TE WHARE WĀNANGA O
AWANUIĀRANGI

THE INFLUENCE OF PUBLIC SERVANTS ON TREATY SETTLEMENTS

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2023

A thesis presented to Te Whare Wānanga o Awanuiārangi in fulfilment of the requirements for the degree of Doctor of Philosophy,
Te Whare Wānanga o Awanuiārangi

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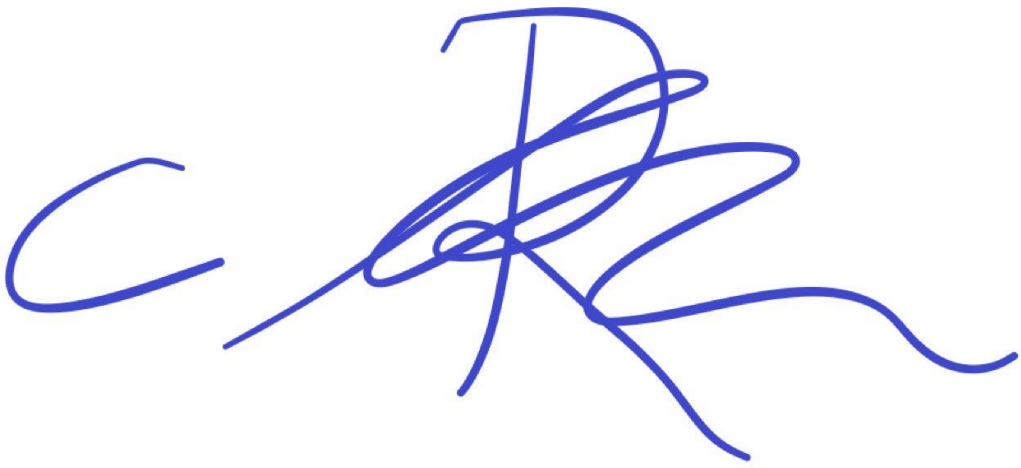

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ABSTRACT

This study investigates the influence of public servants on treaty settlements. The research examines the origin of the public servant, which coincided with the exponential growth of Pākehā settlers to these shores, all with an insatiable demand for Māori land. The signing of the Treaty of Waitangi in 1840 between Māori and the Crown was not the panacea for the return of stolen Māori land but signalled the arrival of colonisation. The role of public servants was to facilitate the demands of their political masters and it could be argued they were complicit in the subsequent devastation caused, and wars initiated by the Crown to quash Māori resistance to their land being taken. To address Māori concerns the Crown introduced a treaty settlement process that supposedly compensated Māori fairly for the land taken. A compensation package that pays out two to three cents for every dollar taken, is not fair in anyone's language.

Through a kaupapa Māori research approach, in-depth interviews were held with iwi negotiators and Crown public servants. Findings from the research confirmed that the power imbalance between the Crown and Māori still exists and Māori influence in a predetermined treaty process is minimal at best. The research highlights that through international, national, political, and community-driven agitation things began to change and Māori grievances gain recognition. It also found that when public servants are not involved directly in the negotiation process gains are possible. The recommendations build on these findings and seek to establish a process where a fair and just treaty settlement is achieved.

The case study explores the origin of Te Whānau o Waipareira Trust (Waipareira or Trust) and their battle with the Crown and iwi for funding the Māori programmes the trust provides. The premise is that the Crown and iwi are not adequately providing these services to Māori. The research explores the drift of Māori from the rural areas to the cities, the demand to maintain their Māori identity and the need for health, social and support services. The attitude of iwi and the Crown has forced Waipareira to litigate in the courts to ensure their rangatiratanga and mana are retained, and service delivery continues for Māori. The recommendation seeks to establish services that are not only community and whānau driven but are effective and efficient for Māori.

ACKNOWLEDGEMENTS

Kaua e mate wheke, me mate ururoa

"Do not die like an octopus, instead die like a hammerhead shark.
Do not give up so easily, instead fight until the bitter end".
Murray, J (2016).

Life began again for me in my mid-40s, as I explored different employment opportunities. The lure of working in Australia in some capacity or finding work in Aotearoa close to my family were my choices. As a mature student, I decided to stay and completed a law degree at Auckland University. My next task was trying to find suitable work.

From out of nowhere "salvation" appeared in the form of John Tamihere the chief executive officer of Te Whānau o Waipareira Trust in West Auckland, who offered me a job as a strategic advisor (read that as a helping hand while I sorted myself out). Through working at the trust under the supervision of the trust Lawyer and stints as a duty lawyer at the Auckland district court, I became a barrister. I am forever grateful to John Tamihere and his deputy at the time Diane Tuari, for all the help and assistance given to me during my time at Waipareira.

After leaving the trust, I became a trustee on the Waipareira Trust Board for the next six years. The assistance I received during that time from the various chairs, Josie Smith and Ray Hall was much appreciated. However, special thanks must go to my very close friends and colleagues, Evelyn and Jack Taumaunu. While working for Waipareira I was exposed to the behaviour of the Crown and in particular the way they treated organisations like Waipareira. In Chapter Six, by way of a case study, I have outlined the genesis of Waipareira, the battles John has led on behalf of the trust to ensure the services they deliver to Māori are funded appropriately and based not on who you are or represent, but on the results you achieve.

I also became involved in treaty settlement work for various hapū and iwi. My initial expectations that a fair outcome would be achieved through this treaty process were quickly extinguished on my first interaction with the Crown. "Might is right," seems to be the Crown's mantra when in negotiations with Māori. There is a clear imbalance of power with Māori having very little if any involvement in developing the negotiation

process. However, what caused the greatest angst and shock is the financial settlement the Crown paid iwi. At every turn of the process, the Crown placed hurdle after hurdle in front of iwi negotiators making it difficult for them to reach an acceptable treaty settlement. This position was unacceptable and things had to change.

One weekend while visiting a good friend, an esteemed scholar, and kaumātua from Ngāti Porou Api Mahuikia at his home in Te Tairawhiti, I noticed several files on his kitchen bench from the Awanuiārangi Campus. When I inquired about the files, he told me that he was completing a Doctorate in Philosophy. We spoke further about the academic work he was completing which piqued my interest and googled "Awanuiārangi doctorate programme" when I got home. I made further inquiries at the campus and got to meet one of the academic tutors, Professor Virginia Warriner, and was able to explain to her my frustration with the Crown whilst working at Waipareira, and in the treaty settlement arena. Professor Warriner convinced me to enrol in the PhD programme which I envisioned I would finish in two years. However, as most people who start this journey will attest to, what I thought would take a short time to complete, dragged on and on, with no end date in sight. I felt sorry for Professor Warriner who must have gotten tired of listening to my excuses which she had no doubt heard the same from past students. I thank her for her professionalism, persistence, tenacity, and commitment to seeing me through to completing my thesis.

Likewise, thank you to Te Wheki Porter from student support services who spent hours and hours reviewing and helping to reference my work. I also wish to thank the library staff who provided valuable ongoing support. A special thanks to my eldest daughter Dionne who spent hours formatting and editing this document. I want to thank the rest of my family including my wife Tania, son William his lovely wife Anna, my daughter Keely, stepsons Sheldon (thanks for walking the dogs) and Josh and my handsome moko Tai and Cooper, my parents John and Lucy and Tania's parents Albert and Kura (lovely people) and her family. I want to acknowledge my brother Toots and his wife Sarah, my best friend Mook, and the late Tainui kaumātua Dr Tui Adams. These people stayed with me during the hard times, and have always been there to help, criticize when necessary, and always there to encourage me to complete my work. Finally, my appreciation and gratitude for the financial support from Waipareira under the leadership of the CEO John Tamihere, the trust chair Ray Hall and the trust board.

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CHAPTER ONE

INTRODUCTION

1.0 History

In 2008, whilst in the final stages of completing my law degree at Auckland University, I was approached by a close friend Mook Hohneck (Mook) who told me he was in the middle of a treaty settlement with the Crown and asked if I could help him, with the work he was doing for his hapū, Ngāti Manuhiri. At that time, I had several more pressing things going on in my life, and working on a treaty settlement was not one of them. However, anyone who knows Mook knows that he is very persistent and refuses to take no for an answer and will explore every opportunity to convince you to get on board and help when needed. Eventually, I agreed to drive up to Pakiri to meet with Ngāti Manuhiri kaumātua and chief treaty negotiator Laly Haddon.

I had never met Laly Haddon before, but I had heard a lot of good things about him. From his exploits on the rugby field as a Māori All Black, how he was highly regarded throughout Māoridom and the community as a leader and conservationist. Laly was described as a person who got things done, a no-nonsense individual who called a spade a spade, a person who valued honesty, loyalty and friendship, a person who had gained a well-earned reputation in the early days for settling disputes the old fashion way and not necessarily by consultation or negotiation. Laly had fought for his people all his life.

From that first meeting at Laly's house at Pakiri, it became obvious that Ngāti Manuhiri like other iwi and hapū who have been involved in treaty settlements were operating on a shoestring budget. Laly, who had been recently diagnosed with cancer, outlined in detail the Ngāti Manuhiri negotiation structure including the three negotiators; himself, Mook and a kaumātua, Peri Watts. He also discussed the role of the Manuhiri Omaha Kaitiakitanga Ora (MOKO) trust, whose roles and responsibilities were to oversee and support the treaty claim. He also spoke about the work that had been completed and the work that still needed to be done. I could sense the frustration in his voice because his illness was starting to slow him down and restrict his work. As Laly took a step back from negotiations to deal with his health, Peri Watts was also experiencing health problems, it was left to Mook to take on more and more of the work. Laly said Mook

needed someone to give him a hand so he could focus on negotiations. I realised that Mook had depended a lot on Laly during the early stages of their negotiations, now with Laly's illness and the workload increasing exponentially he needed even more help, how could I refuse?

At this stage of the negotiations, most of the work undertaken by the negotiators was unpaid. Any funding received from the office of treaty settlements, complemented by whatever monies the MOKO trust was able to provide, went to pay for hui with Ngāti Manuhiri beneficiaries and cover general administrative costs.

During this time Mook was living in Rotorua, all the travel he did up north attending meetings with Crown agencies, iwi and local government representatives was done in his vehicle at his own cost. With little or no money available for accommodation or travel costs, it wasn't unusual for Mook to stay at my home or with friends and relatives when he was passing through Auckland on his way up or down from the north. Aside from the numerous hours he worked during this negotiation process, he was also holding down a full-time forestry job.

I took on the multifaceted role of project manager and my tasks included: dealing with representatives of the Office of Treaty Settlements, Department of Conservation, Ministry of Education and other Crown entities, sourcing where ongoing funding of the settlement negotiations would come from either Crown Forestry Rental Trust (CRFT) or through the Office of Treaty Settlements: negotiating, drafting and managing a budget; the coordination of specialists to provide financial and legal advice and valuations of forests, housing and other properties to name but a few. Other important tasks included: attending all negotiation meetings between Ngāti Manuhiri negotiators and the Crown, following up on matters or work that was agreed on and ensuring contractual milestones for progress reports, budget expenditure and extensive work around finalising the treaty settlement deeds.

Our team of Mook and I travelled around the countryside meeting and greeting the various Crown officials, entities, local councils, iwi and hapū representatives. We would regularly report back to Laly on progress, seek guidance when necessary, and a decision when required. In certain circumstances we would bundle Laly into the car if he was not

too sick and take him along to the meetings if we believed his presence would assist in negotiations or the discussions were at a stage; we needed someone with his experience and mana to be present.

Laly's influence and sway were never taken for granted or underestimated, Mook spoke about an occasion before my time when they had met with the then Minister for Treaty of Waitangi Negotiations Douglas Graham. It was up north in a tin shed, with the rain pelting down outside, while eating tomato sandwiches that Laly was able to persuade the Minister to markedly increase the quantum figure that had been offered.

We put a lot of hours and energy into treaty negotiations, which sometimes extended well into the night discussing issues with iwi who lived around the Ngāti Manuhiri boundaries and claimed a similar interest in the land as Ngāti Manuhiri. I lost count of the times we pulled over to some rest area late at night to eat takeaway food over the bonnet of Mook's car in the middle of nowhere, while debriefing the meeting that we had just attended and discussing further tactics and strategies. Treaty negotiations aren't always glamorous work discussed during office hours by suited officials around a table in Wellington. Quite often it involves endless hui and meetings in far-flung areas by Māori negotiators at all times of the day or night.

The time spent on the Ngāti Manuhiri treaty settlement highlighted the inequity of a system where the victim of major atrocities, in this instance Māori were required to justify to the perpetrators of those atrocities, mainly the Crown, why they were entitled to receive compensation for the mamae they had suffered. It also provided an insight into the machinations of the Crown and the serious imbalance of power that exists. Belgrave (2005) talks about how Māori negotiators have been constrained by their inequality and the Crown has been limited in its dealings with Māori by the demographic power of the non-Māori majority.

It is from this position of inequality and imbalance of power that Māori have entered into a treaty settlement process with the Crown. This research will provide a repository of knowledge in terms of identifying specific examples which reinforce the view held by Māori negotiators, that inequality and the imbalance of power still exist and will remain

so until the Crown decides that it is time to change. Only then will treaty settlements be fair and just.

1.1 Background to the Study

In January 1840, William Hobson sailed into the Bay of Islands of Aotearoa on board the HMS Herald. He had the rank of Lieutenant-Governor of a province that did not yet exist and the extent of which had not yet been chosen. He was under instructions from Lord Normanby to claim the nation, with the approval of the Māori Chiefs (State Services Commission, 2005).

Hobson sought support and advice from a number of sources including missionaries working in Aotearoa, his secretary James Freeman and James Busby who had been in Aotearoa since 1833 as the British Resident and consular representative, and previous British Treaties. As a result, he wasted no time in claiming the nation with the signing of the Treaty of Waitangi on 6 February 1840. Whether it was with the approval of the Māori Chiefs as instructed by Lord Normanby is debatable (State Services Commission, 2005). Orange (2004) talks of an incident in the Hokianga harbour where two major chiefs refused to sign the treaty, and one returned a gift of money. Another brought back his gift of blankets with a letter signed by fifty of his tribe; he wanted his name removed from the treaty. Hobson refused and irritably dismissed these incidents.

There was a report commissioned by Ngāpuhi kaumātua and kuia, that was very critical of Hobson because he was the one who had promoted the treaty which led them to relinquish their sovereignty. They also believed that he was acting as an agent of the Crown at the time (Te Kawariki & Network Waitangi Whangarei, 2012).

For Māori, the treaty was seen as an agreement with the Crown for power-sharing, where they would determine their destiny as the indigenous people of the land and contribute to the future development of Aotearoa (Bishop & Glynn 1999). The expected promise of Māori and the Crown working together as one people and in partnership proved to be hollow (Orange, 2004).

What followed was a series of actions by the Crown against Māori where: Māori lives and land were taken, Māori women were raped and molested, promises and commitments

made were broken, lies were told, legislation legitimizing the theft of Māori land was passed, Māori were driven off their land and forced into warfare to protect and retain their land, and men, women and children were wrongfully imprisoned.

The flow-on effect of the Crown's actions is still being felt today when Māori have struggled to build an economic base and future for themselves. In a report (Anaya, 2010) tabled in the General Assembly by the Special Rapporteur on the rights of indigenous peoples, James Anaya visited New Zealand in 2010 and spoke to several people. This included ministers, the then prime minister John Key, the Waitangi Tribunal, the Māori Land Court and the Human Rights Commission as well as others. In his report, Anaya said that New Zealand had made significant strides to advance the rights of Māori, but further efforts needed to be consolidated and strengthened. He went on to say that he could not help but notice the extreme disadvantage in the social and economic conditions of Māori when compared to the rest of New Zealand (New Zealand Herald, 2011).

When it comes to the Crown and Māori negotiating treaty settlements, the treaty settlement process is driven and often manipulated by public servants whose tenure extends beyond that of their political masters. It is the public servants who advise the ministers, negotiate the treaty deal with Māori and convince the minister to sign off treaty settlements. Their influence should never be underestimated or taken for granted. On behalf of the Crown, the public servant will cajole, leverage off, play favourites, threaten, bully, over-ride, appease and ignore Māori requests during the negotiations. Māori then have to compromise, and become subservient, not question, accept predetermined deals, concede their positions and in certain cases follow the "party line" before the Crown will agree to finally honour any treaty settlement. Greg White, the chief negotiator for Ngāti Tama, described the Crown as being the biggest bully during treaty negotiations (Crown Forestry Rental Trust, 2003).

