

CHAPTER 4

PUBLIC TRUSTEE ADMINISTRATION, 1882–1913

4.1 Introduction

This final chapter addresses the Public Trustee's administration of Maori trust reserves from 1882 to 1913. It follows chronologically from the previous chapter through to 1913, where it joins with a corresponding study of the Maori Trustee produced by the Crown Forestry Rental Trust. The Native Reserves Act 1882 lay at the heart of administration between 1882 and 1913. It marked a decisive shift in the administration of trust reserves from the Native Department commissionership to the newly formed Public Trust Office. This chapter continues with a legislative and policy overview of trustee administration.

The chapter relies largely upon secondary sources. Published accounts in the *Appendices to the Journals of the House of Representatives* have proved less useful than expected on account of the Public Trustee's method of reporting only balance sheet details, without any explanation of approach to administration. The early Public Trustee files between 1869 and 1883, left by Alexander Mackay as Commissioner of Native Reserves, were examined to provide some underlying view of the effect of the 1882 Act on administration. However, it has proved an impossible task to plumb the depths of primary source material on Public Trustee administration given the broad nature of the project, and time restrictions. For the purposes of a general overview report, I have been forced to focus on legislative history and policy developments, rather than close regional inspection. This must be recognised as a weakness of this report, but at the same time, relevant source materials have been identified where it is appropriate.

This chapter is structured into three sections. The first explores the nature of the transition of administration from the Commissioners of Native Reserves, and the origins of the Public Trust's involvement with reserves administration. The second part traces the style and effect of the administration established under the 1882 Act through the following decade, and the introduction of leases in perpetuity. Parallels are drawn between the situation of the West Coast settlement reserves in Taranaki,

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1. Kieran Schmidt and Fiona Small, 'The Maori Trustee 1913–1953', report commissioned by Crown Forestry Rental Trust, May 1996
 2. Refer to 'Commissioner of Native Reserves', ma mt 1/1b, NA, Wellington
 3. In reality, the material contained in ma mt 2-45 necessitates an entire report devoted to the practical workings of Public Trustee administration on a local level.

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and more general trust administration of native reserves. Finally, later Liberal initiatives in Maori land administration are analysed with reference to their connection and impact on the fate of reserves administration up to 1913.

There are a number of larger questions or themes which run through this analysis. First, we must question whether the introduction of the Native Reserves Act effected a change in administrative form, or merely reflected a continuation of a gradual shift in Government policy concerning Maori. Another theme examines the relationship between the Public Trustee's administration of the West Coast settlement reserves and other reserves administration. This study draws on material from the Waitangi Tribunal's recent *Taranaki Report* concerning the administration of the West Coast settlement reserves.⁴ A recent argument postulated by Crown counsel in the Wellington tenths hearing (Wai 145) has led to an examination for the purpose of this report of the relationship between the Government and the Public Trust Office, and the requirements of an independent trustee.⁵ Aware that the Waitangi Tribunal has already reported at length on the West Coast settlement reserves, there is not the time nor the scope to revisit a close investigation of their administration, except to draw comparisons in administration. For that reason, this report will not provide a detailed discussion of these reserves. However, we will refer to the findings of the Waitangi Tribunal in order to consider the origins and nature of Public Trustee administration under legislation. Phrased as a question, we might ask: Were the West Coast settlement reserves typical or atypical of reserves administration under the Public Trustee during this period?

4.2 Origins of Public Trust Administration

In the previous chapter, we discussed the 'dual commissionership' administration of native reserves in the 1870s. We must, however, begin this chapter with a degree of overlap. The conception and involvement of the Public Trust Office in the business of trust administration did not begin abruptly in 1882, but had its origins in 1872, if not earlier. Formed in 1872, the Public Trust Office was first introduced to reserves administration in a limited capacity in 1877, well before the Native Reserves Act 1882 was enacted.

Through the 1870s and early 1880s, there were continued attempts to replace the Native Reserves Act 1873. In mid-1880, Captain Thomas Fraser, the member of the Legislative Council for Otago, moved that there be a complete return of reserves currently administered under native reserves legislation, in order to best inform the ongoing attempts to relegislate. This represented a positive step

4. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, ch 9, pp 245–276

5. Crown counsel has submitted that the Maori Trustee (post-1920) was not an agent of the Crown. It contends therefore that the Tribunal does not possess the jurisdiction to investigate the actions of the Native (later Maori) Trustee: Crown submission, Wellington tenths hearing, (Wai 145 rop doc 2.101), 16 August 1996.

6. Refer, for example, 'Native Reserves Vesting Bill', 24 October 1879, NZPD, 1879, p 514

towards the accurate location of the position of trust reserves under the Native Reserves Act 1856, amidst continuing attempts to implement legislation for the administration of Maori reserves. The 1880 Native Reserves Bill was an attempt to recommit the 1879 amendment Act (mentioned in the last chapter). It was hinted in debates that the Public Trustee might logically adopt the administration of Maori reserves:

If these reserves were placed under the Public Trustee, seeing that he was a government officer paid by the colony to attend to the Natives⁸ as well as to the europeans, he (Mr Reynolds) would not object so much to the Bill.

Here the Public Trustee was clearly identified as suitable for the task on account of his role as Government officer in charge of European trust estates. Further suggestions that the Public Trustee should adopt reserves administration appeared in the actions and debates of Parliament the following year.

4.3 Public Trust Legislation

In order to understand the involvement of the Public Trust Office in reserves administration, it is useful to connect the formation of the office in 1872 to the broader imprint of Vogelite policies of expansion and centralisation in the 1870s. Indeed, it was Vogel himself¹⁰ who pushed the public trust legislation through the parliamentary process. Vogel urged the expansion of European settlement and the centralisation of Government administration with equal verve.¹¹ J Woodward, as the first Public Trustee, stated the purpose of the Public Trust Office as follows:

The appointment of a Public Trustee is an attempt to insure the faithful discharge of trusts, and at the same time to relieve persons from being obliged to burden their friends with the responsibilities of Trustees . . . Farther, the Public Trust Office Act proposes to substitute a permanent officer for guardians who, with the best possible intentions, are liable to be incapacitated for the duties they have undertaken, by removal, change of circumstances, or death. A guardianship is thus established which will continue long after the individual who first exercised it will have ceased to act.

The act also provided for the absolute safety of trust property, and for its application to the purposes directed in the deed or will by which the trust has been created.¹²

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7. Fraser stood as a notable figure in the 1880s debates over reserves administration. For background, refer to G H Scholefield (ed), *A Dictionary of New Zealand Biography*, Wellington, Department of Internal Affairs, 1940, vol 1, p 282; Captain Fraser, 'Native Reserves', 30 June 1880, NZPD, 1880, p 604.
 8. Reynolds, 'Native Reserves Bill', 5 August 1880, NZPD, 1880, p 123
 9. F Whitaker, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102; see also the implementation and debates surrounding the West Coast Settlement Reserves Act 1881.
 10. It was claimed that the formation of the Public Trust Office in New Zealand represented the first in the world: C J Vennell, *A Century of Trust 1873–1973: A Centennial History*, 1973, p 30.
 11. For a wider context of Vogelite developments refer to Sinclair (ed), *Oxford Illustrated History of New Zealand*, 1990, chs 5, 6; also, Rice (ed), *Oxford History of New Zealand*, 1992, chs 5–7.
 12. Circular, J Woodward to E Pearce, 30 December 1872, cited in Vennell, p 33

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We might measure these statements of guardianship against later developments in reserves administration under the authority of the office.

The office was first introduced to limited administration of Maori reserves under the terms of the Public Revenues Amendment Act 1877 (discussed in chapter 3). Yet the office had existed prior to this, having been formed in 1872 under the Public Trust Office Act 1872 (which was subsequently amended in 1873 and 1876). Moreover, under the terms of the public trust legislation, it was conceivable that full management of trust reserves may have been passed to the Public Trustee from 1872. Section 15 of the 1872 Act enabled the Governor to vest any trust property in the Public Trustee.¹³ These terms were amended by sections 3 to 10 of the Public Trust Office Amendment Act 1876. Amendments in 1876 also extended to the Public Trustee the authority to lease lands.¹⁴ This was a strong signal that the Trustee was being equipped to adopt the formal administration of Maori reserves, among other rental properties. In light of these legislative provisions, we are led to question why the transfer of full powers of administration, not simply financial arrangements, was delayed until the Native Reserves Act 1882, after the implementation of the West Coast Settlement Reserves Act 1881?

The management of finances, derived from Maori reserves, formed a smaller part of the ongoing question of how to administer Maori reserves. The issue of responsibility for reserves finances had been uncertain from as early as the Native Reserves Amendment Act 1862. On 7 July 1865, the Colonial Treasurer, William FitzHerbert, wrote to the Attorney-General seeking clarification as to whether the Treasury should manage funds from the commissionership.¹⁵ In reply to a memo from George Swainson, Native Secretary Rolleston attempted to clarify the situation regarding financial management:

By the 4th section of the Amendment Act [1862] the property rests in the Governor he is to receive rents and the power to hold this property cannot be delegated. The proceeds should go first to the Treasury.¹⁶

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13. ‘When any such property is placed in the Public Trust Office, all the duties powers and responsibilities of the officers trustees or other person theretofore holding or administering the same shall cease, and such officers trustees or other persons shall forthwith hand over to the Public Trustee all deeds papers and moneys belonging to or relating to such property.’
 14. Section 9 of the Public Trust Office Amendment Act 1876
 15. ‘The Colonial Treasurer wishes to be informed whether it is his duty to require any monies that may be in the hands of the Commissioner [of Native Reserves] or may from time to time be received by them, to be paid over to the Treasury’: Colonial Treasurer to Attorney General, 7 July 1865, ma-mt 1/1a, item 27.
 16. Rolleston comments on ‘Memo’, Swainson to Mantell, 11 July 1865, ma-mt 1/1a, item 28: Rolleston continued in the margin: ‘I think the Commissioner should be the person to hold the special fund after it has passed through the Treasury. There are other Trusts of a like kind established by the Treasury eg Intestate estates . . . Expenditure should be authorised through the Executive Government but I imagine there would be a power in the Commissioner to resist a payment which seemed to him alien to the intention of the Act – a power which could never be effectively used in the case of disagreement between the Commissioner and the Executive who could cancel his delegated powers. The case is peculiar and there is a little confusion in the position of the parties but if Mr Swainson on considering that primarily the Governor, that is, the Government are Trustees he will see that it is reasonable that his accounts should all pass through the Treasury.’

Swainson retorted that such a requirement to pass all accounts through a centralised agency before distributing to Maori ‘is just impossible’.¹⁷ Heaphy, on the same document, echoed Swainson’s opinion:

This is perfectly true. The Natives are always in communication with the tenants and come for the rent the same day (or at most the day after) it is paid to the Commissioner. They cannot understand the system of placing the money at Public Account and getting authorization to clear it out again.¹⁸

Heaphy’s comments help demonstrate continuing concern against the centralisation of reserves administration, which persisted after the implementation of the Public Trust Acts. Heaphy highlighted the degree of Maori presence in the administrative process, and something of Maori requirements as counterpoised to the centralised administration of finances.

All financial arrangements connected with the Public Trust Office were arranged by statute. Section 37 of the Public Trust Office Act 1872 named all moneys paid into the Public Trustee’s account the property of the Government. Furthermore, all management expenses, salaries, and costs associated with the office were paid from a separate pool of trust revenue known as the ‘Public Trustee’s account’ (s 38):

The Public Trust Office shall keep a separate account, called the ‘Public Trust Office Expenses Account’ which he shall charge with all salaries and other expenses incurred in the general management of the Public Trust Office, and shall credit with the sums payable out of the several properties in the Public Trust Office for the cost of managing the same, and with all fees and other moneys paid into the Public Trustee’s Account but not belonging to or forming part of any such property. And he shall keep a separate and detailed account of the receipts and payments made on account of each separate property in the Public Trust Office, and of all moneys invested on account of each such property.

Perhaps surprisingly, the Executive assumed direct responsibility over the fund, despite making no direct financial contribution. Section 39 detailed explicitly how salaries of officials were to be paid:

The Public Trustee shall pay out of the Public Trustee’s Account all such salaries and other expenses in the general service of the Public Trust Office as he shall be authorized to pay by the Colonial Treasurer, as shall be by law payable, but not otherwise; and he shall pay out of the same Account all current expenses and charges incident to the management of the properties in the Public Trust Office, and all the net profits and income accruing therefrom to the several persons entitled to receive the same, subject to the provisions of this Act and of the regulations issued under the authority thereof:

Provided that he shall not pay or agree to pay on account of any property in the Public Trust Office any sum in excess of the amount which is standing in the Public Trustee’s Account to the credit of such property.

17. Memo, Swainson to Mantell, 11 July 1865, ma mt 1/1a, item 28

18. Ibid. Heaphy appended his comments to the original document on 11 September 1873.

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These early arrangements continued to form the basis of financial arrangements and administrative charges made on Maori reserves once the Public Trustee adopted full management in 1882.

As already hinted at, the Public Trust Office fashioned from 1870s legislation was inextricably attached to the Government. As well as financial support, the constitution and authority of the Public Trustee involved direct Government influence. Whilst the position of the trustee was intended as a non-political appointment, his decisions were subject to the board of management, closely aligned to the executive. Automatic membership of the board included the Colonial Treasurer, the Government Annuities Commissioner, the Attorney-General, the Commissioners of Audit, and the Public Trustee. Moreover, board membership and responsibility remained largely the same under the Native Reserves Act 1882, until further amended in 1894.

Under the 1870s Public Trust Office legislation, ‘guardianship’ was applied to the management of estates of minors, the deceased, and lunatics. For this purpose, all lands were vested in the Public Trustee. Section 10 of the 1876 amendment Act added provision for the trustee to assume possession of and administer the land of an ‘absentee proprietor’. The majority of the provisions related to the administration of lands where the recipients either were incapable of legally administering their own affairs or were intestate. Before legislation placed Maori reserves under the administration of the Public Trustee, Maori perceived a connection between the assumption behind such public trusts and their own reserves’ administration. In a petition against the Native Reserves Act 1873, Renata Kawepo complained: ‘This law resembles the law for Pakeha children, drunkards and lunatics. And we are compared by this law to infants inebriates and idiots.’¹⁹

In retrospect, Kawepo’s astute criticism also highlights continuity in administrative approach before and after the involvement of the Public Trustee. Like Kawepo, we must question the assumption underlying the decision to place Maori reserve administration in the Public Trust Office. European estates were vested in the Public Trustee when beneficial owners were unable to manage lands themselves. The same assumption was applied to Maori. By including Maori reserves under the same form of administration, the Government expressed the assumption that Maori were incapable of managing their own lands. Such views are glimpsed in speeches from parliamentary debates in 1880, mentioned later in the chapter.

