marae lands were vested in trustees by order of the Maori Land Court dated 16th November 1950.[79]

12.2 Archival data from the Council records show that in 1956 the land was classified as non-rateable.

12.3 The Rating Act 1967 set out the rates obligations where Maori land was vested in trustees:[80]

> The trustee of any Maori freehold land shall, out of money, whether capital or income, derived from that land and held by him for the beneficial owner or owners of the land, pay all rates levied upon the land and lawfully recoverable, but he shall be liable for rates only to the extent of the money so derived held by him on behalf of the beneficial owner or owners.

12.4 Rating Acts which have amended and replaced the 1967 Rating Act contain similar provisions. The Current Local Government (Rating) 2002 Act states: that when Maori freehold land has been vested in trustees, then the trustees are the ratepayers[81], and at section 93:

> **93 L imitation on trustee liability**
> If trustees are liable to pay the rates on rateable Maori freehold land,—
> (a) the rates must be paid out of income derived from the land and received by the trustees for the beneficial owners of the land; and
> (b) the trustees are liable for rates only to the extent of the money derived from the land and received by the trustees on behalf of the beneficial owner or owners.

12.5 The Matahiwi Marae lands produce no income. Basic expenses are covered by koha and grants. Ms Tamakehu said this currently amounted to $5,000, which covers basic costs such as electricity, telephone and essential maintenance.[82]

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[79] Wang. MB 107/68-69.

[80] Rating Act 1967- sec. 151.

[81] Local Government (Rating) Act 2002- sec 92(4)(b)

[82] #N12(b) –para 3.1.1

12.6 The current level of koha has not been available consistently to the trustees, and in many years the level of koha/ grants received has been very low or non existent.

12.7 The phrase 'money derived from the land and received by the trustees on behalf of the beneficial owners' - would not include koha for the use of buildings or grants to pay specific expenses.

12.8 Despite there appearing to be no statutory basis for an accumulating rates debt, Ms Tamakehu has noted that the outstanding rates debt to the Council is $23,959.31.[83]

12.8 Despite the statutory provision that the trustees are not liable to pay rates beyond the derived income from the land, the Council has sought rates payments from individual trustees, causing distress to the trustees involved.

12.7 The Council has imposed rates on the property of the claimants' whanau at Lismore at an unnecessarily high level.[84]

Prejudice.

13 As a result of the breaches set out in the preceding paragraphs, notably the failure to adhere to the original vesting terms the claimants and their tupuna have suffered the following prejudice:

13.1 Fragmentation of their land holdings and resources which have greatly reduced their value; and

13.2 Dislocation from the land their tupuna have lived on for hundreds of years.

13.3 They have been prevented from or hampered in the proper economic utilization and development of the areas originally set aside for owner occupation and which were intended to be inalienable.

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[83] #3.2.645

[84] Brief of evidence of Heeni Jayne Ranginui dated 18th August 2010 – para 27

13.4 The Matahiwi marae owners being restricted in their exercise of tino Rangatiratanga, as no certificate of title was issued when the land was revested in 1936; and as the land is currently burdened with the multi-million Atihau Whanganui mortgage.

13.5 They have had to pay land tax at an inequitable rate, due to the failure of the Crown to properly consider the effect of the tax on vested lands owners.

13.6 They have suffered Impoverishment due to the low rental returns on their interests in the vested lands; a result of Crown favouring the lessees interests at the owners expense.

14 Findings Sought

14.1 A finding that the Aotea Maori Land Board, the Maori Trustee and Atihau-Whanganui Incorporation have failed to protect the interests of the tupuna of the claimants, in failing to comply with the provisions of the vesting deed to set aside inalienable reserves for the owners occupation, and in not allowing the tupuna of the claimants and other owners any rangatiratanga over the lands they own.

The Taranaki Tribunal reported on a 'parallel' process which happened in that area with the reserved lands being amalgamated and then transferred to an Incorporation.

> The continuing disassociation of Maori from their ancestral land finally became memorialised in 1963, when the interests of all owners in every revenue producing reserve from the north to the south of Taranaki became pooled in one grand amalgamation. Following a report on the state of Maori land in 1960, and pursuant to a statutory direction in the Maori Purposes Act 1962, in 1963 the Maori Land Court amalgamated the owners into one title, which it called the Parininihi-ki-Waitotara reserve. The title comprised the remaining 71,969 acres of perpetual lease land. No doubt the amalgamation was administratively convenient owing to the many owners and their dispersal, but it had nothing to do with the customary preference of Maori. Every person in every hapu who had inherited land no longer held that interest in their home area but had an interest instead in every reserve throughout Taranaki, irrespective of their hapu affiliations. It underlined that in effect the owners interests were no longer interests in land; they amounted to no more than a right to share in rents according to the vagaries of share devolutions.
>
> As a result, the Parininihi-ki-Waitotara Incorporation (the PKW Incorporation) was established by an Order in Council of 16 February 1976. It was to receive 55,137 acres from the Maori Trustee to manage, being the balance lease land

then remaining, and it would administer the leases and rents, subject to the provisions of Part IV of the Maori Affairs Amendment Act 1967.....The court rejected submissions that the committee include an appointee from each of the main hapu groupings on the ground that the committee should act in the interests of all beneficiaries irrespective of tribal affiliations. It represented yet one further step away from any accountability to hapu.