The public is not privy to the "behind the scenes" negotiations "akin to warfare" between Māori and public servants.

Where:

- Specific Crown agendas are imposed and changed without notice
- Māori expectations are quashed

- Crown determines which Māori are eligible to settle treaty claims and those whom they deem do not meet their eligibility criteria, are not
- Large Māori groups are permitted to subsume the mana of the smaller Māori entities. Divisiveness occurs when Māori are pitted against Māori and
- Historical accounts are sanitized by the Crown to avoid the bad publicity that normally follows when they are identified as the perpetrator of these misdeeds.

Eventually through this Crown-driven process of chaos, once every last concession has been wrung from Māori, a draft deed of settlement is reached. It is at this stage that the Crown achieves the greatest concessions possible from Māori; the first is that Māori realises they are not likely to get any more for their negotiations and what they miss out on has been graciously gifted to the people of Aotearoa; secondly, an acknowledgement that the treaty is fair, final and comprehensive and lastly once the claims are settled the jurisdiction of the courts and the Waitangi tribunal over the claims has been removed. The long-term impact of these concessions supposedly denies Māori tamariki, and mokopuna any chance of relitigating the issues and consigning them to a future where they will always regard the Crown, as the oppressor when speaking about treaty settlement negotiations. Anaya said the Crown needed to: involve all groups that had an interest in the grievance; to show flexibility during settlement negotiations and in consultation with Māori to address their concerns regarding the negotiation process and the perceived imbalance of power between Māori and Crown negotiators (New Zealand Herald, 2011).

The imbalance of power is no better reflected than in the strict criteria and standards the Crown insists treaty claimants adhere to before any consideration of compensation for a final settlement is considered. For agreements outside the treaty domain, the Crown has adopted a more flexible approach as the following South Canterbury Finance (SCF) example highlights.

1.1.1 Crowns contrasting behaviour

In 2008, the Crown's Finance Minister Dr Michael Cullen used his powers under the Public Finance Act to introduce an opt-in retail deposit guarantee scheme. The scheme

was designed to cover all retail deposits of participating New Zealand registered banks and retail deposits by locals in non-bank deposit-taking entities. Dr Cullen said the deposit scheme would give assurances to ordinary New Zealand depositors that their deposits were safe during the uncertain international financial market conditions that prevailed at the time. In another word the Crown guaranteed to repay those investors who lost money in the event the financial institutions, they invested in failed (Reserve Bank, 2008).

In November 2008, SCF was admitted to the deposit guarantee scheme but by 2009 had announced a net loss after tax of $67.8 million for the year and it became clear that much of their additional lending was not high quality (Hartley, 2010). On 31 August 2010, scarcely two years after joining the deposit guarantee scheme, SCF asked its trustee to place it into receivership after negotiations over a recapitalization deal failed. It is believed at that time SCF owed depositors as much as $1.7 billion. The Crown without hesitation immediately paid out $1.6 billion to the 35000 investors who had lost money (Tripe, 2010). At that time the member of parliament for the Māori party Te Ururoa Flavell said Māori were comparing the $1.6 billion with the $1 billion caps put on Treaty of Waitangi settlements 15 years ago to cover the following 10 years (Hartley, 2010).

The cynic would argue that the Crown applies separate criteria when honouring agreements between Māori and others. This becomes evident when SCF depositors were not subjected to the same process Māori endured when trying to elicit compensation from the Crown but were paid in full. The best Māori could hope for was a small fraction of what they should have been paid, for what was illegally taken from them.

Is it any wonder that after over 182 years of trying to get the Crown to listen to their grievances, Māori feel aggrieved with the whole treaty claim process? The treaty settlement process is unfair and unacceptable and needs to change.

1.2 Aim and Research Questions

This study aims to discover the influence that public servants have had on treaty settlements. The Crown has developed a treaty settlement process that has had little or no input from Māori, excludes private and conservation land from negotiations denies Māori ownership of the minerals under their land and operates under a caveat that restricts the amount of compensation they are willing to pay. Despite these limitations, the Crown

continues to beat down Māori even further by rigorously contesting and denying any requests they seek.

The questions put to the Māori and Crown negotiators were generic in nature to allow the free flow of information and put the interviewee at ease. The following were the research question put to the iwi negotiator:

- What impact if any did the Crown negotiator have during the settlement negotiation process?

Within the context of that generic question was the opportunity to ask further questions depending on the response from the Māori negotiator.

The generic questions put to the Crown negotiator were designed to gauge the part or influence they exerted during the settlement negotiations. The following were the research questions put to the Crown official:

- What influence do they play during the treaty settlement negotiations?
- What specific briefing did they receive from the Minister for Treaty of Waitangi Negotiations before negotiating treaty settlements?
- Was the Minister joined to every decision they made during the negotiations?
- What action is taken if an Iwi will not agree to a Crown proposal over treaty settlements?

The writer is not that naïve to believe that any person being interviewed especially a Crown negotiator is not likely to answer questions that show them or the Crown in a bad light.

The second part of the research focused on Te Whānau o Waipareira Trust (the trust) as the Case Study topic. The trust has experienced several challenges with the Crown as they try to obtain sufficient funding for the Māori social and health programmes they deliver in the West Auckland community. The Crown prefers to fund iwi organisations, rather than urban-based authorities, exacerbating the issue. The trust frustrated with the Crown's position, challenged their decisions through the courts and the Waitangi tribunal. The Waitangi claim was given the reference Wai 414. The following question was put to trust members:

- Following the decision of the Waitangi Tribunal on your claim Wai 414, how has the relationship between Crown entities and the trust improved?

The expectation was that the Crown having paid cognizance (but not bound by the tribunal's decision) to the tribunal's decision would have changed their funding preferences to ensure Waipareira was funded appropriately.

1.3 Significance

The signing of the Treaty of Waitangi in 1840 signalled the beginning of colonization for Māori with the British firmly entrenched in Aotearoa. Māori was now at the whim of the Crown whose interpretation of the treaty was anathema to justice and equity.

This study is significant because firstly, it identifies the factors over the years that have shaped, moulded and determined the approach and attitude of the Crown and by association the public service and public servants when engaged in treaty settlement negotiations with Māori. The effect is a Crown negotiation process devoid of Māori input with a predetermined outcome. Secondly, it identifies the issues that iwi negotiators have raised during negotiations with the Crown as they try to finalise a treaty settlement. The pool of information elicited from the interviewees will provide the basis for building and developing an inclusive treaty settlement process that is focused on achieving a just and fair outcome for Māori.

From the Trust's perspective, the study identifies the issues they have experienced and the actions they have taken over the years to ensure they are adequately funded for the programmes they run from West Auckland. The conundrum they face is the Crown's preference to fund iwi groups at the expense of urban Māori.

1.4 Overview of Methods

This studies will embrace the qualitative data collection method. According to Patton (2005), qualitative research is an observational approach that looks at events and occurrences in a particular context - such as a real-world setting where manipulation of interest events is not attempted

In both cases, a Kaupapa Māori research methodology is adopted in preference to the Western methodology which has close ties to colonization. Kaupapa Māori is a term used

by Māori to describe the practice and philosophy of living a Māori culturally educated life (Smith,1997). It is research by Māori, for Māori and with Māori, it does not reject or exclude Pākehā culture rather it challenges, questions and critiques Pākehā hegemony (Pihama et al., 2015).

The qualitative research method to elicit the information was face-to-face interviews with research participants. Opdenakker (2006) says face-to-face interviews have long been the dominant interview technique in the field of qualitative research. Kvale (2006, p.1) states that the qualitative research interview is an interview whose purpose is to gather descriptions of the life-world view of the interviewee concerning the interpretation of the meaning of the described phenomena.

It was felt by adopting the face-to-face interview method a rapport with the interviewee would be established and social cues, such as voice, intonation and body language would prompt the interviewer to gather further information that could be added to the verbal answer that was given (Opendakker, 2006). To ensure the information from the interviewee was retained, written notes were taken at the time of the interview and with the permission of the interviewee, the interview was recorded. This practice proved invaluable on one occasion when the recording device failed to record the conversation between the interviewer and interviewee, fortunately, because extensive notes were made at the time of the interview valuable information was not lost.

Initially, it was envisaged that a number of negotiators based on the value of the treaty settlements would be approached and interviewed. It however became obvious after the first interviews and literature review that a complete rethink on who should be interviewed was required. In Chapter Seven, my rationale for change is outlined in detail.

From the Case Study perspective, the objective was to examine the relationship between the trust and the Crown and identify what triggers they need to pull to ensure funding parity with iwi. The current strategy of highlighting the services the trust provides accompanied by a breakdown of which iwi their clients originate from appears to have fallen on deaf ears. It may be the right time for the recipients of the trust services to take a lead and voice their concerns not only to their iwi but to the people who are duly elected to hear them.

1.5 Overview of Research

Chapter One signals the beginning of colonization in Aotearoa with the arrival of Hobson on behalf of the British and the signing of the Treaty of Waitangi in 1840, by Māori and the Crown. The Crown's behaviour after the signing of the treaty is also examined. **Chapter Two** focuses on the appropriate research methodology to be adopted for Māori interviewees. The Kaupapa Māori theory is recognised as the integral research method for Māori to gather the data for this thesis. **Chapter Three** reviews the literature on the completed treaty settlements of Tainui, Ngāi Tahu, Ngāti Raukawa, Ngātikahu Ki Whangaroa, Ngāti Manuhiri, Rangitane Tū Mai Rā (Wairarapa Tamaki nui-a-Rua) and reviewed the academic literature on the topic. **Chapter Four** explores events that have led to significant changes for the betterment of Māori in Aotearoa. Suggestions that will improve the treaty settlement outcome are also explored. **Chapter Five** examines the evolution of the public servant and how historic events between Māori and the Crown from the signing of the treaty have been a significant factor in shaping and moulding the public servant of today. **Chapter Six** is a case study of Te Whānau o Waipareira Trust (the trust) and the events that lead to the establishment of the trust. The difficulties the trust has encountered with iwi and the inequitable distribution of funding received from the Crown for the programmes the trust provides for Māori in the community are also explored. **Chapter Seven** reviews and analyses the findings of the iwi negotiators' and Crown representatives' interviews. I also analyse the information gleaned from the completed treaty settlements and academics who have spoken on the subject. In **Chapter Eight**, conclusions and recommendations are drawn from the findings of the personal interviews with iwi, Crown negotiators and information drawn from the completed treaty settlements.

1.6 Chapter Summary

This chapter briefly outlines my involvement in treaty settlement processes and with the Waipareira Trust and the effect public servants have had on both. For treaty settlements, the conundrum was how best to collate and present the material, be it personal interviews or literary reviews and I decided on a combination of both. For the trust, a case study was used.

The next chapter examines the Kaupapa Māori methodology of qualitative research. Our tribal history and the stories told by our kaumātua and kuia are treasured as fonts of

knowledge yet regarded as myths and legends by Western researchers. Kaupapa Māori methodology espouses the creed of Māori for Māori where our tikanga and kawa are factors each Māori researcher is cognizant of when they look to interview other Māori as part of their research.

CHAPTER 2

METHODOLOGY

2.0 Chapter Introduction

The introduction of colonisation in Aotearoa in the mid-1800s meant Māori were dominated by a Eurocentric worldview composed of Western theories of knowledge and Western cultural norms (Bishop & Glynn, 1999). Burrows (2007) emphasised that Western epistemology believed its methods were superior to all others. As a consequence, indigenous epistemological knowledge, policy, law and theory were marginalised and disregarded. Smith (2012) reported that Māori had been dehumanised as a result of the research connected to the production of Western knowledge, in the essence of academic work and in the production of theories. That being the case Western ways of knowing have dominated while at the same time, the validity for Māori of Māori knowledge, language and culture has been denied.

Smith (2012) also highlighted how early ethnographers were driven by the need to collect volumes of material to be recorded as rapidly as possible before it became tainted or mislaid. Meredith (2015) commented on the published works of early Pākehā ethnographers that have been the subject of much criticism. He described ethnography, particularly pre-modern Euro-centric ethnography as one of the most ineffective colonisation approaches. He said such studies were prone to misinterpretation and misrepresentation of a culture's concepts, wants, and means of achieving both and the results should be cautiously scrutinised. This has been evidenced through the work of non-indigenous researchers like Best (1925) who wrote about his work with Tuhoe kaumātua, and Stafford (1967) who wrote about the history of Te Arawa. Both Western researchers were fluent in te reo and well regarded by Māori have attempted to capture Māori history and whakapapa from their articles and writings which have highlighted Māori conquests, alliances, tales, myths and stories. In the case of Best, there was some criticism that his information was out of date and that he appropriated Māori knowledge to further his own career (Holman, 2008). With respect to Stafford, a number of people disagreed with certain versions of the stories he told in the book he wrote about Te Arawa (Te Arawa Stories, 2022).

Kovach (2005) described indigenous epistemology as fluid, nonlinear and relational and recognizes the connection between the physical, mental, emotional and spiritual aspects of individuals with the earth, the stars, the universe and all living things. Lavallee (2009) maintains there are numerous indigenous methods of knowing that acknowledge the reality of both the material and spiritual worlds. One must realise that reality cannot always be quantified if they are to accept the nonphysical. In particular, he spoke about knowledge that had been obtained through dreams, visions and intuition which was regarded as spiritual knowledge arising from the spirit world and ancestors.

My personal beliefs extend to the origin of my whakapapa and the arrival of my ancestors on the Tainui waka, 800 years ago. The waka captained by Hoturoa journeyed up the eastern Bay of Plenty before eventually arriving in Kawhia at Maketu (Jones & Biggs, 1995). Likewise, my belief in the stories I was told when young, is about my grandmother who lived in Kawhia and her relationship with the Patupaiarehe (fairy folk) who lived on Mount Pirongia in the Waikato. My grandmother would regale at length to my mother and her siblings about her experiences with these supernatural people. The details of the interaction remain private within the family. My grandmother was from Maniapoto; her first language was Māori, she was a Māori leader who was passionate about weaving, waiata, karakia, tikanga, kawa and te reo, all skills representative of kuia and kaumātua in those days. From our whānau perspective, the stories she told about her relationship with the patupaiarehe were never questioned or disbelieved.

Doctor Tom Roa (Waka Huia, 2014) a Tainui leader, kaumātua, Associate Professor at the University of Waikato's Faculty of Māori and Indigenous Studies spoke about his family and his marae Purekireki relationship with the patupaiarehe on Mount Pirongia. He described the patupaiarehe as possessing their spirit, their sacredness and mana. He said all of these things have life forces, the life force of man, of the environment, of the mountains, the rivers, of fire. All of these elements are associated with the spirit of people and what made them different from the ordinary person. He also spoke about the carvings outside and within the Purekireki Marae and their relationship with the patupaiarehe (Waka Huia, 2014). It is difficult to believe that someone as distinguished and reputable as Dr Roa would make up such a story.

Mikaere (2005) talks about the arrival of the missionaries to Aotearoa where they began a concerted campaign of attack on Māori belief systems. A process that has been described as an attack on the indigenous soul. A soul that had to be destroyed for colonisation to succeed. The colonisers refused to acknowledge the validity of Māori spiritual beliefs, branding them as puerile and insisting on the superiority of their faith. From a non-Māori Westernised perspective, the stories told by my grandmother and Tom Roa would be regarded as Māori myths and legends.

Mahuika (2008) believes Kaupapa Māori theory provides a platform from which Māori are striving to articulate their reality and experience, their truth as an alternative to the homogenization and silence that is required of them within mainstream New Zealand society. Inherent in this approach is an understanding that Māori has fundamentally different ways of seeing and thinking about the world and simply wish to be able to live by that specific and unique identity. He describes as a form of disempowerment the treatment Māori and other indigenous peoples have experienced first-hand from researchers who have taken Māori knowledge and claimed it as their own and set themselves up as authorities on Māori culture. Smith (2012) says it is annoying that Western researchers and intellectuals can assume to know all that it is possible to know of us, based on some instances of their brief encounters with Māori.

These brief encounters with Western researchers were not always positive for the indigenous people, as highlighted by Chilisa (2012) who talks about the theft of indigenous knowledge from a local African tribe that for generations had used a certain plant to stave off the effects of hunger. A research company was able to isolate the active ingredients in the plant and manufactured it into a diet pill which they renamed and sold and made a lot of money from. The tribe in question were then left to argue over intellectual property rights.