4.3.1 Raupatu reserves

While public trust legislation gradually angled towards the inclusion of Maori reserves administration, a sharp distinction was made in the case of raupatu reserves. The Government and Compensation Court awarded Maori reserves on Raupatu lands in South Auckland, Waikato, and Taranaki. These reserves were

19. Renata Kawepo, petition, AJLC, 1873, no 7 (cited in Ward, p 253)

separated from the sweep of the public trust legislation and were guided instead by local legislation:

If the operation of this [Native Reserves] Bill extended to that part of the colony on the West Coast where the disturbances were taking place, a difficulty might arise in reference to legislation with regard to that part of the country. Legislation of a special nature must take place in reference²⁰ to that portion of the country, and that legislation would detail what has to be done.

Although South Auckland reserves were never administered by the Government, Taranaki West Coast settlement reserves²¹ were placed under the administration of the Public Trustee from the outset. Moreover, a consideration of the administration of the West Coast settlement reserves is essential for understanding broader trust administration of Maori reserves from 1882.

4.4 West Coast Settlement Reserves

West Coast settlement reserves were formed in Taranaki through the operations of West Coast commissions of inquiry in 1880 and 1881 (see sec 4.2.4), then formalised in legislation in 1881. Their significance in a broader overview of trust reserves administration is twofold. Created in 1881, West Coast settlement reserves were the first Maori reserves to be placed under the direct administration of the Public Trustee. On another level, it might be seen that innovations in the administration of these settlement reserves guided the genesis of wider trust administration of reserves in the 1880s and 1890s. Still, we must be cautious to keep both categories of administered reserves distinct. Confusion was evident even among administrators themselves. In one instance, Rennell, the local Public Trust Office agent, became uncertain over whether a particular Taranaki reserve was administered under West Coast settlement reserves legislation or the general²² trust administration. Eventually, Mackay as commissioner clarified the distinction.

In the recent *Taranaki Report*, the Waitangi Tribunal has examined the West Coast settlement reserves in some depth.²³ We refer here to the Tribunal findings. These will be briefly summarised²⁴ to give an understanding of the genesis of public trust administration in the period. The central issue, as earlier introduced, is the

20. F Whitaker, 'Native Reserves Bill', 5 August 1880, NZPD, 1880, p 123

21. The Crown was involved in the Waiuku reserves, although it never formally 'administered' them: refer Waitangi Tribunal, *Auckland*, Rangahaua Whanui Series, July 1996, pt 1, pp 228–229.

22. ma-mt 1/1b

23. See Waitangi Tribunal, *Taranaki Report*, pp 246–273

24. Also refer to reports prepared for the investigation of the Taranaki claims (Wai 143 rod): Janine Ford, 'The Administration of the West Coast Settlement Reserves in Taranaki by the Public/Native/Maori Trustee 1881–1976' (Wai 143 rod, doc m18), 1994; Donald Loveridge, 'The Adoption of Perpetually Renewable Leases for Maori Reserved Lands, 1887–1896' (Wai 143 rod, doc c2), 1994; Hazel Riseborough, 'Background Papers for the Taranaki Raupatu Claim' (Wai 143 rod, doc a2), 1989; Ben White, 'Supplementary Report on the West Coast Settlement Reserves' (Wai 243 rod, doc m20), 1996

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extent to which the construction of the West Coast settlement reserves administration functioned as a model for all reserves administration.

4.4.1 West Coast Commission, 1880

The 1880 West Coast commission of inquiry was established under the Confiscated Lands Act and Maori Prisoners' Trials Act 1879, in response to Maori complaints that Europeans had failed to return Maori lands in Taranaki. Three members of Parliament, Sir William Fox, Sir Francis Bell, and Hone Tawhai, constituted the first commission which sat in 1880. The commission sought to investigate the Government's failure to allocate reserves in Taranaki.²⁵ However, Tawhai immediately resigned on account of the biased views of the other commissioners. Fox and Bell (both supporters of the Government) remained and produced three reports.²⁶ They described the reserves they thought were needed and some reserves to be set aside. They then formed a second commission in order to bring the reserves to fruition, under the West Coast Settlement (North Island) Act 1880.

However, as the Tribunal has found, the second commission acted unlawfully in its failure to adhere to the West Coast Settlement (North Island) Act and allocate adequate reserves.²⁷ In addition, some of the Tribunal's criticisms of the West Coast commission's work for example, might well be remembered in order to understand the subsequent administration.

The Tribunal included a discussion of the role of the West Coast Commission in the subsequent administration entitled 'Perpetual leases begin with the West Coast Commission'. The following is an excerpt from the discussion:

Throughout its inquiries and its several reports, the commission saw no conflict between protecting Maori interests and promoting European settlement, for any tension was simply resolved by putting European interests first. That conflict was transferred without thought to the statute that was to govern the administration of the Maori reserves. The West Coast Settlement Reserves Act 1881 was drafted by the West Coast Commission. It vested the management of the reserves in the Public Trustee, empowered the trustee to lease the reserves, and yet required, in section 8, that the trustee act for the benefit of 'the natives to whom such reserves belong' on the one hand and for the 'promotion of settlement' on the other. From that day forward, the Public Trustee was required to promote two goals inherently in conflict. Like the West Coast Commission, the Trustee was to favour European settlement . . . In any event, by drafting this special legislation, the West Coast Commission arranged for the management and the administration of all reserves it created to be vested in the Public Trustee, who would allocate to Maori such land as was thought necessary for their own occupation and lease the balance to Europeans generally on perpetual terms. The Trustee was now the rangatira. Traditionally, it had been the

25. Waitangi Tribunal, *Taranaki Report*, p 246

26. For further details on Tawhai's position as the member of the House of Representatives for Northern Maori, see Ranginui Walker, 'Hone Mohi Tawhai', in *The Turbulent Years, 1870–1900*, 1994, pp 142-145

27. *Ibid*, p 254

Figure 2: West Coast Commission reserves

4.4.2 Trust Administration of Maori Reserves, 1840–1913

function of the hapu, through the kahui rangatira, to arrange all land allocations themselves.²⁸

This quotation is intended not to pre-empt more detailed analysis of the Public Trustee which will occur later in the chapter, but to recognise the initial involvement and effect of Public Trustee administration on the West Coast settlement reserves. Further, the Tribunal in its findings emphasised the dual purposes explicit to the approach under the West Coast Settlement Reserves Act 1881. Attempts in legislation to equitably measure the interests of Maori and Europeans were problematic, as the interests of one party usually affected the other detrimentally. And, as the Tribunal has noted, the interests of European settlement (as mentioned in the name of the Act) gained primacy over the interests of Maori beneficiaries.

4.4.2 West Coast Settlement Reserves Act 1881

The West Coast Settlement Reserves Act 1881 traced its descent from the New Zealand Settlements Act 1863, as it purported to deal with those reserves within the confiscated territory of Taranaki. It defined all reserves subject to the Act as those created by the West Coast Commission and the West Coast Settlement Act 1880. Excluded from the 1881 Act were all pre-existing reserves which were ‘actually administered’ under the terms of any reserves legislation. Under the Public Trust Office Act 1872, the Public Trustee became sole trustee for the West Coast settlement reserves, and so signalled the beginning of its responsibility for the administration of Maori trust reserves.

The Public Trustee was authorised to manage all settlement reserves, and could exchange, lease, or sell them. Sole authority to alienate reserves was granted to the trustee.²⁹ Rental revenues were paid directly to Maori beneficiaries, rather than ‘administered’ for Maori benefit. This was an administrative improvement for Maori from the 1870s commissionership or the succeeding Native Reserves Act 1882. However, as the Tribunal has noted, after full costs of administration had been deducted from rental incomes,³⁰ little or nothing was left for the ‘owners’ of the West Coast settlement reserves.

Maori involvement in the administration of West Coast settlement reserves was left stated in vague terms:

And it shall be the duty of such Trustee, so far as conveniently may be, in the exercise of the powers given him under this Act, to consult and obtain the assistance

28. Waitangi Tribunal, *Taranaki Report*, p 258

29. Indeed the wording of this provision (s 7) was couched in the negative in order to lend an impression of security, in the absence of any former restrictions on alienation:

No reserve which has been made alienable in any way, whether or not the same has been granted to the Natives, or to any person in trust for the Natives, shall be so alienated except with the concurrence of the Trustee, who before giving his consent shall satisfy himself that the terms of any such alienation are fair and proper, and, in respect of the leases, that the proposed lease is in all respects in conformity with the provisions of this Act.

30. Waitangi Tribunal, *Taranaki Report*, p 261

of some Native or Natives who shall be best acquainted with the circumstances of any reserve which is being dealt with, and to act as far as possible in accordance with the wishes of the Natives interested in the reserve.³¹

On the application of the 1881 Act in general, the Tribunal has commented:

Although the 1881 Act directed the Public Trustee to consult with those Maori whom the Trustee thought might be necessary and to act in accordance with Maori wishes, too much was left to the Trustee's discretion. He was also required to promote European settlement, and Maori, having lost their rights of control,³² were merely respondents to Government initiatives.

This relationship was more or less repeated in the terms of the Native Reserves Act 1882, and under a less than formal role in a board of management. European 'settlement' of Taranaki, then, was the express purpose of the West Coast Settlement Reserves Act 1881. We can observe similar pressures and intentions behind general reserves administration, although less explicit. Maori representative Tomoana had already signalled his fear that, although the West Coast settlement (North Island) Bill 1880 related to Taranaki, 'it will extend over all other portions of the country'.³³ We need to exercise caution before generalising about all areas of reserves administration, but by drawing comparisons between the provisions of the West Coast Settlements Act 1881 and the Native Reserves Act 1882, we are better able to appraise the relationships between these different trust administrations.

4.5 Origins of the Native Reserves Act 1882

After the implementation of the West Coast Settlement Reserves Act 1881, attention returned to the situation of the reserves administration effectively left hanging after the Native Reserves Act 1873. In July 1881, concern was raised for an urgent amendment to native reserves legislation. At the heart of this inquiry was concern over the European tenancy of the Greymouth reserves.³⁴ From there, the member attempted to cover all options: 'Failing the individualising of the Native title to the land referred to, long leases should be granted, in the interests of the trust and the tenants alike.'³⁵ This was not the first time the provision of leases had been mentioned. Maori interests were assumed implicit in the word 'trust', but not once were they mentioned directly. Instead, we can glimpse a strong concern for the future of European lessees, particularly in Greymouth. It was commonly assumed that, owing to the relatively 'large' amount of revenue (£4000) derived from

31. Section 8 of the West Coast Settlement Reserves Act 1881

32. Waitangi Tribunal, *Taranaki Report*, p 260

33. Mr Tomoana, 'West Coast Settlement (North Island) Bill 1880', 20 August 1880, NZPD, 1880, p 519

34. 'His [Weston's member of the House of Representatives] object in asking this question was to ascertain whether or not steps were likely to be taken to improve the tenure of the lessees of the town of Greymouth': Weston, 5 July 1881, NZPD, 1881, p 298.

35. Weston, 5 July 1881, NZPD, 1881, p 298

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Greymouth leases, Maori trust reserves were well catered for by the Government. Evidence emerged during the 1881 parliamentary debates which strongly countered this view. It was pointed out, in one example, that a European leaseholder at Greymouth was in fact sub-letting the property and earning himself £1000 per annum, a quarter of the trust's total revenue.³⁶ Walter Mantell maintained that £4000 was:

not a large amount for a very large portion of the most important part of Greymouth, and if it belonged to the Hon Mr Lahmann [member of the House of Representatives], £12,000 a year³⁷ would probably be the lowest rental that honourable gentleman would accept for it.

In short, the imbalance of Pakeha and Maori interests in the case of Westland reserves administration is comparable in some respects to the Tribunal's criticisms of the West Coast settlement reserves.

When the Bill was explained before the House of Representatives a month later,³⁸ there was a redolent concern for the European leaseholders at Greymouth. As Frederick Whitaker explained:

It was suggested then, on more than one occasion, that it would be very desirable that the whole of the Native Reserves should be placed under the administration of the Public Trustee, and the Board who acted with him in the management of matters under his charge. On careful consideration of the matter, and more particularly now, as the Native Reserves Commissioner was dead, it had been decided that the Native Reserves might properly be put under the management of the Public Trustee³⁹ and the Board acting with him, who should have control in dealing with them.

We might now shift to question the underlying reasons for transferring reserves administration from trust commissioners to the Public Trust Office. Charles Heaphy's death should be seen as part of events, but, as Butterworth has suggested, we should not see it as overly significant in this process, because it simply began⁴⁰ the review 'that Bryce's policy [as Native Minister] would have made inevitable'.

Any attempt to explain adequately the shift in administration and assess its impact must contextualise the issue of reserves administration inside broader developments to centralise Government administration and, in particular, the Native Department. Alan Ward has noted that John Bryce, as the new Native Minister in 1879, 'proposed to end⁴¹ "the system of personal government which obtains in the Native Department"'. The decisive trend to centralise Government authority affected both Maori and European. Provincial government had been abolished in 1876. Bryce was intent on pushing the amalgamation of Maori

36. Thomas Fraser, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102

37. Walter Mantell, 'Native Reserves Bill, 24 August 1881, NZPD, 1881, p 102

38. 'Lahmann pointed out that the town of Greymouth would be seriously affected by the passing of the Bill': Henry Lahmann, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102.

39. F Whitaker, 'Native Reserves Bill', 24 August 1881, NZPD, 1881, p 102

40. Butterworth, p 18

41. Refer NZPD, 1879, pp 350–360 (cited in Alan Ward, *A Show of Justice*, 1995, p 281)

administration much further in relation to the Native Department than his predecessors, Pollen and Sheehan. Therefore, we must understand the shift of trust reserves administration, from commissionership to the Public Trustee, as part of the larger impetus, spearheaded by Bryce as Native Minister, to centralise Maori within a single governmental structure without ‘exceptional laws’.

After Heaphy’s departure, Alexander Mackay was left to administer all trust reserves in the interim before a new reserves Bill was introduced. In addition to maintaining the administration in a rudimentary form, Mackay submitted administrative accounts for both the North and the South Island trust reserves for the year 1881, itself a formidable task.⁴² Mackay’s views were sought right up to the implementation of the 1882 Act. It was unlikely that he had any hand in drafting the legislation himself, though, because the 1882 version contained little in the way of departure from any of the previous proposed amendment Acts from the late 1870s. In September 1882, Mackay was appointed sole commissioner to aid the Public Trustee under the 1882 Act. Shortly afterwards, on 20 May 1884, Bryce effectively removed the position of commissioner from reserves administration, and appointed Mackay a judge of the Native Land Court.