The formation of the incorporation completed the process of divorcing the owners from their traditional lands, for the owners no longer had an interest in any land but they did have a right to receive a rent. It was an ever-diminishing rent as land interests fragmented by succession over time.[85]

14.2 A finding that Government Departments - Lands and Deeds Registry and Land Information N.Z - have failed to follow statutory provisions as regards the issuing of a proper Certificate of Title to Matahiwi Marae.

14.3 A finding that the Whanganui District Council, has been acting unlawfully in its rates collection policy in relation to Matahiwi marae.

14.4 A finding that Land tax was imposed inequitably on the tupuna of the claimants and other owners of vested lands.

14.5 A finding that the Aotea Maori Land Board was for all intents and purposes a Government department.

14.6 A finding that the Crown has breached the principles of the Treaty of Waitangi in its policy and practices concerning vested lands; and

14.7 Findings similar to those made by the Taranaki Tribunal in relation to the Taranaki Reserved Lands scheme.

Our preliminary opinions follow. By the terms of the Treaty, Maori were solemnly guaranteed not merely the ownership of their lands but the control and possession of them. Emphasis is given to this position when the English and Maori texts of article 2 are read concurrently. The transfer of the administration of the reserves to Government-appointed trustees, the imposition of lease terms, the regular and unilateral amendment of the terms, and leases in perpetuity were all contrary to the Treaty's terms and principles.

In the management regime that the Government created, Maori and the lessees were not treated equally. Not only were the initial lease terms set by the Government, but the lease terms were changed regularly without Maori approval and dramatically to their detriment. The lessees position was

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[85] Taranaki Tribunal report 1996- para 9.3.6

regularly improved and relief was readily given to obviate unexpected changes of circumstance. That was not so for Maori when rents were eroded by inflation and frequent rent reviews were needed.[86]:

15 Recommendations sought

15.1 A recommendation that the Crown compensate the claimants for the prejudice suffered as a result of the acts, omissions, legislation and practices of the Crown identified in this statement of claim.

15.2 A recommendation that the Crown pay the full costs of the claimants for the preparation and presentation of this claim and the costs of recovering any land recommended to be returned or other costs incurred in securing the implementation of the recommendations.

15.3 A recommendation the Crown compensate the Matahiwi marae owners for the failure of Government Departments to issue a proper and correct title for the marae.

15.4 A recommendation that L.I.N.Z issue a clean title for Matahiwi marae (Ohotu 1C1) - without the Atihau Whanganui mortgage attached to it.

15.5 That Whanganui District Council undertakes a review of rates charges on the Matahiwi Marae, from the time rates were first imposed, and that refunds are made if warranted.

15.6 That recommendations are made - similar to those made by the Taranaki Tribunal -that the negotiations to settle the grievances involving vested lands are with the hapu.

If, as we believe, compensation is due for loss of rents or loss of use of the greater part of the reserves, then the question is: to whom is the compensation due, the shareholders in the PKW Incorporation or the affected hapu or both? The answer, in Maori terms, can favour only the hapu. Had matters gone the Maori way from the beginning, nothing would have passed directly to the individual as of right, for by Maori law, the individuals benefit equates to the individuals value to the group. Had Maori law prevailed, as it should have, all reserves would have been held for the benefit of the hapu. How could individuals be further compensated now, when they were not directly entitled in the first instance?

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[86] Ditto-para 9.3.7

> In any event, it is group compensation that is most needed for future cultural survival, with compensation to be held for the general purposes of those who belong to the hapu. It is the group, not the individual, to whom the land belonged; it is the group, not the individual that has been most deprived of benefit; and the Maori loss has been the loss of the society that the group represents. To dissipate such moneys that may be available for the settlement of these claims by benefiting anonymous shareholders now scattered to the world would merely add to past injustice. The money should stay where the land is, for the people belong to the land, not the land to the people.[87]

15.7 Other recommendations as the Tribunal sees fit.

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[87] Taranaki Tribunal Report- para 9.3.7