2.1 Methodology and methods overview

Cultural research requires sensitivity and attention to detail. These topics benefit best from qualitative research methods, ethical approaches to interviews, and an examination of how decolonised methods contrast with colonised methods (Smith, 2012).

Smith (2006) describes empirical qualitative research as focusing less on published texts and more on people. Relationships and interactions establish the experience the researcher examines to prove or disprove their hypothesis. The nature of this settlement required observation of Māori and testimony on the process. A case in point was my observations of each of the participants interviewed for this thesis, the emotion and frustration exhibited (and alluded to later on in this thesis) as a result of their interaction with the Crown over treaty settlements was striking.

2.2 Kaupapa Māori Research Method

This study focuses on the grievance iwi treaty negotiators have against the Crown, their officials, and the instructions Crown negotiators received from the Minister for Treaty of Waitangi Negotiations. The perceptions, thoughts, and opinions are not quantifiable but are best explained through description by answering various questions, so the study's appropriate design will be a qualitative study.

When talking about the benefit of qualitative research, Patton (2005) describes it as a naturalistic approach that attempts to understand events and occurrences in a context-specific setting, such as a real-world setting where manipulation of interest events is not attempted. Maxwell (2012) states that qualitative research design is used when the research aims to understand a particular phenomenon in a real and social context. Zikmund et al., (2013) suggest another reason why qualitative research design is appropriate is that it does not incorporate numerical information.

The majority of the participants of this study (except the two Crown officials) are Māori and it was considered the kaupapa Māori research approach would be appropriate. This decision was not made lightly, I was aware that there are commentators who have expressed concerns about the value of the kaupapa Māori research. Rata (2006) believes that a tribal elite has been established through kaupapa Māori who are just as culpable of creating repressive structures similar to those within the Western world that they have so heavily criticised. Mahuika (2008) stated that with respect to other post-colonial theories and approaches it is unclear where Kaupapa Māori sits.

I was also mindful that throughout my career I have been educated and undertaken research in various disciplines under the auspices and guise of a Westernised research approach, which has served me well. Though it must be noted that the research I was undertaking did not involve Māori participants. There were a number of factors that helped me change my mind including experiencing personally the power imbalance that exists when dealing with the Crown. I note comments made by Bishop and Glynn (1999) who argue that power imbalances can be addressed by reaffirming indigenous Māori cultural aspirations, preferences, and practices termed kaupapa Māori theory and practice.

Another important factor was examining the origins and history of kaupapa Māori. Nepe (1991) describes Kaupapa Māori as dating back to the beginning of time and the creation of the universe with its own body of knowledge that has distinct epistemological and metaphysical foundations. Taki (1996) extrapolates the word kaupapa in detail describing "Kau" as the process of coming into view or appearing for the first time, to disclose and "Papa" to mean foundation base or ground. She says when both are put together, among other things it refers to the right way of doing things. Walker (1996) is of the view that Kaupapa gives meaning to the life of Māori. Pihama et al., (2002) believe that the origins of kaupapa Māori stretch back thousands of years. Mahuika (2008) believes the Kaupapa Māori research approach was a response to the continuing power imbalances and to the insistent use of culturally deficit theory as an explanation for the position Māori occupy in Aotearoa. She states that kaupapa Māori is not a new phenomenon nor is it a simple revamp of existing Western theories that have been disguised in Māori culturally appropriate vocabulary and attire. It has been described as a body of knowledge that has distinct epistemological and metaphysical foundations which date back to the beginning of time and the creation of the universe. It is intertwined with the Māori language and culture and is a part of Māori identity.

Smith (1992) when referring to kaupapa Māori education, outlined the emerging political awareness of Māori in the 1980s through the establishment of Te Kōhanga Reo, then Kura Kaupapa Māori, Whare Kura and Whare Wānanga that provided the catalyst for the rejuvenation and rebirth of kura Kaupapa. The comments of Smith (1992, pp.13-14) where he identified and elaborated on six intervention factors that are a part of kura

Kaupapa resonated with me and reinforced my desire to adopt this research approach. These six factors included:

- Tino Rangatiratanga: (Self-determination principle) - is incorporated in the Māori version of the Treaty of Waitangi 1840. Where sovereignty, mana motuhake, autonomy, and independence are integral and emphasised. Smith (2015) claims this principle allows the subjects to have greater control over the research projects, creating confidence in the data collected.
- Taonga tuku iho: (the culture aspirations principle) - the legitimization and validation of te reo Māori, Mātauranga Māori, and tikanga Māori is highlighted. Māori recognizes diversity, which is enhanced through the understanding of the Māori language. The culture, identity, and education of Māori are tied to their language. Cultural understanding of Māori can lead to a long-lasting positive relationship with the community; thereby enhancing global connectedness. Education opens the door for Māori to understand the external world from a diverse perspective (Pihama et al., 2002). Smith (1999) stated that kaupapa Māori encapsulates a Māori worldview and supports resistance to the assimilation of Māori language, knowledge, culture and hegemony. Smith (2015) states Māori have their way of understanding and interpreting the world. This allows the subjects or participants to conserve their culture as opposed to a Western-based research approach. Kaupapa Māori research takes into account the spiritual and culture of the subjects, which are ignored by the Western-based research that values evidence.
- Ako Māori: (culturally preferred pedagogy) – teaching and learning practices unique to tikanga Māori are promoted. Kaupapa Māori research emphasizes a culturally preferred pedagogy as defined by the principle of Ako Māori (Napan et al., 2020). The principle of Ako emphasizes the value and need for group-based learning and shared learning interactions and experiences (Alton-Lee, 2003).
- Kia piki ake i ngā raruraru o te kainga: (the mediation of socio-economic factors) - the issues of Māori socioeconomic disadvantage and the negative impact on whānau and children in the education environment. Despite these difficulties, the intervention of kura kaupapa mediation practices and values proved successful for whānau well-being.

- Whānau: (the extended family management principle) – an important part of Māori identity and culture is the practice of whānaungatanga and whānau. Kura kaupapa is for all Māori and recognises the diversity within our people; kuia (female elder), koroua (male elder), men, women, rangatahi (young person), tamariki (children), whānau, hapū, iwi and urban Māori.
- Kaupapa: (the collective vision principles) – a collective commitment and vision have ensured Māori education has been maintained. (Smith, 1992, pp.13-14).

Bishop (1994) believed that kaupapa Māori provided a pathway for Māori to regain control over their lives, culture and research related to those things. Within the Māori context, kaupapa Māori is not just a matter of listening, recording or re-telling stories of subjects but of adequately responding to what the stories mean for participants. Smith (1997) described kaupapa Māori as a Māori term that describes the practice and philosophy of living a culturally informed life as Māori. He believes kaupapa Māori research is both specific and unique and recognizes the need for research to be conducted in a culturally appropriate way that does not exclude other cultural traditions and approaches. He goes on to say that this type of research is connected to Māori philosophy and principles, and it recognizes each individual's unique journey. It is regarded as research by Māori, for Māori**,** and with Māori (Smith, 1997)**.**

Walker et al., (2006) note the Kaupapa Māori research approach is preferred over the Western research approach because the central principle is self-determination, which fits well with Māori for Māori. Kaupapa Māori research also becomes about social justice in redressing the imbalance of power and bringing benefits for Māori. Marie and Haig (2006) describe kaupapa Māori as a right-based approach to research. Whereas Barnes (2013) states that kaupapa Māori research is based on various principles that reflect Māori values, practices, and cultural beliefs which gives it advantages over the Western-based methodological research approach.

In developing an understanding of kaupapa Māori theory it is important to realise that kaupapa Māori is more than just Māori knowledge and beliefs, but is a way of framing how we think about these ideas and practices (Mahuika, 2008). Pihama et al., (2015) state that the term kaupapa Māori is a term used by Māori to describe the practice and

philosophy of living a Māori culturally and educated life. It is research by Māori, for Māori and with Māori, it does not reject or exclude Pākehā culture rather it challenges, questions and critiques Pākehā hegemony.

Smith (2012) explained that kaupapa Māori research allows space for not just the Māori people, but any indigenous culture adopting this method, in the development of their studies, and demands respect for the legitimacy of those studies and their results. Smith (2012) suggests that "non-indigenous, non-Māori can be involved in kaupapa Māori research but not on their own, and if they were involved in such research, they would have ways of positioning themselves as a non-indigenous person." But for the sake of this study, the radical definition applies that kaupapa Māori research is appropriate for Māori only. Hiha (2016) believes kaupapa Māori research separates what constitutes coherent knowledge from morality and politics. It allows Māori to have total control of their aspirations and cultural practices through the principle of rangatiratanga. Hoskins and Jones (2017) suggest transforming the agenda by recognising that decolonisation heals and mobilises people. The researcher must remain dynamic and open to the experiences of those they study, to their lives, customs, and histories.

Smith (2015) was able to draw a subtle distinction between Western research and research undertaken by Māori. From a Western context to conduct research is to look for information, understanding, clarification, and knowledge. It is predicated on the idea of knowing and contains insights into how we acquire or come to know knowledge. The premise of Western research paradigms is that with adequate training, we can get the knowledge we need; it just takes ability, being methodical and sensitive.

From a Māori perspective, there is a concept of levels of phases or knowledge in the Māori knowledge space. Other dynamics may conflict with this goal for many Maori, age, whānau status, gender, the regard in which other whānau members may be held, and unique personalities all play a role in these. Being Māori, a mokopuna or being Ngāti Maniapoto does not necessarily make you an insider in terms of research. The many positions Māori hold and the varied relationships with each of those positions binds us to make our own research encounters dubious, dynamic and rich (Smith, 2015).

The topic of this treaty settlement necessitates the radical interpretation of the method to be employed in this research. The Crown's resolution to apply exclusively Western colonised methodologies perpetuates further stigma and arbitrary results favouring their desired outcomes. Exercising kaupapa Māori research as a Māori-exclusive method restores a modicum of balance to this case.

2.3 Mātauranga Māori

As reported by Sadler (2007) mātauranga Māori is a knowledge tradition or an epistemology that originated in Polynesia and was brought to Aotearoa by our ancestors where it was embellished and refined by succeeding generations. The Waitangi Tribunal (2011, p. 22) said "mātauranga includes our whakapapa, language, technology, systems of law and social control, systems of property and value exchange, forms of expression, and much more".

Royal (2012) describes mātauranga Māori as an understanding of the world around us, a way of explaining natural phenomena and a pathway to pursue further knowledge and understanding. Both Sadler (2007) and Royal (2012) highlight how this knowledge was endangered by the arrival of Europeans to Aotearoa, but at the same time adapted to the new nation created.

Broughton and McBreen (2015) have described mātauranga Māori as the indigenous knowledge system of Aotearoa and all that underpins it. It is innovative, dynamic and generative. They say tino rangatiratanga and the need for mātauranga to prosper if Māori is to survive as Māori, serve as the foundation for mātauranga revitalisation.

Smith (2003) states that mātauranga Māori should not be confused with kaupapa Māori theory which makes space for Māori to legitimately conduct their studies of mātauranga Māori. Royal (2012) believes kaupapa Māori refers explicitly to a particular kind of methodology or a set of explicit actions and goals which is not the case with mātauranga Māori. He goes on to say that its deeper call relates to notions of indigeneity, rekindling kinship between people, and between people and the natural world. For this thesis, I was mindful of demonstrating tikanga Māori (which is immersed in mātauranga) through

karakia prior to the meeting and the opportunity to converse in te reo if so desired by participants.

Certain elements of academia have been slow to accept there is such a knowledge system as mātauranga. Kuokkanen (2007) spoke about Western academics and how they treated indigenous knowledge systems as additional to real knowledge; only relevant to the extent they have something to offer existing discourses and theories. This is consistent with the findings of the Waitangi Tribunal (2011) which spoke about scientists working well with kaitiaki whose mātauranga was of benefit to their projects, but research based on mātauranga itself was being neglected. Rawiri (2012) highlighted how dominant Western epistemology had become by suppressing other knowledge systems. He said the key to Western culture living and developing as a Western nation is Western epistemology. Likewise, the key to Māori living and developing as Māori is mātauranga. He said through learning te reo me onā mātauranga, Māori retain their values and ways of life crucial to our identity and existence. Broughton and McBreen (2015) claim that science has been complicit with the government in trying to erase mātauranga. Mātauranga has been treated as simply information rather than a knowledge system, and Māori instead of being regarded as collaborators, colleagues or experts have been treated as informants.

Dunlop (2021) wrote an article on mātauranga Māori and the rift that has occurred within the academic fraternity at the University of Auckland. Seven professors (academics) at the university have raised concerns about a National Certificate of Education Achievement working group that proposed changes to the school curriculum that will ensure parity for mātauranga Māori. The academics have objected to a particular part of the course which states that science has been used to support the dominance of Eurocentric views (used as a rationale for colonization of Māori and the suppression of Māori knowledge) and that it is a Western European invention and itself evidence of European dominance over indigenous people including Māori. The academics do not accept that mātauranga Māori is equivalent to science. Interestingly one of their academic colleagues said what the seven professors were saying was not new and originates from a particular set of scientific norms that go back a long way and have their roots in colonisation. The University of Auckland Vice-Chancellor Dawn Freshwater said the comments from the seven academics had caused considerable hurt and dismay among students and staff and did not represent the views of the university (Dunlop, 2021).

Stewart (2021) claims co-authorship of the words that led to the Auckland University academic's furore and says Dunlop's article was flawed and had been taken out of context. The statement that was cited was a section of a summary of the potential subject matter for senior secondary Pūtaiao students to research in relation to social scientific concerns from a Māori perspective. The nervous response from the academics of a top science university in the country to a sentence that indicates taking a critical look at the involvement of science colonisation of Māori does science's public image no favours. Stewart (2021) went on to say that the actions of the Vice Chancellor of Auckland University to distance the employer from the academic rhetoric was the appropriate action to take.

Hikuroa (2017) describes mātauranga and science as bodies of knowledge methodically created and contextualised within a worldview. He goes on to say that the critical difference is that mātauranga Māori includes values and is explained from a Māori worldview. Stewart (2020) argues against equating mātauranga Māori with science, rather than as a form of science itself and thinks it is better conceived as a form of philosophy of science.

The interaction between my grandmother and the patupaiarehe encapsulates what Mātauranga means to me. Māori have a different perspective about certain customs and events not based on a Westernised philosophy, which insists there must be an answer or explanation as to why these things occur. My grandmother's experience highlighted our cultural acceptance of things that don't necessarily have to be explained. The kaupapa Māori perspective provides comfort when operating within mātauranga that we are working according to Māori tikanga, which provides Māori researchers with comfort and a safety net without competing with other processes. The spreading acceptance of this knowledge base is recognized by other indigenous cultures that have their unique research methods.

2.4 Other Indigenous Research Methodology

The recognition of kaupapa Māori research methodology as a philosophy unique to Aotearoa has been hard fought against a bias where Western research has always prevailed. It is reassuring to know that Māori are not in isolation from other indigenous tribes across the world who have developed their own research methodology similar to kaupapa Māori research. They share the same objectives as researching for their people by their people and accepting sources of counter-hegemonic knowledge to further decolonisation efforts. Chiblow (2020) speaks about the Anishinaabe, a North American tribe, that established their research paradigm by focusing on seeking balance in their place in the universe. It incorporates Ndakenjigwen, the knowledge of water gained from the Great Lakes, into their research on reconciliation and relationships.

Bessarab and Ng'andu (2010) have identified "Yarning" as the unique research method of indigenous tribes in Australia and Botswana. Yarning is a semi-structured interview, an informal and relaxed discussion through which both the researcher and participant journey together visiting places and topics of interest relevant to the research study. Yarning is a process that requires the researcher to develop and build a relationship that is accountable to indigenous people participating in the research. Yarning enriches the interview experience for both parties on their journey.