4.6 The Native Reserves Act 1882 – ‘A Fish Full of Bones’

Bryce reintroduced a Native Reserves Bill in 1882. It was debated between July and August 1882, amended, and then finally passed into law. This was the first piece of legislation relating to the general administration of native reserves to have survived passage through the House in the previous 20 years. However, the provisions of the 1882 Act were not innovative. The majority of features derived from either former trust reserves or public trust legislation. Even the notion of Public Trustee administration of Maori reserves had been around for more than a decade.⁴³

The 1882 Act transferred full responsibility for the trust administration of native reserves from the commissioners attached to the Department of Native Affairs to the Public Trust Office. Management and title to reserves was vested in the Public Trustee. Section 8 stated:

All lands and personal estate now vested in the Governor or any Commissioner or Public Officer (as such) under any Act theretofore in force relating to Native reserves shall, from the commencement of this Act, be deemed to be placed in the Public Trust Office, and shall vest in the Public Trustee, subject to the trusts attached thereto respectively.

The aim behind the creation of the Public Trust Office, according to the official historian of the Public Trust Office, C W Vennell, was to provide an independent

42. ‘North Island Native Reserves Account’, 1 April 1880–31 March 1882’, AJHR, 1882, g-6; ‘Native Reserves, Nelson and Greymouth’, AJHR, 1882, g-7

43. Native Minister John Bryce acknowledged that it was not the first time that the issue of Public Trust administration had been raised: ‘Native Reserves Bill 1882’, 28 July 1882, NZPD, 1882, p 651.

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body. Yet we must question whether contemporary assertions of independence are sustainable in retrospect. For, while the Public Trustee and not the Governor now assumed title and administrative responsibility, Government connections, as we have already seen, were not far removed.

Practical administration was directed through the actions of the Public Trustee in concert with a ‘board’. This administrative board, as envisaged under the Public Trust Office Act 1872, was intended to focus upon financial management; this was reflected in the selected appointments (s 18). Significantly, the status of the Public Trust Office board was broadened slightly against the restricted focus of the original 1872 Act. Still, this were not enough to stay sharp criticisms made of the board:

it will consist of five members – the Public Trustee, the Colonial Treasurer, the Commissioner of Annuities, the Attorney-General, and the Commissioner of Audit; three to form a quorum. Now that is as complete a Government affair as it could possibly be, and I ask honourable members to consider the power that would be placed in the hands of any Government, through the Trustees holding such an immense amount of land . . . We should have an independent Board of some kind.

Despite this criticism, the Public Trust Office board of management under the 1872 Act was now called upon to administer Maori reserves. The trend of feeling might also be measured by another proposal, suggesting that reserves might be better managed by the Minister of Lands and the Waste Lands Board ‘in the same way as the Crown lands are dealt with at present’.⁴⁵

The sole departure from the pre-existing administrative structure was the inclusion of a Maori voice. We must be careful not to confuse the provision of a board to administer the Public Trust Office with the initiative to install Maori into decisive roles of administration within a ‘board of management’ under the earlier imperative of the Native Reserves Act 1873. It is important to clarify the distinction, for, in response to objections raised in the House, Bryce admitted two Maori to roles within the Public Trust Office board. Although, as will be seen, the roles were more perfunctory than proactive. In response to parliamentary debate on the subject, Bryce postulated:

I think it would be a suitable thing to place a Maori on this Board, so far as its duties relate to the management of these reserves. I am prepared to accept an amendment of that kind, or even to introduce such an amendment myself. That, I think, would meet the objection raised, for I don’t think the member, after he had considered the matter, would recommend that a Maori be given actual official work upon a salary, because, while a Native might be very well qualified to express his opinion on matters coming before the Board, it is obvious that he could not very well do official work.⁴⁶

44. Montgomery, ‘Native Reserves Bill’, 28 July 1882, NZPD, 1882, p 656

45. J W Thomson, ‘Native Reserves Bill’, 28 July 1882, NZPD, 1882, p 659

46. Bryce, ‘Native Reserves Bill’, 28 July 1882, NZPD, 1882, p 651

The position of commissioner was retained to assist the Public Trustee in a secondary capacity. This position appears to have been tailor-made for Alexander Mackay. After Mackay's promotion to the Bench of the Native Land Court in 1884, the position was never again occupied.⁴⁷ Bryce outlined the situation: 'The Public Trustee will have a general supervision over the management of these reserves, but he will be assisted by a commissioner to be appointed for the purpose.'⁴⁸ In addition, agents of the Public Trust Office were expected to assume roles within the administration of Maori reserves. The involvement of 'agents' was not specifically mentioned in either the Native Reserves Act 1882 or the Public Trust Act 1872, although section 10 of the latter Act allowed the Governor to appoint other 'officers'. The direction to appoint local 'agents' to carry out the administration of the Public Trust Office came instead from the *Gazette* notice:

Local agents will be appointed to manage the legal and other business connected with estates, the preference being given to estates (subject to the approval of the Public Trustee) to Solicitors or Agents who have previously had the management of the property, or who are nominated by the person placing the property in the office, or the parties principally interested therein.⁴⁹

The matter became confused over the issue of who should pay for the deployment of Public Trust Office 'agents'. Vennell described agents as usually:

commercial or professional men, most of whose time was devoted to other interests. In remote districts, policemen were sometimes employed . . . their powers were strictly limited. They had no authority to liquidate claims, to spend money, or to commit the Office in any way. Everything had to be referred through Wellington for decision. They were simply receivers of claim and collectors of rent and interest.⁵⁰

The systematisation of administrative procedures under a central authority was a strong characteristic feature of the 1882 Act. A concerted attempt was made to systematise financial income and expenditure. The Act made provision for the centralisation of the payment of costs relating to the administration of reserves. Previously, payments to officials had been deducted in a less balanced, though immediate, fashion, depending on the relative wealth of each account. In contrast, the terms of the Public Trust Office Act 1872 established that all management costs were to be met from the Public Trust Office account. The salaries of the Public Trustee, clerk, and commissioner appear to have been paid in this manner. However, the 1882 Act carried a further provision which allowed the Governor

47. The absence of a commissioner to assist the Public Trustee during the interceding decade and a half was noted by a commission of inquiry into the Public Trustee in 1913: 'Under the Native Reserves Act there has always been power to appoint a Reserves Commissioner who should, subject to the Public Trustee, conduct routine business connected with such reserves. No such Commissioner exists.' 'Commission of Inquiry in the Public Trust Office', 15 January 1913, AJHR, 1913, b-9a, p 17.

48. Bryce, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 651

49. 'Public Trust Office Act 1872', 30 December 1872, *Gazette*, 1872

50. Vennell, *A Century of Trust*, p 42

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authority ‘for fixing the charges to be paid as cost for managing the same.’ It continued (s 9):

The salaries of all Officers appointed for the administration of this Act, or the carrying out any of the purposes thereof, shall be defrayed out of such moneys as shall from time to time be appropriated by the General Assembly in that behalf.

Outside of the centralised management, practical administration continued to be conducted by agents. Agents were instructed to deduct a fixed percentage commission from the rents they collected prior to delivery of the funds to the Public Trust Office.⁵¹ The initial percentage figure of 10 percent was halved after Mackay’s response. Another agent noted attendant difficulties and indicated it preferable if the Public Trustee could manage all such deduction and payments centrally.⁵² However, for unknown reasons, Public Trustee Hamerton chose to adhere to separate schemes for payment. The existence of two echelons of administration meant that the legacy of self-funding administration continued unabated under the terms of the Native Reserves Act 1882.

In addition, there was some ratification of reserve fund expenditure (s 13):

Every Native reserve shall be used, and the rents and proceeds there of be applied, for and towards the purposes or objects to which the same are applicable respectively, and none other.

Section 14 defined terms of ‘benefit’ for Maori ‘beneficiaries’ as follows:

Where any Native reserve has been or shall be made for the benefit, or in trust for the benefit, of any Natives, whether individually or collectively, the said word ‘benefit’ in any instrument constituting the trust shall be construed to mean the physical social moral or pecuniary benefit of any such Natives, and shall extend to include the providing of medical assistance and medicines; and the proceeds of any such reserve may be applied accordingly.

Section 3 redefined all types of reserves for the purposes of the Act:

All lands coming within any of the definitions following shall be deemed to be Native reserves, that is to say—

1. Lands which have been or shall hereafter be excepted or reserved by Natives on the cession or surrender of lands to the Crown, and specified as so excepted or reserved in the deed of conveyance, cession, or surrender.
2. Lands which have been or shall hereafter be reserved or excepted for the benefit of Natives upon the sale by them to the Crown of any lands.

51. Hamerton requested Mackay ‘to prepare an order in Council fixing the charge to be paid for management under section 9 of the Native Reserves Act 1882 – such charges to be made 1 April next. I suggest 10% on all sums collected, £1 1s from Lessee for lease and any other small fee you have been in the habit of charging’: Hamerton to Mackay, 26 February 1883, pt 83/59, ma mt 1/1b.

52. Perkins (Agent for Greymouth) to Hamerton, 28 February 1883, pt 83/60, ma mt 1/1b

3. Lands which, by virtue of the provisions of the fourteenth section of ‘The New Zealand Native Reserves Act, 1856’, or the seventh section of ‘The Native Reserves Amendment Act, 1862’, may have been subject to the provisions of ‘The New Zealand Native Reserves Act, 1856’.
4. Lands comprised in blocks guaranteed to or set apart for the benefit of Natives by Colonel McCleverty, or according to the directions of any Commissioner appointed to investigate purchases of land made from Natives by the New Zealand Land Company.
5. Lands reserved for the benefit of Natives by the New Zealand Land Company or the New Zealand Company.
6. Lands vested in the Public Trustee under this Act.

Only particular reserves, those ‘subject to the provisions of any Act repealed by this Act’, would come under the jurisdiction of the 1882 Act (s 4). Unlike the previous Native Reserves Act 1873, reserves within confiscated areas were extricated from the 1882 Act under section 5.

In keeping with earlier trust reserves legislation, the Act continued to restrict trust administration to reserves in Crown title: ‘no Native reserves shall be subject to the administration of the Public Trustee under this Act until the Native title over such land shall have been extinguished’ (s 19). Such statements must be read in conjunction with the expansion of the role of the Native Land Court to make assessments on reserves for the purpose of administration as well as individualisation (see ss 16, 19, 20–26). For example, it was mentioned in the context of discussion of the 1882 Act that:

it is highly desirable there should be a subdivision of Native Lands to a very considerable extent,⁵³ and I believe that is the end and object which we should keep very much in view.

The central force of the Act was contained in sections 8 to 16. All reserve lands and personal estate were vested in the Public Trustee. The authority to lease reserves was granted to the trustee on the sanction of the board. At the same time, the degree of limitation placed on the trustee by the board should be questioned. We might assess the degree of protection offered to Maori reserves under the terms of the Act.

Two terms of lease were offered. Thirty-year leases were tendered for the purposes of mining or agriculture, on land that was not to be built upon. Tenants planning to build were offered 63-year leases in three terms of 21 years, with an automatic right of renewal at the end of each term. Both figures exceeded previous terms of leasehold. Both categories benefited further from a lower frequency of rental assessments than previous terms. The regulations therefore appear tilted to favour construction on the land and the longer-term retention of leases. Security for pre-existing leases was guaranteed under section 10. This ensured that previous contracts were honoured and eased the anxious minds of Greymouth lessees.⁵⁴

53. Bryce, ‘Native Reserves Bill 1882’, 28 July 1882, NZPD, p 651

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The terms of the lease contracts were also better defined and structured under the 1882 Act:

- (a) Every lease shall be disposed of by public auction or public tender, after due notification thereof has been given by advertisement in a newspaper having general circulation in the district wherein the land to be leased is situate, as the Board shall think the most fitting in each case.
- (b) The rent to be reserved shall be the best improved rent obtainable at the time.
- (c) No fine, premium, or foregift shall, in any case, be taken upon any lease.
- (d) No person in any way concerned with the Administration of this Act shall in any case be personally interested, directly or indirectly, in any lease, nor shall there be imported therein any provision or covenant for the private advantage of such a person.

These provisions sought to derive the maximum rental return on leased reserves. In such a way, it was envisaged Maori beneficiaries would derive the greatest benefit from administration based on rental market forces. We might consider these measures as an attempt to improve the administration of Maori reserves.

The Public Trustee received the authority to grant leases with a strong protection over existing trusts and lease arrangements (refer ss 10, 15). Still, such protections did not appease other leaseholders who were more concerned about the Act's provisions which imposed regulations for all future lease contracts. Indeed, the provision that all leases would be disposed by public auction to the highest bidder riled the existing Pakeha leaseholders. They feared the loss not only of their lease but of any improvements made to the property and exerted considerable pressure on politicians. From the lessees' riposte came another piece of legislation: the South Island Native Reserves Act 1883, which provided for compensation to be paid for improvements.⁵⁵ In many ways then, the application of the Public Trustee's administration resulted in a tightening of measures and practices in a formal sense. These changes reflect a shift to centralise administrative authority.

4.7 The Native Land Court and the removal of restrictions on alienation

Part of the centralised shift involved the resurrection of an active role for the Native Land Court. Administration envisaged under the Native Reserves Act 1882 applied

54. 'The reason it commended itself to that Committee was that pressure in respect to the leasing of these reserves was unduly brought to bear upon the Minister in whose charge the lands were, and it was felt that if there was any possibility of removing that pressure means ought to be taken . . .': John Bryce, 'Native Reserves Bill', 28 July 1882, NZPD, p 651.

55. 'The effect of the 1883 legislation was to ensure that the value of the improvements would be paid to tenants on the expiry of their then leases': Waitangi Tribunal, *Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 3, p 743. Leases in Greymouth were also reduced to a term of 21 years, where other reserves remained either 30 or 63 years. Resentment continued and in 1884 there was an attempt to introduce further legislation to provide existing lessees with an automatic right of renewal, before a royal commission was appointed in 1885 (discussed below).

only to reserves in Crown title. Reserves in customary title had to be taken to the Maori Land Court before they could be ‘protected’ under formal administration. The Native Land Court occupied a significant role, although it was not involved with the action of direct administration such as had been proposed in 1869 and during the amendment debates of the mid-1870s. Under section 16, beneficial interests in reserves were to be determined by the court, at the request of the Public Trustee.

