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LIST OF ABBREVIATIONS

ACMB	Appellate Court minute book
AJHR	<i>Appendices to the Journals of the House of Representatives</i>
app	appendix
ATL	Alexander Turnbull Library
ch	chapter
doc	document
DOSLI	Department of Survey and Land Information
fol	folio
ma	Maori Affairs series, National Archives, Wellington
MB	Minute book (Maori Land Court)
NA	National Archives
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages
pt	part
ROD	record of documents
s	section (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
vol	volume

PREFACE

The author of this report is Thomas Bennion BA(Hist)/LLB(Hons), former legal officer at the Waitangi Tribunal and now a private consultant on Maori land law and Treaty issues. He was assisted in the research by Janine Ford BA(Hist)(Hons), a former tribunal researcher and author of five research reports on the Taranaki claim, now studying law at the Victoria University of Wellington.

The report has been prepared at the request of the Waitangi Tribunal, under the Rangahaua Whanui programme.

The report makes extensive use of Parliamentary debates, printed government reports in the *Appendices to the Journals of the House of Representatives* and general files on Maori Land Boards and Maori Land Court activities held at the National Archives in Wellington. To gain a picture of how the Maori Land Court worked in practice, a random selection of microfiche minute books were examined for each of the districts in the period 1911–12, 1924–25 and 1932–33 and 1940. Maori Land Board minute books are not recorded in a central archive, although a reasonable picture of board activities has been obtained from: John Hutton's report on the Waikato–Maniapoto District Maori Land Board; the minute books of the Tairāwhiti district Maori Land Board (included in the microfiche collection of land court minute books); general files on the land boards held at National Archives; and the annual returns of the boards in the AJHRs.

The author received assistance from staff of the Waitangi Tribunal, Cathy Marr, Professor Alan Ward, Dr Grant Phillipson, and also staff at National Archives, Wellington and the Alexander Turnbull Library, Wellington. Draft reports by John Hutton and Rachael Willan have also been consulted.

INTRODUCTION

This report looks at aspects of Native and Maori land legislation and the operation of the Maori Land Court and the associated district Maori Land Boards in the period 1909 to 1952. While much research has been undertaken on the operation of the Native Land Court in the nineteenth century, relatively little work has been carried out for this century. In what twentieth century research there is, a natural bias has existed towards the groundbreaking development schemes initiated (in many cases) by Sir Apirana Ngata, and carried on by subsequent Governments after his resignation in 1934. But since those schemes never covered more than one quarter of Maori land, they are only part of the story.

1909 is a useful starting point because a major consolidation of the existing law was undertaken in that year and a new meeting of owners' procedure was enacted for alienations of Native land. Although the law was consolidated again in 1931, the underlying principles governing dealings with native land were not altered. The 1931 consolidation did however include additional provisions concerning land development schemes, provisions which began their life as miscellaneous amendments to native land legislation of the 1920s. This study ends in 1952, just before another codification took place. Once again, that codification did not take Maori land legislation and policy in a fundamentally new direction, although it did mark a bridge of sorts between the early decades of the century, when Maori were a rural agricultural community still owning substantial areas of land in the North Island, and the largely urban wage labouring population of today.

This report is essentially about the North Island only, although some South Island figures are mentioned. By 1909, most land in the South Island had been alienated so that only about 300,000 acres remained in Maori hands, and significant areas of that were in reserves. The North Island is where most Maori land was that was of interest to the Crown and Pakeha settlers. Conclusions about the operations of courts and Maori land boards do however apply in many instances to the South Island, particularly since the Maori Land Court and Maori Land Board for the South Island was in some periods situated in the North Island.

This report focuses on the operation of the land court and the land boards, what their functions were and how they operated in practice, how relevant they were in different decades to Maori land holders, and Maori responses to them. It asks whether the bodies and individuals responsible for decisions over Maori land were clear about their duties and responsibilities, and whether the legislation was similarly clear. Another key issue addressed is how far legislation and practice concerning the land court and the land boards gave Maori landowners control over their estates. In this respect a very useful model for analysis is provided by Erik Schwimmer in an insightful 1960s study. He considered that in the use of their land, Maori sought a bicultural relationship with the Crown where their preferences

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would be catered for. To determine how far a bicultural relationship operated for Maori land tenure and land rights, Schwimmer suggested that four issues be looked at:¹

- legal rights: did Maori have legal rights equal to Pakeha in land transactions and ownership?
- participation in collective goal attainment: did Maori join on an equal basis in the forming of agricultural policy?
- resources: did Maori have equal access to the resources needed for making their land productive?
- capacities: did Maori have equal capacity (in terms of educational attainment, technical skills and business expertise) for success in farming?

On the Government side, he suggested that a bicultural approach to Maori land policy would involve:

- acceptance of the validity of Maori culture – did Pakeha believe that Maori forms of landholding were as good as Pakeha ones?
- familiarity with Maori culture: were Pakeha familiar with the values underlying Maori landholding?
- conscious confrontation and reconciliation of conflicting systems: were decisions regarding Maori land reached after informed reflection upon the differences between Maori and Pakeha values?

I will return to these issues at the conclusion of this report.

1. 'The Aspirations of Contemporary Maori', pp 19–20, in E Schwimmer (ed), *The Maori People in the Nineteen Sixties*, Auckland, 1968