2.5 Ethical Considerations

For any qualitative research, ethical considerations include informing the participants about their voluntary participation in the study and considering the ethical data collection procedures and keeping the identity of participants confidential (Creswell et al., 2005). Researchers in all stages of the study face ethical challenges, from designing a case study to analysing the data. These include anonymity, confidentiality, informed consent, and the possible effect of researchers on the participants and vice versa. To confront and manage biases in the study, a reflective memo is utilized throughout the study (Anderson et al., 2017). In this method, the business is confronted and managed by keeping the personal views of the researcher from those of the participants, so that high quality, ethics and validity of the research are ensured. I found this method useful as it caused me to stop and reflect on my demeanour, behaviour and attitudes when I disagree with any

information I receive. I was also conscious, given my experience with the Crown whilst working for Ngāti Manuhiri as project manager and again as one of the negotiators for the Te Kawerau a Maki treaty settlement that my personal views of the Crown may impact the views of the participants interviewed. I made sure throughout each of the interviews I carried out that I made no comments either way with respect to my personal views of the Crown. What was recorded were only the views of the participants.

The negative aspects of authoritative pressure including being overbearing, making mistakes, discouraging collaboration and causing tension were possible factors I was conscious could occur (Online Learning College, 2022). However, these issues were quickly dispensed with given the position and mana of each of the participants and the role they played in treaty negotiations. It was clear to the writer that the participants being interviewed were seasoned and experienced negotiators, a skill they had acquired through continued interaction with the Crown.

Before the commencement of the interviews, participants had been informed about the purpose of the study and the confidentiality of the source of any information they provided. As a way to ensure trustworthiness, transparency and protection the participants were given a consent form to sign. The participants were also advised that the data collected was to be used solely for the research study.

Smith (2013) spoke about the processes she has implemented when researching to ensure ethical processes are maintained. This included karakia (prayer) where appropriate, debriefing before and after with research teams and transcribers and talking to kaumātua (elders). She also highlighted the benefit of karakia before and after interviews providing clear beginnings and appropriate endings to interviews.

The writer is Māori but unable to converse in te reo which is why this thesis is written in English. I am however fortunate to have family members including my wife who are fluent in the language and were available to support me and provide guidance where necessary. The situation never arose where the person being interviewed preferred to be interviewed in Māori. Before interviewing I had discussed with my supervisor suitable mechanisms to ensure that what was told to me, was correctly recorded for later accurate translation, I had also discussed whether on certain occasions it would be appropriate to

have a family member present with me during these interviews. Whether it denotes the position or the role but the iwi negotiators were fiercely independent, professional and no-nonsense people who were at ease being interviewed. All participants were allowed to review everything that was recorded during the interview. If they had requested that they no longer wished to be part of the research then all documentation recorded was destroyed.

Approval of my application from the Te Awanuiarangi ethics committee allowed me to undertake the relevant research interviews (see Appendix One). Throughout the interviewing process, I liaised closely with my supervisor and whānau to ensure all ethical considerations were covered, particularly the need to ensure confidentiality, informed consent, preserving anonymity, avoidance of deception or adverse effects and most importantly ensuring respect and maintaining mana of all concerned.

2.6 Case Study and Interviews

This research used a case study approach to examine Te Whānau of Waipareira. Yin (2011) believes a case study research aims to explore a program, activity, event, process, or individual's perception by collecting detailed data about the research problem. The advantage of such an approach is that it enables a researcher within a specific time frame, to explore how the participant of the study establishes meaning regarding any process, event, phenomenon, or program in a specific social context. The logic for using the case study approach is to preserve the meaningful and holistic characteristics and details of the real-life event (Yin, 2011).

This is an ideal research methodology of single unit analysis involving a person, event, or document that required very narrow examination. This distinguishes case studies from ethnography and other similar methodologies for community studies because they examine a broader scope of people, occurrences, and artefacts. Case Studies work best for the hypothesis with specifically intended outcomes that work well within certain boundaries set by the researcher or by the limitations of the case (Yin, 2002).

A qualitative explanatory case study design was appropriate for the study as it focused on investigating the experiences and perceptions of iwi negotiators who represented both the Crown and the treaty partner. Many social science research studies (Cram et al., 2006) have adopted kaupapa Māori research undertaken by Māori for Māori and integrated it into various social science research to understand the complexity of Māori culture. Bishop (1996) claims that researchers in Aotearoa have developed a tradition of research that has perpetuated colonial values which undervalues and belittles Māori knowledge and learning practices and thereby inflating the research processes of the colonisers. The implication being Māori researchers are inferior to the superiority of colonizers and as a consequence the research they undertake is substandard (Bishop, 1996).

Flyvbjerg (2011) believes the term case study is often applied too liberally because cases are objects of study that focus on bounded systems. Research cases must clearly define their boundaries by way of principles of selection and provide rationales for those boundaries (Creswell, 2014). Researchers need to describe their principles of selection and why those principles are important. Defining boundaries link the theoretical frame of the study to the inquiry being studied. Recognize that while cases blend into one another and boundaries are skewed, the researcher is choosing a particular focus to learn about a specific in-depth case (Morse, 2007). Because case studies have such a variety of focal points, case study researchers employ techniques and strategies, involving interviews, participant observations, physical descriptions, and surveys, though effective investigators choose the most appropriate and specific strategy due to the nature of such exploration. These are carefully crafted systems aimed at empirical investigation. Their various techniques and strategies are guided by the boundaries of the case and the guiding methodology. These boundaries are spatial, temporal, and relational.

In-depth interviews were performed using the kaupapa Māori research. There are many ethical concerns when approaching interviews for research: privacy and confidentiality, informed consent, and power imbalance (Allmark et al., 2009, pp. 51-52). Pseudonyms were offered for those who wished to remain anonymous. Participants were informed at the outset of the purpose and scope of the study, the types of questions likely to be asked and so forth before gaining consent. Interviews allow for observations into another person's life. This is a privilege, and it was acknowledged to maintain the balance of

power between interviewer and interviewee. The opportunity for such insight is appreciated, and that gratitude was expressed to the subjects.

From the beginning, the decision was made that the principal research methodology for collating relevant information from interview participants would occur through face-to-face interviews. Though one would think it is a simple and easy process, in reality, proving difficult with having to try and arrange for people to give up their valuable time. Negotiators who by their very nature are busy people were having to juggle the demands of their iwi, hapū and whānau with the demands from the Crown and at the same time living their own lives and the demands that in itself placed on them. The Crown participants were no different having to juggle their competing work and personal demands and trying to set aside interview time. At no time did any of the participants refuse to be interviewed, on the contrary, if arranged meeting times clashed with urgent meetings then attempts were made to rearrange timings if possible. Only in exceptional circumstances beyond anyone's control would the interview not go ahead at the agreed time. Being flexible and not rigid proved important when having to change dates, times and venues at the last moment.

Questionnaires and data were prepared beforehand, and the procedure to adopt when interviewing subjects was considered well before the event occurred. Discussions with other researchers and academic staff provided much-needed guidance that ensured proper processes were followed. The participants were advised that information gathered and data analysed would be summarised and the participant would have an opportunity to review what had been said. Where they were not happy with various parts of the interview they would be deleted and where they required things to be added this would occur. As a lead into the formal interview process, a relaxed atmosphere was created putting all parties at ease and creating an environment where information could flow freely as time was spent getting to know each other.

Discussions centred around trying to find a connection by way of whakapapa links, tribal affiliations, or common associates. Vaioleti (2006) talks about a similar Pacific island custom of Talanoa which involves personal interviews. He describes the custom as a conversation, talk, exchange of ideas or thinking, whether formal or informal and other

Pacific island countries see the practice of talanoa as the ancient practice of multi-level and multi-layered critical discussions (Vaioleti, 2006, p.23).

This process proved invaluable because both parties appeared to be at ease and the environment created ensured information flowed freely. The principal research methodology of asking a combination of structured and semi-structured interview questions ensured the free flow of information and key points were not overlooked. Throughout the interviews, there was flexibility in how questions were asked and when needed some questions were changed to ensure the information flow was not interrupted. The asking of a number of open-ended questions also assisted with the free flow of information.

For an environment that encourages and allows free flow of information to exist strong relationships between the interviewer and the interviewee must be established. Wehipeihana says relationships matter in a Māori context; she likens them to a critical entrée mechanism, a lubricant that facilitates and underpins ongoing engagement, and the glue that binds people, processes and projects together (Mertens et al., 2013).

The nature of design honours the interviewee's story while simultaneously collecting the necessary data to support this case. Indigenous methods meet colonised requests for evidence. Selecting the participants involved many factors including their role in the treaty.

2.7 Participant Selection

The sampling design for the study was purposive sampling. It is a widely used technique in qualitative research for the selection and identification of information-rich cases (Patton, 2005). The purposive sampling technique involves selecting and identifying groups of individuals or individuals that mostly know about the problem and phenomenon under study (Cresswell & Plano Clark, 2011).

The target population for the study were iwi negotiators, Crown officials, Waipareira trustees including the chief executive officer John Tamihere. There were eleven

participants selected using a purposive sampling technique. Through the writer's work in treaty settlements and regular interaction with other lawyers, Crown negotiators, Crown officials and iwi/hapū treaty negotiators, the writer was able to identify treaty negotiators to assist in this research. Initially, it was proposed that a cross-section of completed treaty settlements would be identified and then placed into three categories; those under $20 million regarded as small settlements, those between $20-$50 million as medium-sized settlements and those over $50 million regarded as large treaty settlements. The rationale for the distinction was to gain an appreciation of whether the interaction with the Crown would be any different given the financial amounts involved.

It was then proposed that treaty negotiators who had completed their settlement and fell within those listed categories would be approached and permission sought for them to be interviewed as part of this research. However, when the negotiators were interviewed it was discovered that a number of them had negotiated other treaty settlements for varied amounts that fell within a different category. The advantage this situation provided is the ability to glean from the negotiator whether the treatment they received from the Crown was any different when they were negotiating claims in category one under $20m than claims in category 3 over $50 million.

Hohneck (personal communication, December 18, 2019) advised that the problems he experienced with the Crown when dealing with the under $20 million Ngāti Manuhiri treaty settlement were no different to the problems he experienced in the $165 million Maniapoto settlement. The only difference he noted was that the Crown was more prone to try and persuade (bully) negotiations at the lower level to accept what was on offer.

The number of Crown negotiators and staff involved in treaty settlements varies from region to region. A chief Crown negotiator often supports the Minister for Treaty of Waitangi Negotiations Minister. Since 2008, the power and influence of such negotiators has increased (Cowie, 2013). For the sake of anonymity, I was able to interview two public servants who had worked as chief Crown negotiators. Cowie (2013) believes chief Crown negotiators have a broader mandate to act as a Minister would, pushing the boundaries of policy, talking to other politicians and making use of the networks they have built up over their careers.

These important and busy people opened a dialogue with this researcher expressing their opinions with as much support from me that I could provide. Applying strategies described in both the case study and kaupapa Māori research methodologies, I designed and employed the best approach for this case.

2.8 Approach

Both case study and kaupapa Māori research rely on outreach and communication with individuals affected by the case. All personal interviews were conducted with a dictaphone to record the interview as well as take written notes. To maintain a power balance, I asked the participants to select the locations. I met some at their private houses, some at their offices, one at a café, and the others came to my office. I had prepared questions (generic in nature) in advance in the hope this would encourage them to speak freely. This proved successful, and the questions acted more as a guide to direct the interviewing, allowing for the discussion to organically garner unexpected, but important answers. All interviews were transcribed verbatim. Any form of research that involves interviews presents challenges. Most of the iwi negotiators who agreed to participate in this research had negotiated more than one treaty settlement, in the case of one of the participants he had negotiated over 18 treaty settlements. I was conscious that any one of the participants interviewed may have requested that the interview be conducted in Māori. I am not fluent in the Māori language but I had whānau available to assist me in the event such a request was made.

I researched several other treaty-completed settlements. One of the most important findings from my interviews and the historical cases I reviewed and researched is that the same problems arose. For example, the lack of involvement in the negotiation process where the Crown has predetermined many factors before the negotiation starts and was unwilling to be flexible, but expected negotiators to be flexible. If the negotiators were not prepared to be flexible, the Crown would return them to the back of the queue. Often, refusing to negotiate further until their preferences were met. Another complaint shared among the interviewees was the Crown adopting its policies. This was in contrast to specific legislation of the 1975 Treaty of Waitangi Act and the Waitangi Tribunal. In this instance, the Crown insists on “Large Natural groupings” to negotiate with instead of

negotiating with individual iwi. These experiences reinforced the testimony of previous treaty settlement negotiators of the Crown's propensity to change the rules to suit themselves and the clear imbalance of power that exists.

Despite employing a mixture of Māori and Western methods in my approach, I found the colonised methods contributed less to the study. Kaupapa Māori research balanced the Māori research with the Māori participants. It ensured the rangatiratanga and mana of the participant interviewed remained. It also created organic and real conversations that enriched my study.

2.9 Colonisation

When discussing colonisation, Hoskins and Jones (2017) describe it as unequal power relations between dominant others and subordinated indigenous populations. They go on to say that colonisation in Aotearoa has not been overthrown, nor has it gone away, it persists. It not only remains ever-present, but it is also resilient, continually changing into new forms and Indigenous communities need to remain in a state of preparedness to resist these shifting forces. Smith (1999) talks about the benefits the non-indigenous world gained through their research on indigenous issues. This included the fostering of academic and political careers, economic and professional gain, the profitable use of indigenous territories, natural resources and indigenous knowledge to name a few. Non-indigenous research has disempowered indigenous peoples who have long been used merely as passive objects of Western research.

Smith (2012) says imperialism frames the indigenous experience. That this is part of our story, our version of modernity. She says it has become a significant project of the indigenous world when writing about our experiences under imperialism and its more specific expression of colonialism. The two terms are interconnected with colonialism being an expression of imperialism.

Western methods it is stated think only of the individual and ownership. "Whilst Western academics may quibble about the success or failure of the emancipatory project, and

question the idealism which lies behind it, there is a tendency to be overly ‘precious’ about ‘their’ project as a universal recipe that has to be followed 'to the letter' if it is to be effective” (Smith, 2012, p. 186). I found evidence of this sentiment in my work with colonised methods for this study.

2.10 Colonised methods

Some Western methods were utilized for this study but proved less enriching than Kaupapa Māori research. The textual analysis included a literature review of completed treaty settlements. This provided a point of reference to compare and contrast historical settlement negotiations and terms. The additional analysis included academic commentary and review from Graham Smith (1992), Ani Mikaere, (2005), Leone Pihama et al., (2015), Linda Smith (2015), and Professor Margaret Mutu (2019b) to name but a few. Television documentaries by O’Regan (2019); Henry (2019); and Mullins (2019) broadcasted the issues iwi negotiators of treaty settlements encountered. Although these sources benefited the thesis, they only highlighted these issues on a broader scale where the kaupapa Māori research provided a voice for the individuals affected by the treaty.

Comparing case study interviews from a Western approach versus kaupapa Māori research is beneficial. Bishop (1999) believes despite the guarantees of the Treaty of Waitangi 1840, the colonisation of Aotearoa continues. Traditional research has perpetuated colonial values that continue to undervalue and belittle Māori knowledge and learning practices in order to increase those of the colonisers and supporters of neo-colonial models. Bishop (1999) said this behaviour implies that Maori culture is unable to cope with human problems and is inferior in human terms to that of the coloniser. Despite the impact of traditional research an indigenous approach (kaupapa Māori) has emerged in Aotearoa which challenges the dominance of Pākehā research. Essential to a Kaupapa Māori approach is that researchers are positioned in such a way as to operationalise self-government for research participants. As a consequence, research issues of initiation, representation, accountability and legitimacy are dealt with and understood by kaupapa Māori practitioners (Bishop, 1999).

2.11 Data Analysis

Data collection and data analysis occur simultaneously in a study. Creswell (2014) stated that qualitative data can be huge and voluminous; so, the compartmentalization of duplicated data from various sources helps the streamlining of the analysis stage. In another study, Yin (2009) asserted that data analysis involves examining, tabulating, categorizing, recombining evidence, and testing so that empirical-based conclusions are drawn from it. Glesne (1999) discusses the process of data analysis involved grouping the data into data clumps for further description and analysis. So, the data collected through interviews and field notes were synthesized, grouped, determined for patterns, and interpreted for conclusions. The analysis of data began with arranging the raw data and various types of information. The final data after organizing it was analysed by the utilization of cross-case analysis. This type of analysis method enables a researcher to find patterns and helps in the prevention of drawing premature conclusions and helps in examining the data from various angles (Yazan, 2015).

This cross-case analysis was undertaken on the treaty settlements that were reviewed. Similarities include the Crown's behaviour towards negotiator's demands that bordered on indifference; which supported a pre-determined outcome and cross-claimant issues and the Crown's willingness to accept unsubstantiated claims; thereby leaving it to the claimants to sort out the Crown-created mess (M. Hohneck, personal communication, July 08, 2011).