It might be argued that the involvement of the Native Land Court in the administration under the Act allowed increased settler access to Maori reserve lands. Section 19 set out the contingent terms for reserves to be included under the Act. New provisions in sections 20 to 22 can be interpreted as allowing more options to Maori, but in the same breath opening (‘unlocking’) reserves to Government administration, where they had previously been held as exempt. Section 20 stated:

In any case where it would be advantageous for the owners of any Native reserves over which the Native title has not been extinguished as aforesaid, to bring the same under the operation of this Act for the purpose of management, the Public Trustee, with the consent of the Natives beneficially interested therein, may make application to the Court for that purpose . . .

Both reasons were expressed in the legislation. However, we must be cautious to consider the effect of provisions working together, rather than in isolation.

Court procedure for determining ‘assent’ was then outlined:

The Court shall hear and determine any such application as if the same had been made by the owners of land, and shall ascertain in the manner it shall think fit the names of all the owners of the land comprised in the application, the proportionate undivided share of each owner therein, and the assent or dissent of the said owners to such land being dealt with in the manner provided.

Thus, in practice there was little scope for Maori input.

Under section 21, Maori were also free to transfer all such reserve lands to the Public Trustee via the Native Land Court. It was perhaps section 22 that may have been viewed as most objectionable to Maori interests:

Where any Native reserve vested in the Public Trustee, or under his control, or held by any Natives under Crown grant, memorial of ownership, or certificate of title, is subject to any restrictions, limitations, or conditions, such Trustee or Natives respectively may apply to the Court to have the same or any of them annulled and removed.

One argument is that such a provision simply allowed Maori more freedom with their reserve lands, and yet, when considered against the purposes of establishing and maintaining secure trust estates, such views appear contradictory to the notion of inalienability. Certainly, there is an element of progression through these provisions, whereby reserves were first brought under the sweep of the legislation

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and could then be stripped of any protective mechanisms at the request of either the owners or the trustee.

Restrictions on alienations had been applied to Maori reserved lands since the Native Lands Act 1862 (s 10). Moreover, the provisions of section 22 of the Native Reserves Act 1882 represented the first stage towards the removal of restrictions governing the alienability of land.⁵⁶ At the same time, the removal of restrictions under section 22 was made contingent upon the retention of ‘sufficient land’ for Maori:

Before altering or removing any restrictions, limitations, or conditions attached to any Native reserve, the Court shall be satisfied that a final reservation has been made, or is about to be made, amply sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or in part belongs.

Restrictions over reserves were gradually eased through the 1880s and 1890s. The ‘guard’ was gradually lowered as successive legislation required proportionally smaller numbers of owners in assent of any removal of restrictions. The nadir was reached in 1894 and 1895, with the enactment of the Native Land Court Act 1894 and the Native Land Laws Amendment Act 1895. The new Maori lands administration scheme established in 1900 returned restrictions (see sec 4.3.12). The subject of the removal of restrictions on alienation is dealt with in greater detail in the parallel Rangahaua Whanui national theme report by Jenny Murray, *Crown Policy on Maori Reserved Lands 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*.

4.8 Parliamentary debates on the 1882 Act

Parliamentary debates in the House of Representatives reveal readings of the purposes guiding administration.⁵⁷ Bryce and certain other European Ministers expressed a desire to further open (Maori) lands for settlement. All four Maori members of Parliament were unified in debate against the Bill. Some other European members of Parliament also chose to oppose the Bill.

Hone Tawhai described the 1882 amendment of the Native Reserves Act as a ‘fish full of bones’.⁵⁸ He explained that the meaning of the Bill was ‘to place all the Native reserves under the authority of the Public Trustee, who is a European’. His

56. Refer Jenny Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series, February 1997

57. Copies of debates in the Legislative Council could not be located.

58. ‘I had hoped that this measure would appear to me in the shape of a fish, or a kind of a eel, called the piharau, which has no bones, so that I could have eaten of it without being annoyed by the bones. But according to the conclusion we have arrived at, and according to what we have seen of this Bill, it is more like a shark that lives on human prey.’: Hone Tawhai, ‘Native Reserves Bill’, 28 July 1882, NZPD, 1882, p 650. Ironically, Bryce, as Native Minister, did not disagree. In a burst of literal rhetoric he crowed, ‘This is a fish, and therefore it has bones, and ought to have bones’: Bryce, 28 July 1882, Native Reserves Bill’, NZPD, 1882, p 651.

major criticism was based on the fact that with a single Public Trustee there would be little or no access to him. Tawhai suggested that a better alternative model of administration for Maori reserves was the Orakei Native Reserve Act 1882. As a private Act, it enabled the trustee, Paora Tuhaere, to lease but not sell land sections at Orakei without the consent of all the beneficial owners.⁵⁹ Tawhai explained:

The system of reservation that I am in favour of is this: that each Maori should be given his own property – his land – and he should hold it under his own authority; that Natives should be allowed to deal with their own lands in the same way that I proposed that those who are interested in the Orakei lands should deal with theirs.

He added:

If lands were dealt with in the manner I have proposed, and the Maoris allowed the power of leasing it themselves, none of the proceeds of the land would then go to pay officers who manage the leases and other gentlemen connected with the administration of these lands.⁶⁰

All four Maori members, Tawhai, Tomoana, Te Wheoro, and Taiaroa condemned the Bill.⁶¹ Access to centralised administration was a major concern for Maori. Local access to the administrator and the funds derived from rents was imperative to Maori, and was denied to them under the terms of the Act. Time and access to administration cost money. Maori members voiced this concern.⁶²

Tomoana commented: ‘I think this is a most iniquitous Act. It takes away from the Maori everything he possesses, and gives it to another person to control.’⁶³ Shades of contrast were drawn with the laws applied to Pakeha lands:

Supposing this Bill dealt with European lands in the same way that it proposes to do with Maori lands, what would be the consequence? Great noise and many objections to it – far more objections than are now made. This Bill, to my idea, is like a nail hammered into a hard piece of wood, and so tightly that to extract it would be impossible.⁶⁴

Underlying the relationship was the racist assumption that Maori were inferior to Europeans. Thus they were placed in a subordinate relationship of dependence, as ‘beneficiaries’. John Ballance, the Minister of Lands from 1884 and later the Premier, commented in 1882:

It would not only be sound policy therefore to bring all leased (reserve) land under general regulations and the control of a department, but it would be a necessary

59. Refer Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1987, p 41

60. Tawhai, ‘Native Reserves Bill’, 28 July 1882, NZPD, 1882, p 650

61. See Taiaroa, 22 August 1882, NZPD, 1882, p 504; also, Tawhai, 28 July, NZPD, 1882, p 650

62. Tawhai, ‘Native Reserves Bill’, 28 July 1882, NZPD, 1882, p 650

63. Tomoana, ‘Native Reserves Bill’, 22 August 1882, NZPD, 1882, p 510

64. Ibid

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measure of protection against unfair dealing. Whatever may be said to the contrary,⁶⁵ it is beyond doubt that the Native is in many respects an infant needing a guardian.

Taiaroa looked to attack such underlying assumptions:

The Maori people are not children, and in saying so I wish also to say that they should not be treated as children, that they have sufficient intelligence to manage their own affairs, and that their lands should not be given to others.⁶⁶

Seddon supported these views:

I say, considering the position of the Maoris, considering that they are intelligent, well-educated and well able to manage their own affairs, I think Parliament would be doing a wrong thing to take from them the right to manage their own affairs. Why, if any of us purchased land on the West Coast from the Government, if Parliament proposed⁶⁷ to interfere with us in the management of our estate, we would not stand it . . .

Another European Minister, Daniels, concurred:

give them [Maori] their land, and let them manage it for themselves. If they wish to have the advice of any person in the management of it, let them have it; but do not make this compulsory trust.⁶⁸

Maori opposition to the Bill also arrived in the form of petitions. References to petitions were made by Taiaroa and Tomoana during speeches before the House.⁶⁹ Taiaroa in particular explained that he was prompted to speak ‘by the fact that so many petitions have come from the Native tribes of this Island objecting to this measure’.⁷⁰ Both Taiaroa and Tomoana accused the Government of not providing adequate coverage to the petitions:

They [the Government] know very well that a petition has been sent here from the Natives about the Oamaru Block, and the [Select] Committee has recommended that it should be referred to the Government for them to⁷¹ take action upon. And what have they done? They have done nothing in the matter.

Maori petitions provided further evidence of widespread complaint against the Native Reserves Bill, and it reminds us of the weak position of Maori members inside a European Parliament.

65. John Ballance, *A National Land Policy Based on the Principle of State Ownership: with the Regulations of the Village Homestead System*, Wellington, 1887, cited in Don Loveridge, ‘The Adoption of Perpetually Renewable Leases for Maori Reserved Lands, 1887–96’ (Wai 145 rod, doc c2), p 9

66. Taiaroa, ‘Native Reserves Bill 1882’, 22 August 1882, NZPD, 1882, p 504

67. Seddon, ‘Native Reserves Bill 1882’, 28 July 1882, NZPD, 1882, p 657

68. Daniels, ‘Native Reserves Bill 1882’, 28 July 1882, NZPD, 1882, p 654

69. Reference to petitions were made in Taiaroa, p 504

70. Taiaroa, 22 August 1882, NZPD, 1882, p 504

Other theories were postulated as to the purposes behind the Government's policies towards Maori land, and, in particular, the Native Reserves Act 1882. Major Te Wheoro stated:

I verily believe these lands will be a security for the money which will be borrowed from England. When these lands come under the operation of this Act, the Government will say to the lenders, 'Well, we have all this property in land; therefore lend us so much money.'⁷²

While the charge was not disputed, there is not space here to pursue the connection.

The overarching imperative to open lands for settlement and economic development was alluded to in the debates. Colonisation was deemed beneficial to all parties. Furthermore, anything which compromised the impetus was criticised in Parliament. Some Government Ministers saw the Native Reserves Act 1882 as locking up Maori land 'to the injury of the productive power of the colony'.⁷³ John Bryce commented in debate:

It has been further objected to the Bill from another direction that it would, in effect, lock up under its management a large quantity of land in a way that would be hurtful to the public interest. No doubt large provision is made for a large quantity of land coming under this Bill, and nothing would give me greater pleasure than to see a large quantity of land coming under it. But I would point out that, if the quantity of land coming under the Bill is too large,⁷⁴ provision is made in the Bill for unlocking, if I may say so, land unduly locked up.

In a 1991 article, Tom Brooking highlighted the Liberal approach to breaking open Maori lands and the attempt to further develop the countryside for European settlement and small farming.⁷⁵ Comments, coupled with subsequent initiatives to

71. Tomoana, 22 August 1882, NZPD, 1882, p 510. Tairaoa earlier stated:

Since I have been in the House this session I have not heard any honourable gentleman express a desire to hear any member of the Native race at the bar in connection with these Native reserves. I attach a great deal of importance to the fact that the owners of these reserves, who are the persons specially interested, have sent a petition to the House praying that they might be heard at the bar, in order to state their objections to the Bill. The Maoris are the owners of the reserves proposed to be dealt with, and the Bill proposes to take away their right of dealing with them and place it in the hands of others.

(22 August 1882, NZPD, p 504.)

72. Major Te Wheoro, 'Native Reserves Bill', 22 August 1882, NZPD, 1882, p 507. Tomoana later asked the House, 'Why should not the object of this Bill be publicly announced? If it is for the purpose of securing these moneys that are to be borrowed, why should it not be so stated? I do not see anything in this Bill whatever that will benefit the Maori people.': Tomoana, 22 August, 'Native Reserves Bill 1882', NZPD, 1882, p 510.

73. Bryce, 'Native Reserves Bill', 28 July 1882, NZPD, 1882, p 651

74. Ibid, pp 651–652

75. Tom Brooking, "'Busting up" the Greatest Estate of All', NZJH, vol 26, no 1, 1992, p 95:

Politicians of every colouration then shared a consensus on three key issues: that all landlordism was bad but Maori landlordism was the most malevolent of that oppressive institution, since Maori landowners constituted a block or bar to settlement and progress locking up the land in the same way as the great estate owners; and that Maori must not be made completely landless so as to become a 'burden on the state'. This phrase was used many times by every kind of politician . . . Furthermore, if Maori could be held somewhere between a proletariat and a peasantry they would stay in remote country areas and away from the towns, supporting themselves and maintaining order and stability.

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bring larger numbers of reserves under the Government's direct administration in the 1880s, can be seen as a backdrop to the later Liberal policies. Numerous allusions were made to the dangers of shutting up the lands in reserves and the corresponding need to 'unlock the land'. This rhetoric demonstrates the omnipresent tension between settler and Maori interests over Maori reserves. Bryce continued:

the land of the Maoris, in common with the land of the White people, must be, in the interests of the colony, made productive . . . there is ample provision for unlocking lands when it is desired so to do. Honourable members will see that is the case if they look at clause 21.⁷⁶

Another member mentioned concern over access to reserve lands in relation to the construction of the main trunk line.⁷⁷ We might also remember that Charles Heaphy's former roles combined Commissioner of Native Reserves with ongoing responsibility for the survey of roads and telegraph lines. That such public works schemes were intimately connected to the fate of reserves administration is itself revealing of the expectations placed on reserves.

Some observers were bothered by the seemingly large area of reserves land which came under the terms of the Act. A direct comparison was drawn with the Thermal Springs Districts Act 1881. It was commented:

The only case that I know of which is like it is the Thermal Springs Bill of last session. That Bill many of us innocently thought was only to prevent the alienation of springs of hot water. And other things with Maori names mentioned in the Bill which are of exceedingly great value for curative and medicinal purposes . . . We were really passing a Bill under which the Government have set aside 680,000 – nearer 700,000 acres in fact – to be administered in⁷⁸ any way in which the Government, without reference to this House, may see fit.

4.9 Administration, 1882–84

The years between the introduction of the Native Reserves Act 1882 and Mackay's dismissal provide a useful focus for examining the nature of change in trust administration. During this short period, Mackay remained Commissioner of Native Reserves, acting as a bridge between the two periods of administration. The institution of a centralised office of administration meant immediate changes to the regional variations and to the flexibility that existed under the commissionership of the 1870s. For example, previously Maori beneficiaries of Collingwood and

76. Bryce, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, pp 651–652

77. 'We in the North Island are very anxious to see the country opened by a railway running from Auckland to Wellington': F Whitaker, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, p 655.