After arranging the data, themes were formed from the respondent's responses. The interpreted result was categorized and described by connecting it to the purpose and aim of the study. Methods given by Rovai et al., (2013) were used for the analysis of data collected through interviews. The steps included in the data analysis process were: (1) reading all the text; (2) list of codes is to be developed; (3) the data is coded; (4) the code and coding process is reviewed; (5) the data is recorded; (6) themes are developed, and (7) thematic relationship is developed between the research question and observational data (no observational data collated for this thesis, just commentary from personal observation of the negotiator's reaction to the behaviour of the Crown). Data collected from the negotiators of the Government, iwi and the trustees were then transcribed and after transcription was verified, significant statements were highlighted that helped in

providing an understanding of how the participants perceived and experienced the relationship between Māori and the Crown in New Zealand.

A simple coding method was utilised. I focused on three generic areas, firstly the participant's view on treaty settlements, secondly the behaviour of the Crown during treaty settlement negotiations and finally the outcome of the treaty settlement. After carefully analysing the participant's responses common themes like bias and the importance of rangatira to rangatira negotiations were grouped and expanded upon when necessary. All questions were generic in nature to allow further questions to be asked when required.

2.12 Chapter Summary

The impact of colonization was not only reflected in the brutality and destruction inflicted on Māori by the British as they stole or confiscated large tracts of Māori land. It was also reflected through the might of the pen, where Māori quickly became the topic of study for Western researchers. This was a period where what was written by Western researchers was accepted as being the truth and never challenged. This was also the period when indigenous peoples were exploited for the information they gave willingly as evidenced by Chilisa's (2012) report of a local African tribe. The kaupapa Māori research methodology espoused by Māori academics including Graham Smith (1992) and Linda Smith (2012) challenged the status quo, and for Māori the realisation that not everything that emanates from the West is gospel. Kaupapa Māori research methodology provides the ideal research tool and a modicum of comfort to those Māori being researched that their commentary is not likely to be misused.

The issue for Māori began in earnest with the British arriving in Aotearoa and the subsequent signing of the Treaty of Waitangi in 1840. The onslaught and impact of settlers on Aotearoa and the influence of public servants in the overall process are captured throughout. The next chapter is the literature review which analyses the completed iwi treaty settlements and the issues raised by the iwi negotiators when dealing with public servants.

CHAPTER THREE

LITERATURE REVIEW

3.0 Chapter Introduction

This literature review will compare and contrast six completed treaty settlements: Waikato-Tainui, Ngāi Tahu, Ngāti Raukawa, Rangitane Tu Mai Ra (Wairarapa Tamaki nui a Rua), Ngātikahu ki Whangaroa and Ngāti Manuhiri. It is anticipated that information gleaned will highlight the issues negotiators have experienced with the Crown and which can be argued have shaped the behaviour of the Crown when it comes to treaty negotiations. Like the phoenix rising from the ashes, it is anticipated an alternative treaty negotiations process that is not only fair and just for Māori, but acceptable to the Crown and the public is required.

The 1990s, signalled the beginning of direct treaty negotiations between the Crown and Māori. The Sealord Fishing deal (to be covered in Chapter 6) was the first direct treaty settlement, followed by Waikato-Tainui and Ngāi Tahu treaty settlements. Coxhead (2002) maintains that the Crown, as part of their settlement policy, had been developing the direct negotiations process since 1975. Mutu (2018) states that the architect of this change was the then Minister for Treaty of Waitangi Negotiations Doug Graham who felt the Court's decision in the ***Lands***[1] case had placed the Crown in the invidious position of not being able to ignore binding recommendations from the court and was now duty-bound to follow unless they legislated otherwise. The direct negotiation policy closed the claimant's access to legal remedies available in the Tribunal, where claims would be restricted to the realm of the Crown and no statutory framework was available to protect Māori interests. It was Graham's view that only the Crown could determine what Māori was given (Mutu, 2018).

The 1995 Waikato-Tainui was the first major settlement of historical confiscation, or raupatu and the Ngāi Tahu treaty settlement in 1997, was the Crown's failure to honour its end of the bargain in land sales that took place from the 1840s. These settlements were

[1] *New Zealand Māori Council v Attorney-General* [1987]. NZLR641, (1987) 6 NZAR 353

used as a baseline for future treaty settlement negotiations. However, other iwi were not able to negotiate similar concessions, with the Crown stating that each claim was to be treated on its own merits and not restricted by a predetermined fiscal cap (Te Aho, 2017).

The difficulty for Māori negotiators has been their lack of experience in negotiating treaty settlements. Henry (2019) identified documents not being read and a lack of tribal infrastructure as part of the reason why they ended up doing what the office of settlements was telling them they should be doing. In contrast, the Crown has amassed a wealth of experience and knowledge built up over time from treaty settlements which they can draw upon when negotiating with new claimants (Crown Forestry Rental Trust, 2003).

3.1 Settled Treaty Claims

3.1.1 Settlement Claim One: Waikato Raupatu Claims

Reprinted 1 August 2020

Waikato Raupatu Claims Settlement Act 1995

Public Act 1995 No 58

Date of assent 3 November 1995

Commencement see section 1(2)

This Act is administered by the Office for Māori Crown Relations – Te Arawhiti (New Zealand Legislation, 2020).

Figure 1: The first Māori King, Pōtatau Te Wherowhero (Ministry for Culture and Heritage, 2018a).

3.1.1.1 Rohe Pōtae (Tribal boundary)

The late Sir Robert Mahuta (1995) described Waikato-Tainui's area of interest as Mōkau in the south, Tamaki in the north, with Hauraki to one side, Waikato to the other, and Maungatoatoa in the middle. There is a well-known saying that describes the region of Tainui as Mōkau above and Tāmaki below (Royal, 2005a). Within these boundaries are the powerful confederation tribes of Tainui namely Waikato, Maniapoto, Raukawa and Hauraki. Land confiscated from Waikato is depicted in the map below – Figure 2.

Figure 2: Land confiscated in the Waikato (Swarbrick, 2015).

3.1.1.2 Historical timeline

It is believed that the Tainui waka and people arrived in Aotearoa around 1350 and settled in Auckland, Hauraki, Waikato, and the King Country areas. By the 1850s, Pākehā settlers were arriving in large numbers and their demand for Māori land was increasing. Māori realised early that they lacked the political power to stem the loss of their land and believed this could be achieved if they were able to unify the tribes under one sovereign who would represent their interests (Jones & Biggs, 1995). From 1853, Matene Te Whiwhi of Ngāti Raukawa assisted by Tamihana Te Rauparaha of Ngāti Toa approached Māori Ariki around the North Island and asked whether they were prepared to take on the role. One of the Ariki approached was Pōtatau Te Whero Whero of Waikato (Figure 1 above), who refused to sign the 1840 Treaty of Waitangi, he also refused the Kingship on several occasions. However, with the intervention of the paramount chief of Tūwharetoa Iwikau Teheuheu and Tanirau of Ngāti Maniapoto, he finally accepted the role, at a meeting known as Te Puna o te Roimata (the wellspring of tears) indicating at that time that he did not have much longer to live (Papa & Meredith, 2012). Having been appointed as King in 1858, Pōtatau Te Wherowhero reign as King only lasted a few years and he died in 1860. He was succeeded by his son Tāwhiao Pōtatau Te Wherowhero who was Crowned the second Māori King (Jones & Biggs, 1995).

In 1863, following a series of aggressive actions from Governor Gray which included the building of a road into the Waikato territory and the threat of dire consequences if Māori intervened, Waikato was attacked by government troops. In conjunction with the attack on Waikato Māori, the Crown invoked the provisions of the New Zealand Settlement Act of 1863, legislation that had been specifically designed to confiscate Waikato land if Māori rebelled against the Queen's authority (Ministry for Culture & Heritage, 2020a).

In 1884, Tāwhiao travelled to England to meet with Queen Victoria to seek redress for the confiscation of Waikato lands. He was twice refused an audience with her instead he was advised to petition the New Zealand Parliament. In 1912, his grandson Te Rata the fourth Māori King also travelled to England to petition the Crown on the Raupatu and received the same advice (Mahuta, 1995).

In 1926, at the urging of Maui Pomare and Apirana Ngata, the Māori Commission on Māori Land confiscations was set up. The Commission was chaired by Supreme Court Judge William Sim and his findings were known as the Sim Report (Ministry for Culture & Heritage, 2020a). The Sim Commission's formal terms of reference were restricted by limiting the scope of inquiry and the type of recommendations that could be made. Mahuta (1995) claims that the commission's brief was to investigate the scale of confiscation, not the act of confiscation itself. It was also barred from allowing appeals to treaty protections and from recommending the return of confiscated lands (McCan, 2001). The report found the land confiscations in Waikato were immoral, illegal, and excessive and recommended that Waikato receive an annual payment of £3,000. Waikato would not agree to any monetary settlement insisting as the land was taken, so the land should be returned (Mahuta, 1995).

In 1930, Tūmate Māhuta and Pei Te Hurinui Jones set up a rangatahi group to negotiate with the Crown on Raupatu. Between the years 1936 to 1946, Prime Minister Savage promised Waikato Māori a settlement of £5,000 a year. In 1946, at a hui in Turangawaewae Prime Minister Fraser offered £6,000 for 50 years and £5,000 thereafter in perpetuity which was accepted by the fifth Māori King Koroki but was not considered a full and final offer (Ministry for Culture & Heritage, 2020a). Following the agreement between Tainui and Prime Minister Fraser the Tainui Māori Trust Board was established to administer compensation funds under the Waikato-Maniapoto Māori Claims Settlement Act of 1947 (Mahuta, 1995).

In 1966, Te Arikinui Te Atairangikāhu succeeded her father Koroki to be the sixth and longest-serving leader of the Kīngtanga (Ministry for Culture & Heritage, 2018b). During her reign, the Waitangi Tribunal was established in 1975 followed by the Waitangi Amendment Act in 1985 which allowed the Waitangi Tribunal to consider land claims dating back to 1840 (Ministry for Culture & Heritage, 2019).

In 1987, Waikato-Tainui filed the WAI 30 claim concerning lands confiscated, the Waikato river- bed, fisheries, and harbours with the tribunal. This was also the same year the Crown changed the State Coal Mines to Coal Corporation of New Zealand Ltd and attempted to transfer the ownership and licenses within Tainui's boundaries to this new state-owned enterprise (Mahuta,1995). The Tainui Trust Board challenged the Crown's

proposed changes fearing that taonga would not be returned. In response, the Crown promised to consult with Tainui but failed to do so even when it indicated that it was proposing to sell Coalcorp to private concerns. The refusal of the Crown to consult or negotiate with the Tainui Trust Board left them with no other option but to take legal action, which they did in February 1989 to the High Court to stop the sale (Mahuta, 1995). The High Court sent the matter to the Court of Appeal which heard the case. Later that year the Court of Appeal found in favour of the Tainui Trust Board; stopped the Crown's proposed transfer, admonished the Crown, and told the Crown that it should be negotiating on this issue (Mahuta, 1995). The Court of Appeal's decision marked a turning point in the relationship between the tribe and the Crown and was the catalyst leading to Tainui raupatu land claim. It was thought before the Court's decision that the Crown had been prioritizing economic recovery over any rights Tainui might have had to the land it was privatizing. Crocker (2016) believed this decision provided the impetus and momentum Tainui had been seeking for the Crown to engage with them directly.

In 1991, Waikato-Tainui chief negotiator Robert Mahuta entered into direct negotiations with the National Government who agreed to return Hopuhopu Military Camp and reimburse the Tainui Trust Board for the costs of negotiations. From the outset, Waikato-Tainui key negotiating principle with both the labour and national governments was the return of all land that had been taken (Fisher, 2015). I riro whenua atu, me hoki whenua mai - Since the land was taken, land should be given back (Ministry for Culture and Heritage, 2021a).

In 1994, the National government released the details for its comprehensive proposals 'to settle all claims without utilising natural resources or the conservation estate, and to limit the total value of all claims to a billion dollars,' within a 10-year time frame (Gardiner, 1996). This policy for which Doug Graham was the architect, was called the fiscal envelope had been developed without Māori involvement. It was rejected by Māori, who objected to both the lack of consultation and the low level of compensation available for historical settlements. Despite the future of the fiscal envelope being in doubt it still appeared in the Crown's budget in 1995 and again in 1996 (Hayward, 2019).

In 1995, the extent of Waikato grievance and claims were heard by New Zealand's Parliament. They were told about the unjustness of the 1863 invasion and confiscation of

their land which caused distress, devastation, widespread suffering, and the dispersal of their people. Later that year Waikato-Tainui was the first iwi to reach a significant historical treaty settlement with the Crown (Ministry for Culture & Heritage, 2019). During her state visit to Aotearoa, Queen Elizabeth signed the Act that made the agreement law.

3.1.1.3 Hara (Transgression)

Waikato grievances were centred on the confiscation of land and the devastation from the wars of the 1860s (Fisher, 2015). The confiscated Waikato territory initially comprised 1,202,172 acres, 4,869 square kilometres as per Figure 2 below, including virtually all of Waikato north of a line drawn from Raglan to Tauranga. Approximately 314,364 acres, 1,273 square kilometres, were returned in an ad-hoc fashion to those Waikato Māori who were judged not to have rebelled or, to groups whose origins were outside of the Waikato, and whose loyalties for and against the colonial government did not count (Fisher, 2015).

3.1.1.4 Settlement

Waikato-Tainui received cash and land valued at $170 million. This included approximately $100 million worth of land from various government departments in the Waikato area, $65 million in cash with which to purchase further lands, and approximately $3 million covered the cost of the decommissioned Te Rapa Airbase and $2 million for funding the negotiations. The Negotiators were also able to negotiate interest payments of approximately $20 million. The agreement also included a formal apology from the Queen.

During their treaty negotiations with the Crown, Waikato-Tainui along with Ngāi Tahu who were also settling their treaty were able to persuade the Crown to agree to an alteration clause in their settlements in return for being prepared to be the first to comprehensively settle their historical claims (Te Aho, 2017). This clause has been commonly referred to as the relativity clause. For Waikato-Tainui the relativity clause allowed them to receive an additional 17% of the final fiscal sum spent on settlements in the event the total exceeded $1 billion (Fisher, 2015).

3.1.2 Settlement Claim Two: Ngāi Tahu Claims

Reprinted 1 August 2020

Ngāi Tahu Claims Settlement Act 1998

Public Act 1998 No 97

Date of assent 1 October 1998

Commencement see section 1(2)

This Act is administered by the Office of Treaty Settlements.

3.1.2.1 Rohe Pōtae

The Ngāi Tahu tribal area of interest is the largest in New Zealand, and extends from the White Bluffs / Te Parinui Whiti (southeast of Blenheim), Mount Mahanga and Kahurangi Point in the north to Stewart Island in the south (Ngāi Tahu Deed of Settlement, 1996). Ngāi Tahu land of interested is depicted below in Figure 3.

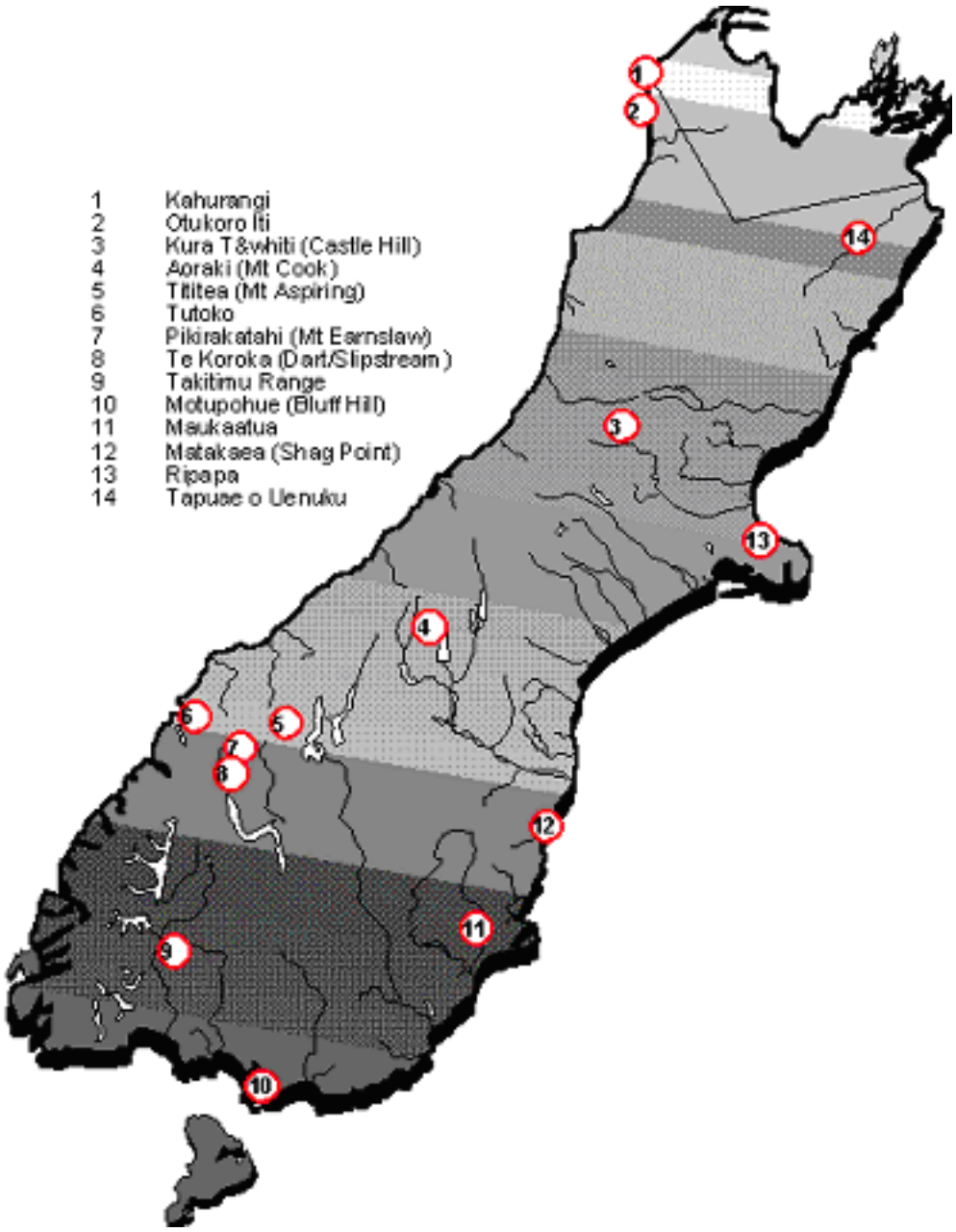

Figure 3: Mana Recognition Te Rūnanga o Ngāi Tahu (Ngāi Tahu, 1996).

3.1.2.2 History

Ngāi Tahu traces its origins to the East Coast of the North Island. The eponymous ancestor for Ngāti Tahu was Tahupotiki a descendant of Paikea and a relation of Porourangi from whom Ngāti Porou descend (Waitangi Tribunal, 1991).

By the 1700s Ngāi Tahu had moved to the South Island and had made contact with European sealers and whalers. By 1830 Ngāi Tahu had established a thriving industry supplying provisions such as pigs, potatoes and wheat to the whaling ships (Ngāi Tahu,1996).

In 1844, the Crown's exclusive right of purchase was waived allowing the New Zealand Company to buy the Otakou block, now estimated at 534,000 acres (2160 sq km). Ngāi Tahu received £2,400 and less than 10,000 acres (40 sq km) for their occupation. This purchase was dwarfed by the Crown's 1,848 purchase of the Canterbury block of about 20 million acres (81,000 sq km). This was nearly one-third of the entire country. By 1864, when Rakiura was bought, more than 34 million acres (138,000 sq km) had been acquired from Ngāi Tahu in return for just over £14,750. This amounted to a fraction of one penny an acre. About 37,000 acres (150 sq km) were reserved for the tribe's use. Ngāi Tahu was left with about one-thousandth of their original lands (Ngāi Tahu, 1996).

In 1849, Ngāi Tahu made its first claim against the Crown for breach of contract. Ngāi Tahu tribal leader Matiaha complained that lands or reserves that the tribe wished to keep had been included in the purchased area. This became a central grievance against the Crown. It was said that official purchase agents even reported that they got the land [Ngāi Tahu's reserves] reduced as much as possible (Ngāi Tahu, 1996).

For the next 150 years, Ngāi Tahu protested the Crown's broken promises, including the Crown's ownership of pounamu (greenstone) and the Crown's failure to provide schools and hospitals. They also protested over the low prices paid for the land, unclear boundaries of the purchased lands, the loss of mahinga kai (customary food-gathering places), the leasing to settlers in perpetuity of reserved lands without the tribe's consent, and the forced sale of their interests in some lands because the Crown had already purchased these from other tribes (Ngāi Tahu, 1996).

Between 1870 and the 1940s, different committees and commissions of inquiry investigated and upheld many of the Ngāi Tahu claims from the early 1870s. Getting compensation from the Crown took much longer. The Native Land Court judge and commissioner, Alexander Mackay, reported in 1887, and again in 1891, that what Ngāi Tahu needed most was enough land to support themselves. The South Island

Landless Natives Act 1906 eventually provided 50 acres a person to be awarded to landless Ngāi Tahu. This proved unsatisfactory because the lands were often so remote and rugged as to be virtually useless, and Ngāi Tahu could not participate in the farming industry that was now the mainstay of the South Island economy (Ngāi Tahu, 1996).

In 1921 the Native Land Claims Commission recommended that Ngāi Tahu receive £354,000 compensation. Ngāi Tahu rejected this as inadequate; the Crown considered it too much. The Ngāi Tahu Claim Settlement Act of 1944 provided for annual payments of £10,000 for 30 years to the Ngāi Tahu Trust Board. The tribe was not consulted on this until the legislation was passed. The 1944 act did not prevent the tribe from further pursuing its claim. The annual payment seemed to be the maximum amount possible for the time. It was later turned into a perpetual payment. Eventually, Ngāi Tahu leaders used much of the money to pursue wider claims under the 1840 Treaty of Waitangi (Ngāi Tahu, 1996).

For over two years from 1987, the tribunal heard Ngāi Tahu's claim and it released a three-volume report in 1991. The report found that the Crown acted unconscionably and in repeated breach of the Treaty of Waitangi 1840in its land dealings with the tribe, it recommended substantial compensation. At the time, and perhaps still, this was the tribunal's most comprehensive inquiry. Negotiations with the Crown began almost immediately and in 1998, after nearly 150 years, Ngāi Tahu completed their efforts to have the Crown address their grievances and signed a deed of settlement (Ngāi Tahu, 1996).

3.1.2.3 Hara

Ngāi Tahu entered into the contracts with the Crown willingly, the resistance was over the terms of the price and the Crown's definition of what land was reserved and what land wasn't. After the transactions took place, the reserves were not made (O'Regan, 2019).

In 1849, the Crown began defaulting on the terms of a series of ten major land purchases dating from 1844, earlier suspicions of the Crown's good faith by some of the Ngāi Tahu chiefs were confirmed, and the Ngāi Tahu Claim 'Te Kerēme' was born. The Crown promised to set aside adequate reserves of approximately 10% of the 34.5 million acres sold – but this was never done. There were also disputes over boundaries, and the Crown's

failure to establish schools and hospitals, as promised. The tribe also lost its access to its mahinga kai, or food gathering resources, and other sacred places such as urupa (Fisher, 2015).

3.1.2.4 Settlement

Ngāi Tahu received a formal apology from the Crown, the symbolic return of its ancestral maunga Aoraki which was later gifted back to the nation, and a cultural redress package that consisted of new statutory mechanisms to express the traditional kaitiaki relationship with the environment. The Economic Redress Package of the Ngāi Tahu Settlement consisted of $170 million in cash, as well as specific mechanisms to provide Ngāi Tahu with the capacity, right, and opportunity to re-establish its tribal base Te Rūnanga o Ngāi Tahu – Te Whakataunga Celebrating Te Kereme- the Ngāi Tahu Claim (Te Rūnanga o Ngāi Tahu, 1997). Ngāi Tahu also negotiated the inclusion of a relativity clause of 16.1% which was only marginally less than the 17% achieved by Waikato-Tainui (Fisher, 2015).

3.1.3 Settlement Claim Three: Raukawa Claims

Reprinted 1 August 2020

Raukawa Claims Settlement Act 2014

Public Act 2014 No 7

Date of assent 19 March 2014

Commencement see section 2

This Act is administered by the Ministry of Justice.

3.1.3.1 Rohe Pōtae

Raukawa area of interest centres on the Waikato basin and Waikato River. It runs from Taupō Moana in the south to Maungatautari in the north, extends westward into the Rangitoto ranges and Waipa Valley, and eastwards into the Kaimai and Mamaku Ranges.

Raukawa kaumātua by way of a tauparapara describe their rohe as follows:

The district of Raukawa is from Te Wairere, Horohoro and Pohaturoa, at Ongaroto is the house of the ancestor Whāita. From Nukuhau to Taupō-nui-a-Tia, to Hurakia on the Hauhungaroa Range. From Titiraupenga mountain, the horizon is the boundary of the district of Raukawa, to the mountain Wharepūhunga and the marae at Arowhena, and to the ranges of Whakamaru. The view extends from the region of Te Kaokaoroa-o-Pātetere, to Maungatautari. The view extends beyond Wharepūhunga to the ancestor Hoturoa, to the marae at Pārāwera (Raukawa Deed of Settlement Summary, 2012). The map below in Figure 4 depicts Ngāti Raukawa boundaries.

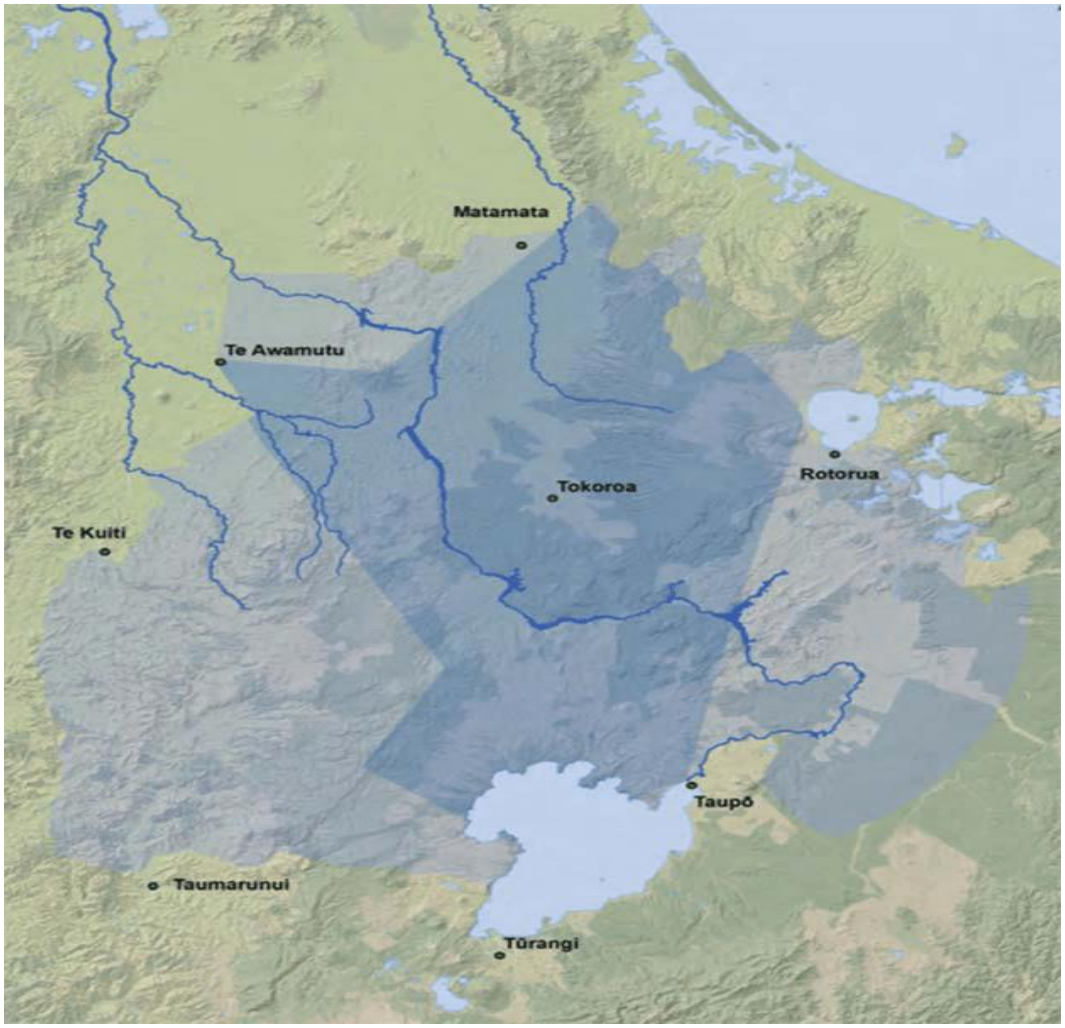

Figure 4: Ngāti Raukawa (Waikato) rohe boundary map (Ngāti Raukawa Deed of Settlement, 2012).

3.1.3.2 History

Ngāti Raukawa descends from Raukawa who in turn descends from Tainui. Through his mother Mahinārangi, he claims lineage to the people of Te Tai Rawhiti, particularly Ngāti Kahungunu. Raukawa was born at the springs of Okoroire 20-25 generations ago and grew up at the home of his father Turongo at Rangiatea near Otorohanga (Royal, 2005b).

In 1863, Raukawa was seriously affected by the unfair act of the Crown sending forces and occupying land while they waged war in Waikato. It was not until 1864 after the Crown forces reached the Raukawa rohe near Cambridge, Rangiaowhia, and Paterangi that a large number of Raukawa fought as a tribe (Royal, 2005b).

3.1.3.3 Hara

As a consequence of Raukawa involvement in the Orakau Pa, Gate Pa, and Te Ranga battles they were punished for what the Crown regarded as rebellion and had land confiscated. Later on, the Crown returned the land to individual members of Raukawa hapū living in Tauranga but gave nothing back to those living in the Waikato. The confiscation of their land had a significant impact on Raukawa who suffered prolonged periods of disruption, loss of life, and property all of which affected them economically and socially (Royal, 2005b).

Before the confiscation of Raukawa land, the Crown introduced legislation that led to the establishment of the Native Land Court all designed to facilitate the alienation of Raukawa land. During this period mindful of Raukawa being part of the Kīngitanga the Crown encouraged Raukawa to separate themselves from the authority of the Kīngitanga and the Māori King (Royal, 2005b).

Royal (2005b) states the court processes and failure to recognise the land interests of Raukawa led to the alienation of Raukawa land. Because the Crown had not negotiated peace with Raukawa and other Kīngitanga iwi they were unable to participate in the 1868 Native Land Court hearings for Maungatautari. Raukawa unsuccessfully used legal processes to challenge the exclusion of their tupuna, Raukawa, from the tupuna of the Taupō-nui-a-Tia block.

Late in the 19th century, Raukawa suffered from land speculation which resulted in a rapid and substantial land loss for Raukawa. During this time private parties and the Crown bought nearly 800,000 acres (80 %) of land within the Waikato basin before 1900. In the twentieth century, the iwi lost further land through public works takings (Raukawa Deed of Settlement Summary, 2012). The Raukawa Deed of Settlement Summary (2012) also highlights the Crown's decision to give 20,000 acres of land in the Pouakani block to an iwi with no ancestral ties to the area, which aggravated the grievance that Raukawa continues to feel today.

3.1.3.4 Settlement

Outlined in the Raukawa Deed of Settlement (2012), is the detail of their financial redress, Ngāti Raukawa received $52 million in cash including value transferred under the 2008

Central North Island forest settlement of 2008, and estimated interest. They were also allowed to purchase part of the Pureora North Crown Forest Licence land and up to 25 Crown-owned properties. Raukawa was also given the right of first refusal for a period of 172 years over 99 Crown properties. A further $8 million was paid to explore future commercial arrangements with Mighty River Power.

3.1.4 Settlement Claim Four: Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims

Reprinted 30 January 2021

Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017

Public Act Date of assent Commencement

Public Act 2017 No 38

Date of assent 14 August 2017

Commencement see section 2

This Act is administered by the Ministry of Justice

3.1.4.1 Rohe Pōtae

The Rangitāne area of interest spans from north of Dannevirke to Mākaramu (near Porangahau), down to Cape Palliser, and encompasses the wider Wairarapa and Tamaki nui-ā-Rua regions (Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua Deed of Settlement, 2016). Rangitane o Wairarapa and Rangitane o Tamaki-nui- ā- Rua Area of interest is depicted below in Figure 5.