78. There were other attendant problems. Facing high rental payments in the midst of the 1880s depression, lessees defaulted payment and sought to purchase freehold. Furthermore the Supreme Court decided that Ngati Whakaue was an iwi, not a 'body corporate', and therefore not entitled to sue for arrears: F J Moss, 'Native Reserves Bill 1882', 28 July 1882, NZPD, 1882, p 661; also see Ward, pp 288–289.

Marlborough reserves received rental payments directly. After 1882, it was recommended that the practice cease and consistency be adopted.

Staffing was re-evaluated. As a result of a request by Hamerton, Mackay submitted the following list of employees salaried to the native reserves account.

Name	Rank and station	Rate (£ per annum)
Alexander Mackay	Commissioner, Wellington	100
	Nelson	225
	Greymouth	225
Catley	Clerk, Nelson	50
Hough	Interpreter, Nelson	40
Hemi Matenga	Assistant commissioner	100*
T P Mutumutu	Assistant commissioner	
E Johansen	Medical officer, Motueka	50
E Collins	See Nelson [†]	50
Lewis Horne	See Wairau [†]	50
Charles Scott	See Picton [†]	50
John Hosking	Schoolmaster, Wairau	55
E Hosking	Sewing mistress, Wairau	10
Vacant	Schoolmaster, Arahura	150
Vacant	Medical, Westland	75

* These three positions were recently vacated at the time the list was compiled.

[†] A single figure was listed. It is presumed to apply to both assistant commissioners. Note the Wellington clerk, Mr Rattray, had been suspended 'having been committed for trial'.

Return showing the names and salaries of the officers employed in the Native Reserves Department. Source: Alexander Mackay to Public Trustee, 15 September 1882, Public Trustee file 82/3156, Maori Affairs Maori Trustee series 1/1b.

Mackay's employment of two Maori assistant commissioners is of particular significance. Given the non-implementation of the Native Reserves Act 1873 largely on account of proposed Maori involvement in management, the (almost secret) existence of two Maori commissioners represented a revelation. Nowhere

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else in documentary sources cited was the participation of the two Maori officers mentioned. Their presence was immediately targeted by the Public Trustee:

The salaries of the two assistant Commissioners and the interpreter must be discontinued unless very good reason be adduced to the contrary. They appear to me to be absolutely thrown away and to inflict a gross injustice upon the beneficiaries of the particular reserves.⁷⁹

It was declared that neither position was further required, and an onus fell upon Mackay to disclaim any need for the Maori commissioners. Mackay responded that the commissioners should be dismissed, ‘their services never having been needed’.⁸⁰ This was an unusual statement given their continued employment on a significant salary. On the dismissal of the interpreter, however, Mackay could not agree. From a comparative view, the employment of Maori officers inside an ostensibly European administration appears surprising and almost contradictory, showing a degree of inconsistency between theory and practice of administration.

There were other inconsistencies in administration. Despite outstanding rental debts owing to Maori, leaseholders continued to capitalise on popular resentment in order to retain new terms of lease. Without exception, significant rent arrears were owed to Maori beneficiaries across all areas. Some notable examples included £525 1s 10d rental arrears from Nelson town reserves, while Motueka–Moutere and Motueka 2 fared little better, with debts accrued of £441 3s 3d and £327 16s respectively. Less surprisingly, perhaps, the worst scenario hailed from the Westland reserves in the South Island, where £740 18s 10d was still owed. Mackay was sufficiently concerned to note:

in some instances where the arrears are large there will be little alternative but to forfeit the lease, as matters will only drift into a worse position, if further latitude is granted.⁸¹

Strong words, although no recorded occurrences could be found to have taken place.

The administrative changeover in 1882 also produced a number of official requests for general statistics on all reserves.⁸² We can usefully juxtapose these against the trust reserves figures from 1882 and 1883. The general statistics of trust reserves under the terms of the Native Reserves Act 1882 were listed by Mackay. He recorded that the total aggregate area of reserves under the Act consisted of 53,762 acres 2 roods 15 perches. Of this, 39,435 acres 2 roods 7 perches lay in South Island trust reserves, while 14,327 acres 18 perches remained in the North Island.⁸³ The aggregate lands were divided among 657 tenancies; 88 in the North

79. Hamerton to Mackay, 15 March 1883, pt 83/82, ma mt 1/1b

80. Mackay explained that ‘their appointment was the result of the popular opinion then prevailing that the Natives should have a voice in the management of their own affairs, but the practical value of the office has been nil’: Mackay to Hamerton, 20 March 1883, pt 83/82, ma mt 1/1b.

81. Mackay to Public Trustee, 5 February 1883, pt 83/ 27, ma mt 1/1b

82. Refer AJHR, 1883, docs g-7b, 7-c, 7-d

Island and 569 in the South Island, demonstrating the relative disproportion of trust reserves allocation.

Mackay's report provides a useful overview of all trust properties administered under the terms of the Native Reserves Act 1882. The report is treated in detail below. In the case of Auckland reserves, of five parcels believed to come under the administration of the 1882 Act, only three (a total of 4⁸⁴ acres 2 roods 29 perches) in fact proved to remain in Maori beneficial ownership. The two remaining reserves (one of six acres and the other of unspecified proportions) were both previously vested in the Crown, but, for unknown reasons, they were not recognised as transferred to the Public Trustee. Mackay's overview itself uncovered a number of apparent administrative inconsistencies, perhaps formerly submerged under the sprawling undergrowth of administration. Yet, what is remarkable is the complete exclusion from trust administration of all reserves north of Auckland (something which Mackay does not mention).

Within his list of trust reserves, Mackay included reserves defined for specific purposes. While under the auspices of Public Trust Office administration, these particular reserves could not be leased by the Public Trustee. Mackay mentioned the example of separate Auckland reserves:

There are other parcels of land in the Auckland Land District formerly brought under the operation of the Native Reserves Act, but these lands were brought under for a specified purpose, and are not otherwise available for occupation.⁸⁵

Tauranga raupatu reserves were another example of reserves defined for specific purposes. Established under the Confiscated Lands Act 1867, these reserves were proclaimed endowment reserves for the specific purpose of education. The administration of the Tauranga reserves contrasted further with the fate of the other raupatu reserves already mentioned. Hawke's Bay reserves were also reserves 'having been brought⁸⁶ under for a specified purpose [and] not available to be otherwise dealt with'. It is not known whether it was this 'endowment' relationship, or other points of confusion, which led Captain Fraser to declare earlier during the parliamentary debates surrounding the 1882 Act: 'Four Native Reserves⁸⁷ were totally lost in Hawkes Bay; nobody knew what had become of them.' Certainly the state of awareness concerning the administration of Hawke's Bay reserves, after Heaphy's own determined efforts in the 1870s, should not have

83. Alexander Mackay, 'Report on the State and Condition of Native Reserves in the Colony', 18 May 1883, AJHR, 1883, g-7, p 1

84. Two of the reserves were found in central Auckland, one the site of the Mechanics Bay Hostel, the third remaining parcel was the former site of the Onehunga portage hostel (the building burnt down in the late 1870s, and was not rebuilt). The rents accrued from the administered reserves were paid into the costs of administering the Mechanics Bay Hostel: Alexander Mackay, 'Report on the State and Condition of Native Reserves in the Colony', 18 May 1883, AJHR, 1883, g-7, pp 1–2.

85. *Ibid*, p 2

86. *Ibid*

87. '[A] and it would be the duty of the Commissioner to find out where they were. Major Heaphy, when he had been examined on the point, either would not or could not say where they were': Captain Fraser, 'Native Reserves Act 1882', 29 August 1882, NZPD, p 637.

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inspired much confidence. Despite such pronouncements, Mackay proved able to identify three further reserves (Te Arai Matawai, Waikokopu, and Poukawa), none of which was leased – possibly a more plausible reason as to why little was known of the reserves administration. We might hypothesise, in the absence of firmer evidence, that these three reserves demonstrated Maori use of the system of reserves administration, almost in spite of itself, to avoid the clutches of alienation. Later, on 10 April 1883, Mackay notified Hammerton that the Hawke’s Bay reserves had been ‘removed’ from administration under the terms of the Native Reserves Act 1882.⁸⁸

Mackay’s count of Taranaki reserves administered by the Public Trustee included 3552 acres 1 rood 4 perches. This number was entirely separate from the West Coast settlement reserves. The rents from these particular reserves were paid to Maori beneficial owners, in contrast to the rents of the West Coast settlement reserves, which were paid into the Public Trustee’s accounts. Similarly, the Palmerston reserves, an example of land acquired from the proceeds of the sale of other Wellington reserves at Wainuiomata, derived revenue which was paid directly to the Waiwhetu Maori as beneficial owners.

Mackay’s list of Marlborough reserves is perhaps the most surprising. As the most complete published record, it shows the total area of Marlborough reserves under the 1882 Act as 21,004 acres. This amounted to the largest individual region of reserves in the country, and half of the South Island aggregate. More revealing perhaps, was the statistic that only five reserves, totalling 3376 acres, were let to Europeans through the terms of the 1882 Act.⁸⁹ Almost all the remainder, much of it in the area now known as the Marlborough Sounds, was either occupied or let by Maori. Mackay explained the situation with the following words:

The reserves in the Marlborough District contain an aggregate area of 21,004 acres 2 roods 8 perches. A few blocks have been let; some are in the occupation of the Natives for cultivation and pastoral purposes, and for fishing-places,⁹⁰ but a large proportion consists of hilly and worthless land, not likely to be utilized.

The implication was clear enough. If the land was not suitably valuable in European eyes then Maori retained effective interest and control over their lands, inside the wider span of reserves legislation.

The situation of the two New Zealand Company settlements of Nelson and Wellington were contrasted in Mackay’s account. The Nelson reserves were styled a success story:

The Natives in the original Nelson settlement, in consequence of the foresight of the New Zealand Company in setting apart these lands for their benefit, have reaped a considerable advantage through being placed in a position of independence in the

88. Although what this meant in practice is not known: Mackay to Hammerton, 10 April 1883, pt 83/46, ma mt 1/1b.

89. Mackay, 10 April 1883, pt 83/46, ma mt 1/1b, p 7

90. Ibid, p 3

way of monetary aid for purposes that the Natives in the other parts of the colony have had to depend on the assistance received from the government.

There was a marked contrast with the fate of Wellington reserves:

A large number of the New Zealand Company's sections appear to have been appropriated to other uses, as well as included in Colonel McCleverty's awards, leaving a very small proportion of the original estate available for the purposes⁹¹ to which these lands were to be devoted under the company's scheme of settlement.

Another contrast was found in the case of Westland reserves in 1882. The total area of reserves on the West Coast was listed as 5936 acres 1 rood 16 perches⁹², a majority of which (4226 acres) were included under the 1882 Act. Mackay also noted the dramatic decrease in demand for reserve leases in the wake of the collapse of goldmining activity. In Westport, for example, the bulk of the town sections lay unoccupied, either by European tenants or by Maori. What concerned Mackay most about the Westland reserves were the entitlements of the leaseholders to an automatic right of renewal, which was threatened by the proposal to auction leases under the 1882 Act.

Further to the subject of tenants' concerns, Mackay made the following points:

The general principle upon which the Native Reserves estate has hitherto been administered was to encourage the occupation of the land, as well as the creation of a permanent and respectable state. Every facility was therefore granted to the tenant to improve and cultivate his leasehold, as if it were his own freehold, by promoting the system of tenant rights. In renewing a lease the tenant's improvements were always considered his own, and an increase of rent was only charged on the land in respect of its inherent properties of fertility, advantages of situation, and other causes that had tended to raise the value during the interim. No difficulty either was ever raised with regard to assignments; the only matter insisted on was that the person to whom it was proposed to assign the lease should be capable of paying the rent. The leases also were free from all restrictive covenants in regard to stopping or the sale of produce. All that was expected was that the tenant would conform with the implied covenant to cultivate the land in a good and husbandlike manner; and it was to his interest to do so, because he felt secure in the renewal of his lease at the end of the subsisting term, or, if he desired to leave the district, he could sell his leasehold to the best advantage in consequence.

All these advantages have disappeared under the new Act, consequently, the tenants are anxious as to their future, and have decided to evoke the aid of parliament to afford them security for payment of unexhausted improvements should their efforts prove unsuccessful in securing a fresh lease in the manner prescribed under the present Act. This is only just and reasonable, considering that the estate is indebted for its improvement entirely to the labour and capital of the present lessees or their predecessors in title. It would be inequitable, therefore, at the expiration of the present

91. Ibid, p 2

92. Ibid, p 3

4.10 Trust Administration of Maori Reserves, 1840–1913

leases, a number of which terminate in about three years, to offer these lands for public competition without consideration for those who have enhanced the value.⁹³

In some respects, Mackay's discourse worked to reassure a number of European leaseholders whose concerns in some quarters had been partly responsible for the initial momentum to amend native reserves administration. What is remarkable, though, was the complete omission of Maori interests in, or long-term ownership of, the reserves. Responsibility in this sense was pledged between Crown and colonist, and Maori appear almost marginalised from the trust relationship. From such perspectives we derive a darker sense of the administrative relationship between the Crown, glimpsed through the actions of the Government, and Maori. On one level, Maori were invited to participate in a centralised system as individuals who would benefit. Yet, on another level, Maori interests were not necessarily considered as important as those of Europeans. This was not simply a primacy placed on European interests, but a form of institutional racism. Put simply, Maori rights to long-term ownership of their lands were prejudicially affected in favour of offering leaseholders many of the benefits of effective freehold. On the facing page is listed a statistical summary of Mackay's 1882 return.

4.10 The South Island Native Reserves Act 1883

The South Island Native Reserves Act 1883 followed in the wake of considerable political pressure from European lessees concerned over the issue of lessee improvements and high rents. As a result of the Act, provision was made for the incumbent lessee to reimburse the previous tenant for the value of any improvements made upon a reserve at the termination of a lease term (ss 5, 6, 10). Terms of lease were also adjusted. In the case of Greymouth reserves, all leases were confined to a term of 21 years, instead of 30 or 63 years. This shortening of the terms of lease generated significant consternation, and was partly the cause of the Commission of Inquiry into South Island West Coast Reserves 1885 (the Kenrick commission).

The commission was formed to inquire into the condition of European lessees on Maori reserves on the West Coast of the South Island. We might interpret such provision, and the seeming ignorance paid to Maori complaints (mentioned in parliamentary debates), as a preoccupation with the interests of European settlers to the detriment of the Maori 'beneficiaries'. Alan Ward has reported on the history of the commission in a historical overview for the Ngai Tahu claim (Wai 27). Ward comments that the commission reported in October 1885 and 'found broadly in favour of the tenants though it stopped short of recommending freeholding'.⁹⁴ The

93. Mackay, 'Native Reserves in the Colony', 18 May 1883, AJHR, 1883, g-7, p 8

94. Alan Ward, 'A Report on the Historical Evidence' (Wai 27 rod, doc t1), p 317

Category	North Island	South Island	Total
Reserves let	51	20	71
Part let	11	6	17
Unlet	10	No number specified	10*
Maori occupation	5	24	29
Part occupied	7	2	9
Unusable	2	6	8
Sold	4	0	4
Part sold	1	1	2
Let by Maori	4	17	21
Granted to Maori	2	23	25
Part granted	6	0	6
Hostelries	3	0	3
Public works	0	3	3
Other [†]	24	3	27
	North Island	South Island	Total
Total number of individual reserves	143	148	291
Total area of reserve land	14,327a	39,435a	53,762a

* There were no South Island reserves which were recorded as 'unlet'. Instead, a number were simply left blank.

[†] This heading includes the 24 Tauranga raupatu reserves created for educational endowment purposes in the North Island, as well as reserves allocated for fishing, timber, and a burial ground in the South Island.

Summary of Mackay's 1882 return. Source: 'Return of Native Reserves Subject to the Operation of "The Native Reserves Act, 1882"', AJHR, 1884, g-7, pp 5–8, refer appendix.

4.10 Trust Administration of Maori Reserves, 1840–1913

Kenrick commission concluded that both the 1882 and 1883 statutes detrimentally affected European settlers holding reserve leases on the West Coast.

Attempts to redress a perceived imbalance followed. The Westland and Nelson Native Reserves Act 1887 repealed the South Island Native Reserves Act 1883 (see s 26). The terms of lease were amended to a uniform 21 years. Above all, European lessees were granted the perpetual right of renewal of leases. Section 14 stated:

In all leases to be hereafter granted there shall be a condition for a new ascertainment of the rent at the expiry or surrender of every such lease, and that the then holder shall have the right of renewal for a like term upon the same conditions and covenants (including the right of renewal), subject only to the difference that the rent shall be the rent so ascertained as hereinbefore provided.

There were other pitfalls for Maori owners of reserves in the terms of the Westland and Nelson Native Reserves Act 1887. These included changes made to the valuation of improvements and the fixing of rents. All leases were to be set by competition at the auction. By auctioning leases, it was hoped that rental values might reflect current market values. At the same time, existing leaseholders were offered a perpetual right of renewal, on the basis that the rents remained in touch with current market valuations. However, when Poynton, the Public Trustee during a commission of inquiry in 1909, described the provision, he commented that:

the farce of submitting the lease to public competition was gone through. Just as there was a tacit agreement not to give a true value to the improvements, so it ⁹⁵was an unexpressed resolve in the community not to bid at auction to give a fair rent.

Further quoting Ward, the Tribunal concluded:

In practice this arrangement does not seem to have resulted in fair rents being set. Because such a high proportion of the Greymouth community were leaseholders and it was difficult to get ⁹⁶real competition for the leases. Lessees were effectively enabled to set their own rent.

And as result, Maori were disadvantaged in the process. Ward stated:

this Act brought about what has been described as a ‘revolution’ in the leasing arrangements on the West Coast. Although the Act did not adopt any of the specific alternatives put forward by either the Kenrick Commission or the Bunny Report, it was clearly passed in response to these investigations, ⁹⁷both of which argued that the tenants had genuine grievances which required redress.

The Tribunal described the effect of the perpetual right of renewal under the Act in the following terms: ‘Effectively ⁹⁸the land was removed from the control, use or occupancy of the Maori owners.’

95. J W Poynton to Native Minister, 3 November 1909, doc n-7, p 349, cited in Ward, ‘Report’, p 327

96. Waitangi Tribunal, *Ngai Tahu Report 1991*, vol 3, p 747, cited in Ward, ‘Report’, pp 326–327

97. Ward, ‘Report’, p 322

98. *Ngai Tahu Report 1991*, vol 3, p 746

4.11 Perpetual Leases and ‘Leases in Perpetuity’

The decision to grant reserve leases in perpetuity should not be read as a sudden shift in administrative policy. As the Tribunal has recently identified, statutory provision for perpetual leases predates 1892 (in the case of the West Coast settlement reserves) and also the Nelson and Westland Reserves Act 1887:

[From the outset] the leases were capable of being made perpetual. Some research advice has assumed that the perpetually renewable leases dated from the 1892 Act. While the Act of 1881 [the West Coast Settlement Reserves Act] did not spell out the perpetual nature of the leases, the form of the leases was given in the fourth schedule of the 1883 regulations, and a basis for perpetuity was introduced in clause 5. We consider those leases were *ultra vires* the Act, but the leases were given out⁹⁹ none the less and were capable of permanently denying possession to Maori owners.

Perpetual leases were imagined as the best means available to appease the concerns of specifically European leaseholders over security of tenure. At the same time, leases with perpetual tenure established a regular basis of rent renewal. From one respect, the provision of perpetual leases overrode any potential benefit that may have been derived from more regular rent increases:

As one counsel explained the Act: ‘There is a provision put in to tickle the natives – they may sit and amuse themselves fixing the rent – but the real power is in the hands of the Public Trustee.’¹⁰⁰

The objectives of European administration were firmly directed at securing financial return as the benefit bestowed, not the continued occupation of land.

Maori response to the implementation of leases in perpetuity under the 1887 Act was mixed and, in some ways, ambivalent. During the early stages, ambivalence may have been the result of inadequate exposure to the implications of the legislation. Certainly, both Maori members Taiaroa and Parata protested that the Bill was foisted on Parliament late at night, without Maori translation.¹⁰¹ This may in part explain the absence of direct criticism of the perpetual leases.¹⁰² Maori had petitioned against the earlier South Island Reserves Act 1885.¹⁰² Yet, no petitions can be located in published sources relating to the 1887 Act and, in particular, perpetual leases. Despite some evidence from the Ngai Tahu hearing investigation

99. Waitangi Tribunal, *Taranaki Report*, p 262

100. McLean, NZLR, 1890, p 7, cited in Patricia Berwick, ‘Trusteeship and Administration’, 1996 (Wai 145 rod, doc e10), p 33

101. For further explanation of the procedure of the Bill through the House refer to Ward, ‘Report’, pp 322–325.

102. References to the petitions can be found in the *Journals of the House of Representatives* such as the petition presented by H K Taiaroa against South Island Native Reserves Bill, 8 June 1887, JHR, sess 1, no 173, p xviii. Another example was the petition of Pamariki Paaka complaining of the provision of the South Island Native Reserves Bill, 3 November 1887, JHR, sess 2, no 142, p xxii. Inia Tuhuru petitioned ‘that the management of their property should be left to themselves’: 29 November, 1887, JHR, sess 2, no 411, p xxxi. Note, none of these reserves were reprinted in the AJHR.

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into the Westland reserves, it is difficult to draw conclusions of Maori perspectives towards perpetual leases, based on written sources.¹⁰³

One possible explanation for this absence of expected criticism may be the relatively small numbers of Maori alive in those particular regions of the South Island, and their limited material requirements. For a relatively small Maori population, endowed with a relatively large area of reserves, the concern to retain land for occupation may have been less than the desire for financial security in the short-term. Perpetual leases were a much more complex issue under Maori customary law.

In 1892, John McKenzie, the Minister of Lands, introduced a land Bill which brought a change to the notion of perpetual leases of Crown lands. ‘Perpetual lease’ tenure before 1892 became ‘lease in perpetuity’. There were significant changes for reserves administration. Former ‘perpetual leases’ granted lessees a perpetual right of renewal, but included market-based rent increases. Replacement leases in perpetuity were available for a term of 999 years¹⁰⁴ and the annual rental rate was fixed at 4 percent of the capital value of the land.¹⁰⁵ One historian has described the shift:

This tenure was a compromise arrived at between the advocates of the freehold and those of a state leasehold; for, although in many respects the new tenure was almost equivalent to freehold, the Crown’s right was preserved to annual collection of rent . . .

The shift had significant repercussions for Maori owners. Maori were removed from the virtual ownership of reserve lands for a fixed period of 999 years. The rental market was monopolised and rents set at a fixed rate of 4 percent of the current land valuation. By removing rent allocations from the free market, rental returns to Maori became directly affected by inflation. It might be seen that the changed administration under the Land Act 1892 ceased to distinguish between ordinary categories of leased Crown land and trust reserves. And, in the process, the status of Maori as owners was further undermined.

In 1892, leases in perpetuity were extended to West Coast settlement reserves. Section 6 of the West Coast Settlement Reserves Act 1892 explained:

Reserves may be leased by the Public Trustee, at his discretion, with the right of perpetual renewal, in the manner and under and subject to the Provisions of this Act.

103. ‘Parata, the MHR for Southern Maori, spoke against provisions in the Bill including the clause giving lessees a perpetual right of renewal, but on both occasions he voted for the Bill. In December 1887 he helped make the Bill law despite the fact that he knew it to be contrary to the wishes of some of the owners of the affected land. Taiaroa maintained his opposition to the end, but as he expressed willingness to vote for an amended Bill containing the perpetual lease arrangements it does not seem that his opposition was directed at the perpetual leasing.’: refer to Ward, ‘Report’, p 325.

104. Native Land Act 1892

105. W R Jourdain, *Land Legislation and Settlement in New Zealand*, Wellington, 1925, p 32

While Maori owners had sought the termination of leases, Pakeha settlers declared the need to ‘secure’ terms of lease. Ballance saw a compromise in the granting of perpetual leases. He later stated:

The want of authority to grant a tenancy longer than twenty-one years, and to allow compensation for improvements, rendered impracticable the leasing, with any immediate pecuniary benefit to the Native owners, [of] the lands which they themselves could neither use nor occupy, and from which they derived no profit.¹⁰⁶

For Maori, this ‘compromise’ represented a mere with a double edge. Closest to Ballance’s heart was the ‘cause of European settlement’:

Nothing is more at the heart of the Government, than to see this question settled once and for all, as we think it is injurious to the cause of settlement, injurious to the settlers, and injurious to the natives that it should remain unsettled.¹⁰⁷

It is possible to compare Maori responses to the 1887 and 1892 Acts in order to ascertain whether Maori perceived problems with the introduction of perpetual leases and leases in perpetuity.¹⁰⁸ There are two reports which examine the issue of perpetually renewable leases. Both comment that the 1892 Act was unopposed over the issue of leases in perpetuity.

As was the case with the 1887 Act, there appear to have been no written objections from Maori members of Parliament to the implementation of perpetual leases. We need to question this absence on the ground that it might be expected that Maori would not support such a measure. Further, while we are left to ask why Maori did not appear to object specifically to perpetual leases, we must be careful not to assume that an absence of written criticism implied assent. Commentators have taken different views of the issue. Don Loveridge, in a report for the Crown Law Office, accentuated the difference of opinion among Maori:

Generally speaking, the Bill met with a mixed, but not entirely hostile reception. Three Maori members spoke at this time. Although all thought the Bill had its shortcomings, none opposed it in total. The first to speak, appropriately enough, was Hoani Taipua, the Member for Western Maori. He decried the role of the Public Trustee in the whole affair, and called for an end ‘to the experiment of placing these lands’ in his hands. He then stated that ‘the present position is this: Some Natives approve of the Government’s proposal . . . [but] I hold in my hand petitions signed by about a hundred Natives. I have just received these petitions, and they state that they are not satisfied with the present Bill. These petitions are evidence that there is considerable difference of opinion among the Natives.’¹⁰⁹

106. John Ballance, AJHR, 1896, h-11, p 15, cited in D Loveridge, ‘The Adoption of Perpetually-Renewable Leases for Maori Reserved Lands, 1887–1896’ (Wai 145 rod, doc c2) p 45

107. John Ballance, AJHR, 1892, g-2, p 5, cited in Loveridge, p 46

108. Refer Loveridge; Ben White, ‘Supplementary Report on the West Coast Settlement Reserves’, (Wai 145 rod, doc m20).

109. Hoani Taipua, ‘West Coast Settlement Reserves Bill’, NZPD, 1892, vol 75, p3 69, passage in quotations cited in Loveridge, pp 51–52

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Although there was a degree of difference among Maori members of Parliament, Loveridge makes the important point that all Maori thought there were problems with the Act. Indeed, the central concern was the participation of the Public Trustee. Taipua, for example, complained of the dubious nature of previous Public Trustee administration:

It is true that the late Public Trustee has been removed, but the regulations framed by his office are still in force. But I think that the experiment of placing these lands in the hands of the Public Trustee has been tried long enough, and that we should devise some other method of administering them. I think we should make a new departure altogether.¹¹⁰

The member for Southern Maori, Tame Parata, took another tack. Instead of simply attacking the imposition of perpetual leases, he sought to highlight Maori industry and ability in agriculture. At the same time as Pakeha politicians preached ‘progress’ and the opening of large estates to smaller farmers, Parata skilfully appealed that Maori should regain access to their own lands in order to commence farming:

The Maori Trustee ought to intervene at the termination of leases, to offer lands to owners for cultivation. I think this is only right and just, and no exception can be taken to it: that wherever a lease falls in, and a certain block reverts to the control of the Public Trustee, before reletting this land he should satisfy himself whether or not the Natives are capable of cultivating it for their own benefit; and, if he ascertains that they are capable of doing that, and will do so, then he should hand over the whole, or a portion, to the Natives for that purpose – either to a few or a large number.¹¹¹

Parata’s stance was set firmly against perpetual leases. In Maori eyes, the implementation of perpetual leases was intimately connected with the larger intervention of the Public Trustee in the management of reserves. The issue was about who had authority to make decisions for reserves. Regardless of whether reserves were under perpetual lease or not, the Public Trustee retained sole authority over them. This formed the major concern for Maori in Parliament protesting against the implementation of reserves legislation in the 1880s and 1890s. Leases in perpetuity must be considered as one part of the larger concerns expressed at the time.

The 1892 Bill drew further petitions. Eparaima Te Mutu Kapa, the member for Northern Maori, referred to a number of petitions against the Bill which had been received.¹¹² More specifically, the member for New Plymouth mentioned a petition from Ngati Rahiri in Taranaki, that sought to withdraw their lands from the administration of the Public Trustee.¹¹³ For Maori owners, the measure came out of

110. Ibid, p 368

111. Parata, ‘West Coast Settlement Reserves Bill’, 1892, NZPD, vol 57, p 373

112. Eparaima Te Mutu Kapa, NZPD, 1892, vol 57, p 371

113. E M Smith, NZPD, 1892, vol 77, pp 194–196, cited in Loveridge, p 55

the blue in 1887 and 1892. Finally in 1899, Taiaroa spoke out against the provisions of the 1887 Act and its destructive effect on reserves:

At the time that the Westland and Nelson Native Reserves Act was being passed in this council . . . I pointed out that the Natives would suffer under the provisions of that Act, and we have found since that they have suffered, and I personally have suffered great loss by the unjust provisions enacted by that law.¹¹⁴

Neither the petitions nor Taiaroa's speech made direct mention of the provision of leases in perpetuity as divorced from the overall statute.