Figure 5: Rangitane o Wairarapa and Rangitane o Tamaki-nui- ā- Rua Area of interest (Rangitane o Wairarapa and Rangitane o Tamaki-nui- ā- Rua Deed of Settlement, 2016).

3.1.4.2 History

The Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua Deed of Settlement (2016) outlines the arrival of the European settlers to the Rangitāne region in the mid-1840s, whereupon they began leasing large areas of land from Rangitāne. The Crown was not happy with this arrangement and began applying pressure on the Wairarapa Māori to end their leases and sell the land to the Crown. By 1853-54 about 1.5 million acres of land representing about 60% of the traditional rohe of Rangitāne had been acquired by the Crown.

3.1.4.3 Hara

As reported by O'Leary (2002), the introduction of the Native Land Court in the 1860s and the creation of the Native Land Court introduced a new tenure system that conflicted with the tribal ownership of Rangitāne communities. From 1871, the Crown set about purchasing several land blocks in Seventy Mile Bush and between Norsewood and Pūkaha where the court had awarded the titles to 10 or fewer owners. During this period despite resistance from the leaders of Rangitāne the Crown began to assert pressure to purchase the large Mangatainoka Block and by 1890 had acquired over 85 % of the Mangatainoka block.

As alluded to in the Waitangi Tribunal Report (1996), the Crown applied considerable pressure on individual Rangitāne owners to sell their interests in the northern seventy-mile bush, above the Manawatū Gorge In other Bush blocks, including reserve blocks, some customary owners failed in their applications to get their names introduced to legal titles because legislation intended to remedy 'ten owner' titles did not provide them with a remedy. Rangitāne communities resisted land sales and the breakdown of tribal structures through several initiatives including the Kotahitanga parliaments and the Privy Council appeal of Nireaha Tamaki. In 1896, Rangitāne and other Wairarapa Māori leaders transferred ownership of the Wairarapa Lakes to the Crown. Instead of providing ample reserves in the vicinity of the Lakes, as agreed, the Crown provided reserves several hundred kilometres away in the King Country.

By 1910, only 10% of Rangitāne's traditional rohe remained in Māori land title. By 1940, that figure had dropped to about 3.5%. Some land, including 580 acres in Seventy Mile Bush and 300 acres around Dannevirke, was lost to public works takings. Today

approximately 2% of the region is owned under a Māori land title. The settlement of Wairarapa and Tamaki nui-ā-Rua resulted in a significant transformation of the environment. Much of the Seventy Mile Bush was cut down to make way for agricultural uses, roads and railways, along with the new towns of Norsewood, Dannevirke, Pahīatua and Eketahuna. Rangitāne lost much of their traditional food resources and taonga (treasures) such as the huia bird. The condition of lakes and rivers was degraded. Becoming virtually landless by the early twentieth century Rangitāne communities struggled to maintain their traditional homes, customary knowledge, and language. During this period Rangitāne experienced considerable social deprivation and, after 1940, Rangitāne identity suffered further due to urbanization and assimilation pressures including Crown schooling that discouraged the use of te reo Māori (Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua Deed of Settlement, 2016).

3.1.4.4 Settlement

As outlined in Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua Deed of Settlement (2016), Rangitane received a formal apology from the Crown and financial redress of $32.5 million-plus interest. They also received an on-account payment of $6.5 million for cultural revitalisation and a further $4.063 million on-account allotment of Genesis Energy shares as part of the Government share offer. Rangitāne also has the right to purchase 30% of the Crown Forest licensed land-Ngāumu Forest; the right to purchase seven specific commercial sites and the right to purchase up to 2 years of six properties at the market from the treaty settlement landbank.

3.1.5 Settlement Claim Five: Ngātikahu ki Whangaroa Claims

Reprinted 1 August 2020

Ngātikahu ki Whangaroa Claims Settlement Act 2017

Public Act 2017 No 41

Date of assent 21 August 2017

Commencement see section 2

3.1.5.1 Rohe Pōtae

Ngātikahu ki Whangaroa area of interest lies in the far north between the Mangonui Harbour and the Whangaroa harbour (Ngātikahu ki Whangaroa Deed of Settlement, 2015). Ngātikahu ki Whangaroa Rohe is depicted below in Figure 6.

Figure 6: Ngātikahu ki Whangaroa Rohe (Ngātikahu ki Whangaroa Deed of Settlement, 2015).

3.1.5.2 History

Outlined in the Ngātikahu ki Whangaroa Deed of Settlement (2015), are the land transactions conducted before 1840, between Europeans and Māori within the Ngātikahu ki Whangaroa rohe. The majority of these land transactions involved another iwi who asserted some authority over the region. The Crown was meant to investigate the legitimacy of these transactions in the 1840s, but in most cases failed to do so because of concerns this would aggravate the inter-tribal conflict. In the 1850s, the Crown investigated some Mangonui land claims but did not investigate others. Though Ngātikahu ki Whangaroa occupied many of these blocks, the Crown failed to adequately consider their customary interests. The Crown considered all customary titles was

extinguished if a land commissioner confirmed the transaction. It assumed ownership of an estimated 11,000 acres of Ngātikahu ki Whangaroa ancestral lands through its “surplus" land policy. Māori evidence regarding these transactions was not always heard in an open, public inquiry.

In 1841, the Crown sought to settle a dispute between two Māori Rangātira by acquiring their interests in the area between Mangōnui, Taemaro, and Otangaroa. Though these transactions involved Ngātikahu ki Whangaroa’s ancestral lands, there was no evidence of their involvement or the Crown sufficiently investigating their customary interests (Ngātikahu ki Whangaroa Deed of Settlement, 2015).

As reported in the Muriwhenua Land Report (Waitangi Tribunal Report,1997), in 1863, the Crown signed the Mangōnui purchase to settle outstanding Māori claims in the eastern Mangōnui area. The Crown agreed to set aside Taemaro and Waiaua as Māori reserves, but it reduced the size of the Taemaro reserve excluding some areas occupied and cultivated by Ngātikahu ki Whangaroa. A Ngātikahu ki Whangaroa petitioner later claimed that the Mangōnui purchase of approximately 22,000 acres only involved about 2,000 acres at Kopupene. The establishment of the Native Land Court in 1865 altered Māori customary tenure by allowing individual ownership. The 500-acre Motukahakaha block was awarded to two Māori owners and was later sold to private interests. The Native Land Court awarded Māori title to the 977-acre Takerau block, but then cancelled it after deciding Takerau was Crown land.

The Muriwhenua Land Report (Waitangi Tribunal Report, 1997), also spoke of Māori being awarded the title to the 3,990-acre Taemaro block in 1870, which lay within the boundaries of the 1863 Mangonui purchase. The Crown at that time failed to attend court believing that the 1863 Mangōnui purchase included the Taemaro block, with Māori arguing that it was not the case and that the Crown had claimed more land than they were entitled to claim. Māori later surrendered title to Taemaro in exchange for an enlarged 99-acre reserve at Taemaro and a 649-acre reserve at Waimahana. The Crown passed the Taimaro and Waimahana Grants Act of 1874, which empowered the Governor to establish the two reserves. The Act vested Taemaro reserve in six individuals and Waimahana reserve in 10 individuals.

As stated in the Ngātikahu ki Whangaroa Deed of Settlement (2015), Taemaro remained a contentious issue for Ngātikahu ki Whangaroa, who claimed they were forced into surrendering the title to the block. Crown officials denied any coercion. Ngātikahu ki Whangaroa repeatedly petitioned the Crown about "surplus" lands and the Taemaro and Takerau transactions.

Following World War II, the Crown took land at Matakaraka that the navy had occupied during the conflict. In 1983, the Crown transferred the land to the Lands and Survey Department, and only revested it in Māori ownership in 1990. The Crown purchased other lands at Matakaraka for scenic reserve purposes without getting the consent of all owners. Ngātikahu ki Whangaroa were left virtually landless and the majority of their people now living outside their rohe (Ngātikahu ki Whangaroa Claims Settlement Act, 2017).

3.1.5.3 Hara

Ngātikahu Ki Whangaroa (Ngāti Ki Whangaroa Claims Settlement Act, 2017) lost their land through Crown inaction. The Crown failed to protect their interests when one of the neighbouring tribes sold their entire land to Pākehā back in the 1830s. When the settlers moved onto the land, they were met with the Māori owners who had no idea that their land had been sold behind their back. The tribe over the years petitioned the Crown to try and rectify the issue to no avail. As Henry (2019) said they adapted to the situation. Negotiations happened in boardrooms in Auckland and Wellington but very little happened back home.

3.1.5.4 Settlement

Outlined in the Ngātikahu ki Whangaroa Claims Settlement Act (2017) are the details of their settlement which included a Crown apology and $6.2 million in financial redress. They also received a cultural fund of $300,000 for a reserve management plan at Kowhairoa peninsular, and the return of 15 cultural sites totalling 3,422.3 hectares.

3.1.6 Settlement Claim Six: Ngāti Manuhiri Claims

Reprinted 30 January 2021

Ngāti Manuhiri Claims Settlement Act 2012

Public Act 2012 No 90

Date of assent 19 November 2012

Commencement see section 2

This Act is administered by the Ministry of Justice.

3.1.6.1 Rohe Pōtae

Ngāti Manuhiri area of interest extends along the eastern coast of North Auckland from Bream Tail in the north to Whangaparaoa in the south and includes Te Hauturu-o-Toi/Little Barrier Island Nature Reserve (Ngāti Manuhiri Claims Settlement Bill, 2012). Ngāti Manuhiri area of interest is depicted below in Figure 7.

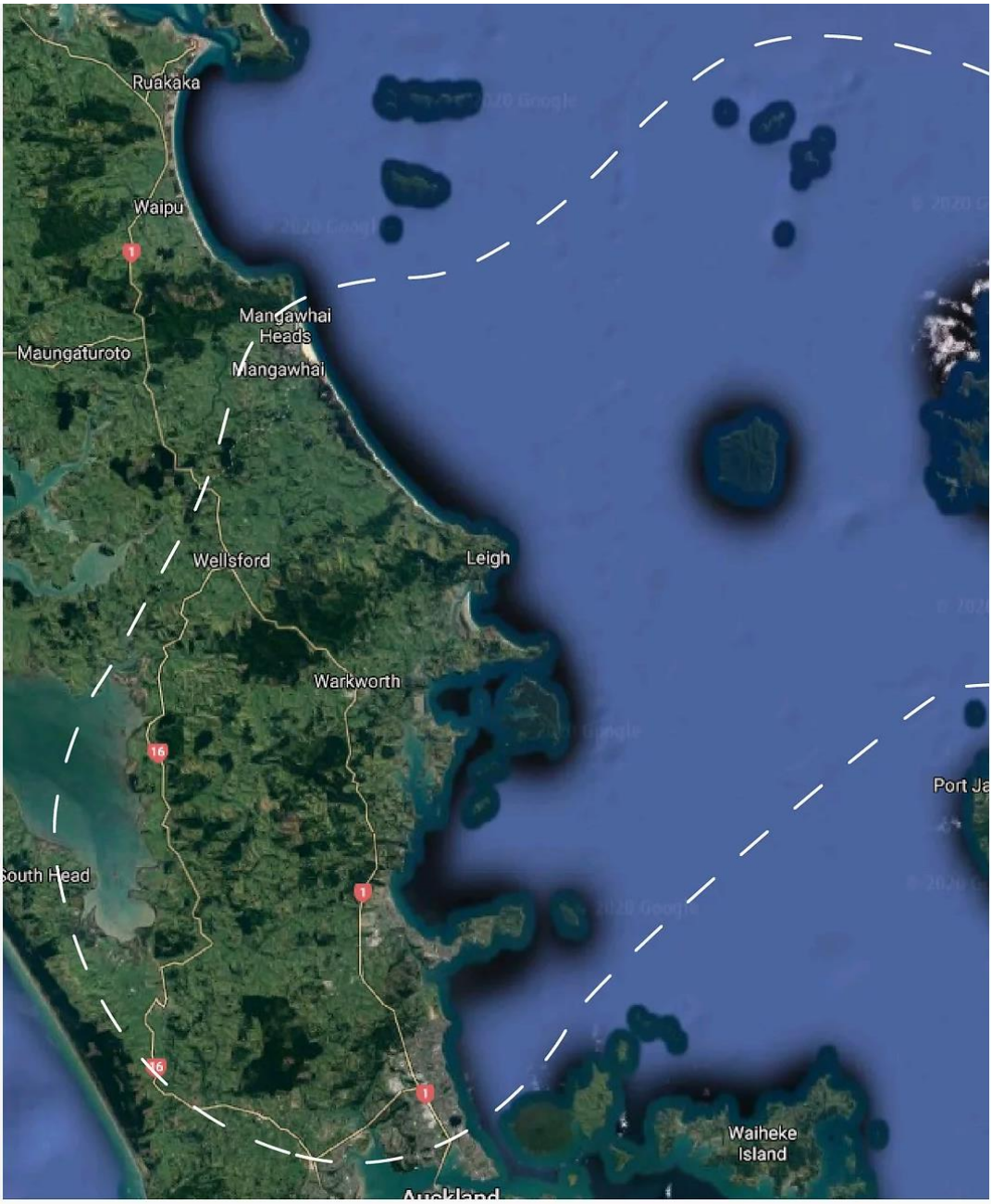

Figure 7: Ngāti Manuhiri area of interest (Ngāti Manuhiri Deed of Settlement, 2011).

3.1.6.2 History

As stated in the Ngāti Manuhiri Deed of Settlement (2011), Ngāti Manuhiri did not sign the Treaty of Waitangi 1840 but with the arrival of the colonial government, they developed cordial relationships with Crown officials. At around 1840, Ngāti Manuhiri held customary interests through a tribal estate of approximately 250,000 acres. In the 1890s, Ngāti Manuhiri held about 10% of this estate. Today, Ngāti Manuhiri are

effectively landless, holding title to around 1,300 acres in small multiple-owned blocks of land.

In 1841, without consultation, or inquiry as to who the rightful owners were or the subsequent payment of any compensation the Crown purchased an extensive area called Mahurangi and Ōmaha much of the lands in which Ngāti Manuhiri held customary interests. Ngāti Manuhiri was not consulted about the sale and the Crown did not investigate customary rights when it purchased these lands. Nor did the Crown provide adequate compensation and reserves for the future use and benefit of Ngāti Manuhiri when it later learned of their interests in the purchase area (Ngāti Manuhiri Deed of Settlement, 2011).

In 1844, the Crown punished a Ngāti Manuhiri chief for his role in a muru (ritualised plunder for compensation) of settlers at Matakana by pressuring him to cede his ancestral interests in land outside the Ngāti Manuhiri area of interest. By the 1850s, when the Crown recognised Ngāti Manuhiri interests in these lands, settlers had begun to move into the area, and Ngāti Manuhiri were left with no option other than to accept compensation and inadequate reserves, rather than overturning the sale itself. The Crown also carried out further purchases from 1853 that overlapped with the “Mahurangi and Ōmaha" lands and paid generally low prices for those lands (Ngāti Manuhiri Deed of Settlement, 2011).

The Ngāti Manuhiri Deed of Settlement (2011), outlines the balance of Ngāti Manuhiri lands that passed through the Native Land Court. The awarding of land titles to individual Ngāti Manuhiri rather than to the iwi or hapū made those lands more susceptible to partition, fragmentation, and alienation. This had a detrimental effect on Ngāti Manuhiri, contributing to the erosion of their traditional tribal structures. Ngāti Manuhiri also lost several wāhi tapu that was of significance to them despite efforts to preserve them from the sale.

In accord with the “Report on the Crown acquisition of Hauturu – Little Barrier Island” (Waitangi Tribunal, 1999), from the 1870s, the Crown expressed a desire to acquire Te Hauturu-o-Toi/Little Barrier Island. Title determination for the Island by the Native Land Court was a long, costly and fraught process. From the early 1890s, the Crown made a concerted effort to acquire the Island, mainly to create a reserve for the protection of birds. The Crown carried out negotiations to purchase Te Hauturu-o-Toi in a monopoly environment, excluding private parties who wished to purchase valuable kauri there.