Loveridge's larger argument gauged Maori objection as lacking specific concerns. In light of this, he concluded that West Coast settlement reserves might be considered a suitable compromise. It seems difficult to sustain this line of argument in retrospect. The lease in perpetuity of theoretically 'inalienable reserves' did not represent a balanced compromise.

Conclusions reached in the *Taranaki Report* also contrast with Loveridge's findings. The Tribunal noted the number of petitions received from Maori protesting against the terms of the West Coast Settlements Act 1892.¹¹⁵ Quoting from the royal commission into West Coast settlement reserves in 1912, the Tribunal emphasised the position of a union formed to safeguard those reserves in Taranaki not yet under perpetual lease.¹¹⁶ This 'union', led by Dr Maui Pomare, visited Parliament in 1909 to protest against the continuing effect of perpetual leases:

Further, that iniquitous and cruel Act [the West Coast Settlement Act 1892] vested our lands in the Public Trustee for ever as if he were the absolute owner thereof in spite of the Crown grants solemnly given to us by Her late Majesty. It empowered the Public Trustee to arbitrarily lease our lands for all time, regardless of whether we have sufficient for our maintenance or not . . .¹¹⁷

When examined by the commission, Dr Pomare provided further evidence of Maori resistance to perpetual leases:

Now suppose the Maoris had been told in 1881 that, except for the lands which were reserved and made absolutely inalienable, all lands which were to be leased were to be leased for all time, do you think there would have been peace? – If that had been told to our people they would have been fighting still.¹¹⁸

114. Taiaroa, 'Native Reserves Amendment Act', 13 October 1899, NZPD, 1899, p 581

115. *Taranaki Report*, pp 262–265

116. Among the terms of investigation, the commission sought to investigate Maori claims against perpetual leases: 'And whereas the Native owners of the lands included in the said leases allege that such lands will be required for their own use and occupation on the expiration of the said leases, and have requested that the desire of the present lessees to obtain permission to surrender their leases and obtain fresh leases under the West Coast Settlement Reserves Act, 1892, shall not be granted': 'Report on West Coast Settlement Reserves (North Island) Commission', 6 April 1912, AJHR, 1912, g-2, p 1.

117. *Ibid*, p 108

118. *Ibid*, p 105, also cited in *Taranaki Report*, p 264

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These examples demonstrate resolute opposition to the continued imposition of perpetual leases in the case of the West Coast settlement reserves.

4.12 Assessments

In 1890, a royal commission of inquiry investigated the overall administration of the Public Trust Office. While few of the recommendations related specifically to the trust's management of Maori reserve lands, the general findings were significant and bear repeating:

Your Commissioners have gone most carefully into this portion of their duties, and it is with extreme regret they feel compelled to state that, so far as the Head Office is concerned, there has been an absolute want¹¹⁹ of any proper or regular system up to the present time in the conduct of its business.

Particular complaints were levelled at bookkeeping, overcharges, and the absorption of any unclaimed funds:

In dealing with the charges made in reference to business done by the Public Trust Office, your Commissioners have to point out that these have been excessive. Up to the end of the year 1889, ten percent seems to have been the charge made for the collection of rents, and where an agent was employed, he was allowed one half, or equal to five percent . . . Your Commissioners believe that, in the interests of the public, the charges can be very much modified and lessened¹²⁰ in such a manner as to increase the business of the Public Trust Officer.

These strong criticisms rocked the boat and Hammerton was duly replaced as Public Trustee. The system of appointment was also changed, the Public Trustee no longer being appointed by the Governor, instead being made a public servant.

Another commission in 1890 on West Coast settlement reserves, the Stevens committee, concluded:

In short, the interest of the Natives in these estates has been reduced to an annuity¹²¹ computed at intervals of thirty years on the unimproved value of the lands.

A further West Coast settlement reserves commission followed in 1891. The Rees commission added further recommendations, including terminating leases. But as the Tribunal has identified, instead of 'terminating leases', the resulting West Coast Settlement Reserves Act 1892 provided for perpetually renewable leases.¹²²

119. 'Report of the Commissioners on the Condition and Working of the Public Trust Office of New Zealand', AJHR, 1891, h-3, vol 3, p v

120. Ibid, p vii

121. 'Report and Evidence of the Joint Committee upon the West Coast Settlement Reserves', AJHR, 1890, i-12, p iii

122. *Taranaki Report*, p 262

4.13 Liberal Administration of Native Reserves

‘Leases in perpetuity’ were extended to all trust reserves in 1895. Loveridge has characterised post-1892 developments in reserves administration as driven by the imagined ‘success’ of the West Coast Settlement Reserves Act 1892. He quoted Colonial Treasurer Joseph Ward as trumpeting:

In the ‘West Coast Settlement Reserves Act 1892’, we have a measure which has tended to solve one of the greatest of our Native difficulties, a problem of which hardly two years ago the solution seemed impossible.

Flushed with ‘success’, John Ballance immediately introduced a Native Reserves Administration Bill in 1893, designed to extend the provision of leases in perpetuity to all administered reserves. After Ballance’s death in 1893, the Bill stalled.¹²⁴

In 1895, Richard Seddon, an earlier critic of the terms of the Native Reserves Act 1882, introduced an amendment Bill. Seddon’s Bill ushered in two major changes to the form of administration of outstanding trust reserves. Leases in perpetuity were extended to tenants of all trust reserves upon application.¹²⁵ Significantly, the involvement of the Native Land Court, earlier extended under the 1882 Act, was severely restrained.

Under section 7(5) of the Native Reserves Amendment Act 1895, all remaining Maori reserves administered by the Public Trustee were able to be transferred to leases in perpetuity:

The new lease shall be for twenty-one years, and shall be renewable in same manner, and subject as far as practicable to the same conditions, as provided by ‘The West Coast Settlement Reserves Act 1892’ . . .

There was a pronounced connection to the ‘successful model’ of the West Coast settlement reserves legislation. It was perhaps partly for this reason that little debate surrounded the extension of lease in perpetuity under the 1895 amendment Act, and no Maori members spoke on the Bill.¹²⁶

In analysing the changes made to the prescribed role of the Native Land Court under the 1895 Act, we might look to view the amendments in a long-term context. The involvement of the Native Land Court in reserves administration fluctuated greatly. This was most discernible in the prescribed shift from the Native Reserves Act 1882 to the Native Reserves Amendment Act 1895. Section 3(1) restricted the Native Land Court’s involvement in reserves administration. Previously, the court was involved in the determination of special conditions affecting reserves, including the application and removal of restrictions on the alienation of reserves.

123. Joseph Ward, ‘Native Reserves Administration Bill’, 4 July 1893, NZPD, 1893, vol 79, p 204

124. For further information on the passage and terms of the 1893 Bill refer to Loveridge, pp 61–69.

125. Section 7(2) of the Native Reserves Amendment Act 1895

126. More attention was paid to the timetabling of parliamentary sessions. Members commented that it was impossible to read and consider bills with due attention: for example, Captain Russell, 22 October 1895, NZPD, 1895, p 543.

4.13.1 Trust Administration of Maori Reserves, 1840–1913

In contrast with earlier roles, the court was permitted only to determine beneficial owners of the reserves. Section 3(2) states: ‘Before the Native Land Court makes any order under this section it shall obtain the consent of the Public Trustee thereto.’

There was some debate over an amendment to section 6: ‘Public Trustee may grant new leases of certain lands now leased.’ Robert Stout sought to add ‘with the consent of the Native owners’.¹²⁷ However, the proposed amendment was thrown out by a majority of one. This debate demonstrates that the issue of direct Maori involvement in the management of their own lands was still hotly contested.

Seddon had been cautious in describing the connection between the Public Trustee and the Government. In 1894, when issue was raised over the status of insurance arrangements under the West Coast Settlement Reserves Act 1892, Seddon outlined a ‘liberal’ view of reserves administration:

The principle of the ‘West Coast Settlements Act, 1892’, by which these reserves were vested in the Public Trustee, was an administration in which he must exercise his discretion in the interest of beneficiaries; and the Governor would not have power to make any regulation prescribing what were to be the obligations of the Public Trustee in the performance of the duties of his administration under that Act. The Governor might make a regulation for the internal conduct of the Public Trust Office, but he could not consistently with the principle of the Act be recommended to make . . . a regulation to which the Public Trustee in the exercise of his discretion should object, or which he should regard as not justifiable by the interests of the trust. Such a regulation would probably be *ultra vires*.¹²⁸

4.13.1 The Public Trust Office Consolidation Act 1894

In 1894, an attempt was made through legislation to tailor administrative processes to the multifarious tasks facing the Public Trust Office. Significant changes were wrought on the 1882 legislation. Gone from the composition of the Public Trust Office board was any Maori input. Bryce’s token efforts had disappeared. Section 9 of the Public Trust Office Consolidation Act 1894 detailed the composition of the board as the Colonial Treasurer, the Native Minister, the Solicitor General, the Government Insurance Commissioner, the Commissioner of Taxes, the Surveyor-General, and the Public Trustee. The role of the board remained largely unchanged. Administrative arrangements were tightened. A series of regulations were produced in the *Appendices to the Journals of the House of Representatives*. Administrative charges were standardised. At 7½ percent, Maori trust reserves attracted the highest cost of all estates administered by the Public Trustee in 1905. However, the provisions did not affect the administration of Maori reserves directly.

127. ‘Native Reserves Bill’, 24 October 1895, NZPD, 1895, vol 91, p 608

128. Richard Seddon, ‘West Coast Settlement Reserves’, 5 July 1895, NZPD, 1895, p 388

4.13.2 The Native Reserves Amendment Act 1896

Lingering uncertainty surrounding the position of certain reserves in relation to the Native Reserves Act 1882, including the tenths, led to the implementation of further legislation.¹²⁹ An 1896 amendment Bill sought to clarify the administrative relationship of the former New Zealand Company tenths reserves under the 1882 Act and the administration of the Public Trustee. The Act was passed and included schedules of all tenths reserves in Wellington and Nelson.

Tenths reserves were formally vested in the Public Trustee. Specific provisions for the application of the rents were also outlined. From 31 March 1896, three-quarters of all accumulated rents and proceeds from reserved lands were distributed to Maori beneficiaries, according to relative shares, as determined by the Native Land Court. After that date:

A part not exceeding one-half thereof shall be annually or from time to time distributed by the Public Trustee amongst the same beneficiaries, and in the same relative shares . . .

The application of the remaining half was left to the discretion of the Public Trustee.¹³⁰

In the case of a particular Ngati Toa burial reserve, the terms proved far more intrusive. Part 2 of the Act removed the burial reserve known as Taupo 2 from the Maori ‘owner’ Wi Parata Kakakura, and compulsorily vested the entire area in the Public Trustee. This ‘burial reserve’ was mentioned by Mackay in his 1882 schedule and is also described in Schedule 2 of the 1896 Act. The reserve comprised 10 acres 2 roods 24 perches. The Public Trustee was empowered by the terms of the Act to retain one acre as the designated burial area and to lease out the remainder. In order to achieve this arrangement, section 7 granted the trustee power to authorise the disinterment of all bodies buried across the 10 acres and the reburial inside the one-acre patch. Maori were shunted into progressively smaller reservations in life and even in death. More galling still was the direction pursuant to section 8 that proceeds from the lease would fund the removal of Maori tupapaku, followed by the ‘beautification’ of the one acre in the ‘European style’, complete with monument.

Although there was no recorded dissent in parliamentary debate, we ought to consider the implications of the forcible imposition represented by the terms of the Act. In many ways, this extreme example signals the extent of control exercised by the Public Trustee and the blithe ignorance of Maori cultural values.

4.13.3 Impositions

During the Liberal period, Maori beneficial owners continued to be paid a regular annuity. Other administrative influences intervened to lower the amount received

129. Preamble to the Native Reserves Amendment Act 1896

130. Section 4 of the Native Reserves Amendment Act 1896

4.14 Trust Administration of Maori Reserves, 1840–1913

by Maori. Attempts in the 1880s and 1890s to lower and fix rental levels charged to European lessees had an increasingly sharp impact on the amount of annuity received by Maori. By denying the influence of free-market forces, Maori annuities were hit hard by inflation, and decreased over time. Valuations were another administrative influence in the determination of rental levels and demonstrated the potential for manipulation in isolated situations. In the same way land valuations are used to determine rates, valuations were relied upon, under the 1896 Act, as a base for setting rental levels. An example of manipulation of valuations has been highlighted in Nelson in 1900. Convinced the reserves were significantly undervalued, the district agent for Nelson made a number of attempts to increase the valuations and therefore the rents. To complete his assessment, he employed an independent valuer. His actions were immediately halted by the intervention of the Public Trustee. The trustee's response read:

All that is required under the provisions of the Act is for you, as my agent, to agree¹³¹ with the lessee to the upset rental for a new lease and the valuation improvements.

Given the extent of advantages directed toward European lessees of Maori reserve lands, we should question whether Maori were able to lease their own lands. In this way, it might have been possible for Maori to pay rent to themselves through the Public Trustee and recoup some of the cost at least. However, Maori continued to be denied the right to lease their own trust reserve lands. As the Tribunal uncovered in the case of the West Coast settlement leases, Maori were blocked from leasing their own lands. The 1912 commission into the Public Trustee's administration of the West Coast settlement reserves made the following observation: 'In the Trustee's view, a Maori was not as a rule . . . qualified to be a successful occupant of a highly improved farm.'¹³² Maori possessed only short-term licences to occupy, with no security against which to borrow. In a continuation of earlier administrative policy, Maori were denied the access and terms of leasehold over trust reserve lands that were enjoyed by Pakeha settlers.

4.14 Petitions

Petitions continued to be received from Maori protesting against the general administration of the Public Trustee. From 1900 to 1912, Maori owners petitioned Parliament every year against the actions of the Public Trustee. Apparently, the only surviving record of these petitions remains in the schedule of petitions in the *Journals of the House of Representatives*. Many of these were not reported on by the Native Affairs Committee.¹³³ Complaints varied. Some Maori wanted their

131. Public Trustee to District Agent, Nelson, 10 July 1900, ma mt 1, 27/2, cited in Kieran Schmidt, 'Maori Trustee 1913-56', 1996, p 14. This example demonstrates the value in pursuing close primary analysis in individual cases. Note there is a chronological error in Schmidt's text.

132. 'Report of the West Coast Settlement Reserves (North Island) Commission', 24 June 1912, AJHR, 1912, g-2, pp 6-9, cited in *Taranaki Report*, p 265

lands removed from the administration of the Public Trustee. On 8 November 1907, Epanaia Whaanga and 22 others petitioned that ‘the Waikokopu No 3 and Opoutama blocks be taken out of the control of the Public Trustee’.¹³⁴ Other petitions requested that a royal commission be instituted to inquire into the administration of particular reserves.¹³⁵ It is impossible to accurately estimate the number of petitions Maori submitted, owing to the survival of so few. Petitions received listed in the *Appendices to the Journals of the House of Representatives* amounted to no more than two or three in any one year, but these lists are imperfect and cannot be relied upon.¹³⁶ The number of petitions against the wider trust administration of reserves was comparatively less than the number of complaints against the West Coast settlement reserves Acts.

4.15 Public Trustee Administration, 1900–13

Despite the implementation of the Liberals’ new land administration scheme in 1900, the trust administration of Maori reserves continued effectively unaltered through to 1912. Variations resulted largely from the practical involvement of individual Public Trustees, rather than the Government. Three succeeding trustees were appointed from 1890 through to 1910. In the wake of the 1890 royal commission, J K Warburton assumed leadership. After an appointment as Auditor-General in 1896, he was succeeded by J C Martin from 1896 to 1900. Finally, Joseph William Poynton administered trust reserves for the first decade of the twentieth century.

4.15.1 Royal commission into Public Trust Office, 1913

In 1912, a public service commission investigated the workings of the Public Trust Office. The subsequent report criticised the office’s administration in general terms. In response, the Public Trustee wrote to the Minister in charge of the Public Trust Office, Mr Herdman, claiming that the findings were unsubstantiated by evidence.¹³⁷ The trustee’s concerns over the first commission were echoed in Parliament and a second commission of inquiry was proposed.¹³⁸

133. Refer to ‘Schedules of Petitions’, JHR, 1900–12

134. Petition of Epanaia Whaanga, no 853, 8 November 1907, ‘Schedule of Petitions’, JHR, 1907, p xv

135. Petition of Hene Maatene (and 42 others), no 791, 14 September 1904, ‘Schedule of Petitions’, JHR, 1907, p xxxiv

136. It must also be born in mind that there is a high likelihood of missing certain petitions owing to the terse descriptions reproduced in the ‘Schedule of Petitions’. If the first sentence of the petition does not mention the specific complaint against the Public Trustee, it is impossible to check whether the rest of the petition may have applied to Public Trustee administration. Hence, the number referred to above must be considered a bare minimum.

137. Fred Fitchett (Public Trustee) to Mr Herdman, 13 September 1912, NZPD, vol 160, 1912, p 257

138. Mr Forbes, 19 September 1912, NZPD, vol 160, 1912, p 258; parliamentary debate on the issue included pp 257–263

4.15.1 Trust Administration of Maori Reserves, 1840–1913

Robert Stout appointed a second commission of inquiry under the Commissions of Inquiry Act 1908.¹³⁹ The commission consisted of two businessmen, Alexander Macintosh of Wellington and John Hosking of Dunedin, and sat during January and February 1913. Among its terms of investigation, the commission was to ascertain:

whether the affairs of members of the Native race intrusted to the Public Trustee are carefully and satisfactorily managed, to report whether Native business managed by the Public Trustee should be separated from the Public Trust Office and managed by a Board or a Trustee specially appointed for the purpose.¹⁴⁰

We are left with the impression that the commissioners were concerned to remove administrative tasks from a centralised and over-burdened Public Trust Office. Herdman commented:

An enormous burden at the present time rests on the shoulders of that officer [Public Trustee]. A tremendous responsibility has to be undertaken by him, and I am of the opinion that some alteration in the Public Trust Office Act will have to be made so as to provide the Public Trustee with the assistance of some business men.¹⁴¹

Furthermore, he said: ‘It is obvious that with the increase of business the Public Trustee could not be expected to bring his own mind to bear upon every question that arose.’¹⁴² The commission’s report contrasted the ever-increasing workload against the limited numbers of head office staff and resources available.

Evidence of Public Trust Office overcommitment was seen in the absence of officers to act at a district level. Attempts were made to rectify the imbalance through legislation in 1912, with the appointment of four deputy trustees to different areas.¹⁴³ But the Public Trust Office Amendment Bill 1912 affected little else as far as native reserves administration was concerned. The commission’s inquiry also highlighted the absence of a Commissioner of Native Reserves since the departure of Mackay in 1884.

Overall, the 1913 commission’s investigation of the accounts and practicalities of administration found no evidence of mismanagement, nor perceived problems. It contrasted significantly with those of the earlier commissions, such as that of 1890:

As regards these [Maori] reserves the functions of the Public Trustee substantially consist in collecting and distributing the rents of the lands leased, in keeping a record of the changes of ownership, and in consenting to dealings by the tenants. For this work a commission of 7½ per cent is deducted from the Native. There has been no suggestion that this work is not well and carefully done, and we found no evidence to the contrary.¹⁴⁴

139. Public Trust Office Commission, 16 December 1912, 7 February 1913, and 28 March 1913, AJHR, 1913, b-9a, pp 1–2

140. ‘Public Trust Office Commission’, AJHR, 1913, b-9a, p 4

141. Herdman, 19 September 1912, NZPD, vol 160, 1912, p 263

142. ‘Public Trust Office Commission’, AJHR, 1913, b-9a, p 6

143. Public Trust Office Amendment Bill 1912

144. ‘Public Trust Office Commission’, AJHR, 1913, b-9a, p 16

In the commission's report, one possible source of difficulty for the continuing administration of native reserves by the Public Trustee was the varied nature of trusts and reserves. The commission highlighted the administration of the New Zealand Company tenths:

a part not exceeding one half of the rents and proceeds is paid to the beneficiaries. The balance is retained to form benefit funds, one for the North Island and one for the South. These funds and their accumulations are to be applied as the Public Trustee in his discretion thinks fit 'towards the physical, social, moral and pecuniary benefit of natives individually, and the relief of such of them as are poor or distressed.'

Despite an apparently positive record of administration, the commission described the New Zealand Company tenths reserves as an example of 'one of those indefinite trusts that serve to create irritation'¹⁴⁵.

Similarly, the commission seemed bothered by the localised application of reserve funds. The functions of the Public Trustee in the distribution of revenues from the reserves (where they would then be applied at his discretion) were discharged through local agents, who reported or made recommendations upon applications received. Through inquiries, the trustee endeavoured to assure himself of the propriety of any suggested expenditure, and how far it would benefit the Maori. The commission found that: 'No general or settled scheme or plan has been devised with regard to the application of these [rental] funds.' On the whole, we are left with the impression that the commission's criticisms reflected less on the performance of the trustee, and more on the preoccupations of the commission with what it perceived as an efficient means of operation.

For a model of administration, the commission turned to the West Coast settlement reserves:

In like manner, as the proper disposal of the unleased areas of the West Coast Settlement Reserves involves the policy of how best to deal with the future of the Native, so does the application of these funds; and for similar reasons to those given in the case of the West Coast Reserves, we think these reserves and funds should be brought more into touch with the Native Department.¹⁴⁶

One key to the commission's perception of public trust administration of native reserves was a financial analysis. A cost analysis demonstrated that Public Trust administration operated at a loss: 'It is also urged that the Native business has not paid.'¹⁴⁷ Based on the commission's accounting, remuneration from the administration of native reserves amounted to £3370, but this figure was outstripped by annual costs estimated at £3480.¹⁴⁸ Ironically, the commission acknowledged that the situation would be improved once the West Coast settlement reserves rents had been reassessed:

145. Ibid, p 17

146. Ibid

147. Ibid, p 18

148. Ibid

4.15.1 Trust Administration of Maori Reserves, 1840–1913

On this estimate the business is done at a loss, but with revaluation of the rents on the West Coast the commission to be derived therefrom in the near future will, it is estimated, on the reduced basis of 5 per cent per annum, which the Trustee now proposes, reach £4000 per annum, instead of something over £2000 per annum as at present. This should afford a handsome profit to the Trust Office, which should compensate it to some extent, at all events, for unremunerative work done in the past.¹⁴⁹

The commission concluded: ‘Nevertheless the Public Trustee and those members of the office staff who have given evidence to us hold the view that the office should be relieved of Native work.’ Their reasons included both financial considerations and the interests of Maori:

The total removal of the administration from the Public Trust Office would help to relieve the over-taxed resources of the office, and it would certainly be impolitic at present to increase the personal duties of the Public Trustee by involving him in schemes for the betterment of the Natives if such are to be initiated . . .¹⁵⁰

Significantly, the commission recommended that Maori input into administration be increased:

We are of opinion that in the administration of these reserves the Native point of view should be adequately represented, and that it should be in the interests of the Natives if by means of the revenues from these reserves – their own property – they could be assisted to better themselves as agriculturalists and otherwise.

Although Maori interests were emphasised, the proposed alternative was far from what many Maori may have hoped:

To this end, we are of the opinion that the whole of the Native reserves and their administration should be vested in an independent body. We therefore suggest that a Native Reserves Trustee should be created, with a Board consisting of himself, the Under-secretary of Native Affairs (or some other expert in Native affairs), the Under secretary of Lands, and two other members appointed by the Governor, of whom one should be a Native and the other a European who has had experience in agricultural matters.¹⁵¹

In its final recommendation, the commission sought the involvement of an ‘independent body’. More than anything else, this comment made an implied assessment of the Public Trust Office as a body inextricably linked to the Government and incapable of neutrality.

149. Ibid

150. Ibid

151. Ibid, p 18

4.16 Conclusions

Under the Native Reserves Act 1882, the original intention of the transferral of administration from Native Department commissioners to the Public Trustee was to vest native reserves administration in an ‘independent body’. Yet the recommendation of the 1913 commission that the Public Trustee did not represent an effective independent body forces us to revisit the original 1882 decision, and to question the extent to which the Public Trust Office operated independently from political influence. We must extend the analysis further to examine how this relationship impacted upon the administration of native reserves. The degree of political influence in the administration of the Public Trustee is debatable. Governed by statute, the Public Trust Office was forged too close to governmental influences. However, further unrelenting political pressure from European lessees to amend reserves legislation, and the string of subsequent amendments, only exacerbated the confusion.

As with earlier chapters in this report, an evaluation of Public Trust administration, in particular the implementation of perpetual leases, requires a balanced view of dual considerations. Under Public Trust administration, Maori continued to be perceived as nominal ‘owners’ of reserve lands; it was believed that they benefited the greatest from the provision of an annuity. Indeed, perpetual leases guaranteed Maori an annuity. The principal rationale for perpetual leases, in Loveridge’s view:

seems to have been that, unless ironclad security of tenure was offered to lessees, the income received on behalf of the owners¹⁵² would be much lower than the value of the property would otherwise generate.

Annuities secured to Maori were further affected. We must, however, set this view against a backdrop of the cessation of market rents and the effective lowering of rents against inflation which occurred. In theory, an open market might have worked to benefit Maori returns; however, the relationship was further compromised by legislative interference. A security of tenure and rental levels was offered to Europeans in perpetuity, which compromised the pecuniary benefit which may originally have been designed. The adoption of perpetually renewable reserves demonstrated that the Public Trustee¹⁵³ could not provide independent management free from political winds.

152. Loveridge, p 76

153. A strong illustration of this is seen in the case of the Nelson tenths reserves brought under the administration of the Public Trustee under the Native Reserves Amendment Act 1896. In 1900, the district agent for Nelson, convinced the reserves were significantly undervalued, made a number of attempts to increase the valuations and therefore the rentals. To complete his assessment, he employed an independent valuer. His energies were immediately halted by the intervention of the Public Trustee. The Trustee’s response read ‘All that is required under the provisions of the Act is for you, as my agent, to agree with the lessee to the upset rental for a new lease and the valuation improvements’: Public Trustee to District Agent Nelson, 10 July 1900, ma mt 1, 27/2, cited in Kieran Schmidt, ‘Maori Trustee 1913–1953’, 1996, p 14. Note there is a minor chronological error in Schmidt’s text.

4.16 Trust Administration of Maori Reserves, 1840–1913

There were a number of similarities between Public Trustee administration of the West Coast settlement reserves and the administration of other trust reserves. Loveridge also remarked on the connection:

the solution adopted for the West Coast Settlement Reserves soon came to be seen as an appropriate model for all Maori reserved lands. One might go so far as to suggest that the 1892 Act was seen as a ‘trial run’ for a mode of Maori Reserved Lands administration which was already being considered [see earlier in 1887].¹⁵⁴

In light of these connections, we might share some of the general conclusions of the Taranaki Tribunal on the effect of Public Trustee administration of West Coast settlement reserves.¹⁵⁵

This leads us to question the involvement of Maori in the management of their reserve lands, and their status in light of the legislation. Although limited provision was made for a single Maori to be appointed to the Public Trustee board of management under the Native Reserves Act 1882, no evidence was found to indicate anyone had ever been granted the limited opportunity.¹⁵⁶ Maori remained marginalised from all involvement in the administration of their reserve lands. Legislation continued to perceive Maori solely as beneficiaries. This position was based on firmly ingrained assumptions which further directed the course of administration. European administration of reserves, and the provision of an annuity, affirmed Maori status as beneficiary, not landholder. Placed in a supplicant position, Maori members protested rigorously. Some, such as Hone Heke Rankin, introduced new Bills aimed at returning the administration of Maori lands to Maori.¹⁵⁷ Others continued to petition Parliament.

Overall, the 1882 Act does not represent a major shift in administration. Public Trust Office legislation and administration bore strong continuities with the preceding course of trust reserves administration. Moreover, the step taken by the Liberal Government to implement perpetual leases might be viewed as a culmination of longer-term direction in trust reserves administration.

In short, we must be flexible enough to measure the beneficial intention of the legislators and the raw consequence of effective alienation by lease on Maori ‘owners’.

154. Don Loveridge, p 77

155. *Taranaki Report*, pp 274–276

156. ‘Commission of Inquiry’, AJHR, 1913, b-9a, p 17. Indeed, as the 1913 commission of inquiry criticised, the board itself met infrequently, and could hardly be deemed to have exercised a positive voice over the direction of administration.

157. Heke’s defeated Native Rights Bill 1894, refer Spiller (ed), *A New Zealand Legal History*, 1995, p 155