Some of the owners had substantial debts as a result of the Native Land Court hearings and only wished to sell if those costs were met.

The "Report on the Crown acquisition of Hauturu – Little Barrier Island" (Waitangi Tribunal, 1999), also outlined the 1892 negotiations between the Crown and individual owners of Te Hauturu-o-Toi with offers that did not take into account the standing timber. Some of the owners agreed to sell; others did not. The Little Barrier Island Purchase Act of 1894, with compulsory mechanisms similar to public works legislation, made Te Hauturu-o-Toi Crown land. In 1895 the island was made a Nature Reserve. Some of the owners (who were key leaders of Ngāti Manuhiri) refused to accept the compensation paid under the Act and refused to leave the island. They were forcibly evicted in 1896.

3.1.6.3 Hara

Without consultation or inquiring as to ownership of the property the Crown without consultation or conducting an investigation purchased customary land belonging to Ngāti Manuhiri in Mahurangi Omaha. Having been made aware of Ngāti Manuhiri interest in the land they had purchased they did not adequately compensate them for their loss. Ngāti Manuhiri was also greatly affected by Crown legislation and decisions of the Native Land Court that impacted Māori ownership (Ngāti Manuhiri Deed of Settlement, 2011).

3.1.6.4 Settlement

The Ngāti Manuhiri Deed of Settlement (2011), provides details of Ngāti Manuhiri treaty settlement which included a formal apology from the Crown and $2,498,400 cash (plus interest payable on the $9 million between the date of their agreement in principle and the settlement date). Both the Warkworth District Court (land only) and Pakiri School (land only) which will be leased back to the Crown were also returned. South Mangawhai Crown Forest Licensed land, which is subject to the current forest license, and the accumulated rentals were also returned. Ngāti Manuhiri would also receive a right of first refusal over 82 Crown-owned properties specified in the signed deed for 169 years.

3.2 My way or the highway

The issues that arose from this review were not new and were raised following the signing of the Treaty of Waitangi in 1840, again during Waikato-Tainui, Ngāi Tahu and other settlement negotiations with the Crown. More recently, Professor Margaret Mutu and her project team identified similar issues when they spoke to over 150 claimants involved in treaty negotiations with the Crown (Mutu, 2019b).

In 1840 at the signing of the Treaty of Waitangi, Māori owned most of the land in the North Island. The signing of the treaty was the catalyst for the Crown to introduce legislation that legitimised the theft and confiscation of Māori land. By 1892, Māori owned little more than a third of all land in the North Island, and by 1900 another 1.2 million hectares of Māori land had been sold (Ministry for Culture & Heritage, 2021b).

The Crown-imposed legislation led to the divisiveness of overlapping or cross-claimant claims which effectively pitted Māori against Māori as arguments raged as to who was legally entitled to exercise mana whenua status over certain areas of land became a common issue (Mullins, 2019). As Māori looked to the Crown to return the land they had taken, they were met with a myriad of problems including the Crown's preference to only deal with large natural groupings, the lack of funding and inadequate compensation paid for treaty settlements. Further problems included the Crown's efforts to sanitise the historical account of the mamae iwi suffered as their land was taken from them, the behaviour of the Crown throughout the treaty settlement process and the constant battle with the Crown officials through each stage of the direct negotiation process.

The frustration arising from a Crown-imposed process where outcomes are already predetermined is reflected in their decision to preclude privately owned land, land held by the Department of Conservation conservancy or land the Crown has decided to withhold for reasons only known to themselves. As a consequence, the voice of Māori has remained silent in any negotiation or consultation process unless the Crown deems it appropriate for Māori to comment. These actions by the Crown are further evidence of the power imbalance and control they have exercised over Māori since 1840. For Māori failing to acquiesce to the demands of the Crown, the penalty is to be placed at the back

of the queue, or funds be withheld until contentious issues are settled to the Crown's satisfaction (Hohneck, personal communication, July 08, 2011).

3.2.1 Legislation

Following the signing of the Treaty of Waitangi in 1840 and the promises made at the time by the Crown, Māori could be forgiven for believing that their land would be protected from unscrupulous land buyers. Māori learnt very early on that the group they had sought to protect their rights, was the same group that was now taking their land off them, the Crown. Māori soon realised, what the Crown had in store for them when they were unable to dispose of their lands as they chose. Māori had to sell their land to the Crown despite settlers being allowed to sell to one another and was limited to selling a maximum of 2,560 acres with acreage above that limit going to the Crown (Orange, 2004). This policy of the Crown was quickly followed by legislation designed specifically to make it easier for land to be taken from Māori irrespective of whether Māori agreed or not with the steps being taken by the Crown.

The Public Works Act of 1864 (1882, 1908, 1928…) allowed the Crown to take land for wide-ranging purposes including subdivision, development, better utilisation, forestry, roading, airports, schools, recreation and provision of public amenities. According to Taonui (2012), the Crown preferred to take Māori land over general land because they could pay Māori less compensation or none at all. If the land was not needed for the purposes for which it had been taken then the Crown was required to return the land to the original owners. As was often the case, the Crown failed to abide by these provisions.

McKenzie (2019) spoke about a family who had lived on their traditional land for over 400 years. One day people arrived at their house telling them they would have to leave because their land was going to be taken from them through the public works act for a dam to be built. The family refused to leave, despite their protestations, the dam was still built and when the water came up to their house the authorities returned and moved them out and put them into a house in Taupo. For the first time in their life, the family had to pay rent. The family walked back to their house and were forcefully taken off their land. The family wept for the loss of their land.

The Native Lands Act 1862, abandoned the right of the Crown to pre-emption and led to the establishment of the 1865 Native Land Court (Ministry for Culture and Heritage, 2021a). The Native Land Court which was based on the Pākehā legal system made it easier for Pākehā to purchase Māori land by enabling the conversion of traditional communal holdings into individual titles to a maximum of 10 owners, therefore, making it easier to be sold. The newly named owners could do with the land as they saw fit (Ministry for Culture and Heritage, 2021a). This legislation which came just over a year after the Waikato Wars is believed to have affected Māori more than any other legislation as more land became available for the settlers that arrived in Aotearoa.

Boast and Black (2011) when highlighting the impact of the legislation in Hawkes Bay, spoke about the effects of the ten-owner system leading to rapid land alienation and contributing to Māori poverty and economic marginalisation by the end of the 19th century. They also spoke about the short-term impact of the system reinforcing and expanding the power and authority of the Māori chiefly governing class, which translated into unfettered control over large areas of land (Boast & Black, 2011). The effects of this law still impact Māori today and cause derision and angst amongst tribal members (Mullins, 2019).

McKenzie (2019) described how the native land court (the court) decisions impacted the people of Ngāti Raukawa. How the court would post in the local gazette their intentions to give someone title over Māori land and require Māori to turn up to the court to prove ownership. For Ngāti Raukawa this meant their people had to travel into the towns sometimes miles away from where they lived, for long periods at their cost. It meant being forced to sell off parts of their land to pay to get surveyors to survey the land blocks, pay lawyers to plead their case in court and pay translators to translate the court proceedings. Having run out of money they then had to borrow money off Crown appointed speculators who would impose conditions, including giving them land, and in the end, most of their land would be gone.

For Ngāti Kahu Whangaroa the Native Lands Act and subsequent Native Land Court decisions were responsible for the large 500 acres, Motukahakaha block being awarded to two Māori owners who later sold the land to private interests. Regarding the Takerau

block, the native land court rescinded an earlier decision to grant Māori title over the Takerau block, deciding that the land belonged to the Crown (Henry, 2019).

The Native Land Act of 1873, took individual ownership even further; it stipulated that every owner was to be listed on the title, but that title could no longer be awarded to hapū or iwi, as was theoretically possible under the 1865 Act. Each named owner was free to sell his or her interests without reference to other owners (Ministry for Culture & Heritage, 2016).

Mavis Mullins (2019) spoke about the impact of the legislation on her people who lived at that time in Kaitoki just out of Dannevirke. They were told to go away and come back with ten names to be listed as owners. The people mistakenly believed that the ten people they nominated would be representative of all the owners. She said they could not understand that the 10 people putting their names on the document meant that they were purporting to be the owners of the land. Mullins highlighted even today the hurt and outrage of those families who were not listed as one of the initial ten owners.

For Waikato-Tainui, the Suppression of Rebellion Act 1863 and New Zealand Settlement Act 1863, was legislation that had been specifically designed to punish those dissident Māori tribes of Taranaki and Waikato that fought against the Crown forces. Both Act's legitimised the confiscation of land belonging to any tribe, judged to have rebelled against the Queen's authority. Through the bullying tactics of Governor Grey who blamed Waikato-Tainui for all the problems the Crown was experiencing with Māori, Waikato-Tainui were forced into a war with the Crown to protect their land (Papa and Meredith, 2012). These very actions by Waikato-Tainui were deemed unlawful and assisted in the confiscation of over three million acres of their land and the death of their people.

O'Regan (2019) spoke of the impact of the Westland and Nelson Native Reserves Act 1887 and how it affected the land Ngāi Tahu had leased to Pākehā in Greymouth and Westport. Where the land suddenly got turned into perpetual leasehold land under a public trustee. As a result, Ngāi Tahu people were moved off the land, and for Pākehā who had been leasing the land, it was made freehold. The Crown claimed that the changes were made to protect the interests of the natives. O'Regan (2019) called these actions of the Crown another form of confiscatory fraud.

The Crown's desire to take land from Māori was not only confined to history but continued into the 21st century with the introduction of the 1986 State-Owned Enterprises Act. The Act created state-owned enterprises to which, as from 1 April 1987, assets previously held by the Crown and administered by the various government departments would be transferred (McHugh, 1991).

The object of the legislation was to create a group of state-owned commercial enterprises to replace several government departments. The nine new corporations would cover the land, forestry, electricity, telecommunications, coal, the airways, the Post Office Bank, the Post Office and Government Property Services. Certain Crown assets would be transferred to the new enterprises, including extensive landholdings. Māori signalled early that this was a move on the part of the Crown to fully privatize these operations and their assets, a claim which the Crown denied at the time (Orange, 2004).

The Māori Council on behalf of Māori objected to the transfer of assets believing that the transfer of ownership of Crown assets, particularly land, would frustrate any likelihood of their availability for restitution or restoration upon Waitangi Tribunal recommendation (McHugh, 1991). From a Māori perspective, the proposed transfers put the whole claims process of the Waitangi Tribunal in doubt. Since the majority of these claims were against the Crown, the transfer of assets would prevent the Tribunal from making recommendations about the assets, since they would no longer be Crown-owned (McHugh, 1991).

On 30 March 1987, the Māori Council applied to the High Court in Wellington for an interim order preventing the transfer of any Crown asset to an SOE, and for the case to be referred to the Court of Appeal[2]. The issue was whether the special provisions of section 27 were the sole protection under the Act for Māori land claims, or whether the general declaration (section 9) gave more protection. The Court was unanimous in its decision stating that the principles of the Treaty of Waitangi 1840 override anything else in the State-Owned Enterprises Act (Orange, 2004). The Court of Appeal's report analysed the principles of the treaty in some detail particularly the duty to act reasonably and in good faith; active Crown protection of Māori interests; and the need for

[2] *New Zealand Māori Council v Attorney-General,* New Zealand Law Reports 1 (1987): 643

government to make informed decisions, remedy past grievances and retain the right to govern (Vertongen, 2012).

3.2.2 Cross claimants

One of the more contentious areas of the treaty settlement process was the Crown's failure to address properly the process of dealing with iwi who were not in negotiations with the Crown and whose interests overlapped with the interests of the group looking to settle their claim (Andrew, 2008). The Crown preference for the opposing interest groups to sort the issues out among themselves (Crown Forestry Rental Trust, 2007). Henry (2019) claims that the treaty settlement process should not be allowed to be called a settlement because it does not settle anything. She says that it is a treaty grievance process that sometimes causes divisiveness with a breakdown of relationships between maraes and disputes between whānau and family units within the community.

In the Tamaki Makaurau Settlement Process report (Waitangi Tribunal, 2007a), the Waitangi Tribunal was critical of the behaviour of the Crown and their efforts in resolving the grievances of one group and the effects of that process on others. Instead of improving relationships, what they were seeing was the opposite where relationships were getting worse and wondered how this situation could have been allowed to happen. The Waitangi Tribunal (2007a), was particularly critical of the office of treaty settlements who they said were focused on achieving as many settlements as possible, choosing one strong group in a district and working with it exclusively to agree on a settlement, while having no formal relationship with other Māori groups in the district.

McKenzie (2019) spoke of Raukawa's attempts to be transparent with their treaty claim when they sent their original map out to the other claimants for comment. These actions opened a pandora's box with claims from other iwi claimants challenging their area of responsibility. The backlash extending to threats against the negotiator's life, and threats made through Facebook.

Mullins (2019) spoke about the initial commitment to work with the iwi whose claim overlapped with theirs, but as the Crown process continued an environment of

divisiveness, frustration and anxiety was created. The relationship between both iwi became so bad that in the end there was a parting of the ways with each iwi negotiating their settlement.

3.2.3 Negotiations

Coxhead (2002) describes negotiation as a creative bargaining process that involves different parties with grievances. It brings these parties together to discuss their concerns, interests, and positions to reach a final mutual and realistic agreement. However, where any step of the negotiation process is flawed such as lack of community involvement, it leads to resistance because those who have had no involvement feel the negotiation process is directly imposed on them. When it comes to historical claims and land settlement Māori have opposed the treaty negotiation process as they have had little or no input in its development (Coxhead, 2002).

Direct treaty negotiations are a political construct, with the composition of the negotiation process provided by Crown policy rather than by legislation (Vertongen, 2012). Cowie (2012) agrees that negotiation agreements are political and no legislation authorises or controls the process of negotiation. Māori enter freely and can exit at any time up until a deed of settlement is signed. If dissatisfied with their offers or the negotiation conduct of the Crown, they can litigate, although the options for judicially ordered redress vary greatly between tribes. Over the years the Crown has considered how best they could settle the Treaty of Waitangi claims within a structure not only acceptable to them but, to Māori and the community in general. They recognised several factors including the need to negotiate a fair, comprehensive and long-lasting settlement for breaches that had occurred before 21 September 1992. The need to achieve a settlement that both increased the mana of Māori and also restored the honour of the Crown and ensured the relationship between Māori and the Crown based on the Treaty of Waitangi principles remains (Coxhead, 2002).

In July 2000 the Crown adopted six principles to guide it in negotiating settlements of historical claims under the Treaty of Waitangi. These principles summarised are:

- The need for negotiations to be conducted in good faith.

- Recognised the importance of strengthening their relationship with Māori.
- That the compensation would be in recognition of the breaches Māori suffered.
- The need for fairness with all claims.
- The need to be honest and open to ensure understanding of all issues.
- That negotiations between both parties would lead to a fair and durable settlement (Coxhead, 2002).

The Crown having identified the principles they will follow has then magnanimously outlined the terms iwi negotiators must accept before they will negotiate with them; these include, the need for negotiations to be conducted in good faith, remain private and confidential between both parties and the need for both parties to agree on any media statements released (Coxhead, 2002). Having set the parameters for negotiating the settlement, iwi negotiators are expected to negotiate within the established parameters if they wish to settle their claims (Te Aho, 2017).

The behaviour of the Crown allowed them to continue unchallenged with the only checks and balances on their behaviour from the court of public opinion. For Ngāi Tahu, the court of public opinion they experienced after the signing of their Treaty settlement resulted in a number of their marae being firebombed, burned down and racist slogans painted all over their building. The fire-bombing was thought to be the work of Pākehā citizens and not the gangs (O'Regan, 2019). With a background of racism simmering behind the scenes, the Crown was always going to make decisions particularly when it concerns Māori, that are in the best interests of their large voting base, Pākehā.

For iwi negotiators, the negotiation process was all about getting the best treaty settlement redress for their people. The treaty settlement redress comprises three streams, financial, commercial and cultural. Financial and commercial redress refers to the portion of the total settlement the claimant group receives in cash and commercial assets (Office of Treaty Settlements, 2004). Financial and commercial redress also recognises that where claims for the loss of land and or resources are established, the Crown's breaches of the principles of the treaty will usually have held back the potential economic development of the claimant group concerned (Office of Treaty Settlements, 2015, p. 81). Only the Crown knows what process they undertake to come up with the redress they offer iwi. For Ngāi Tahu the cultural redress elements of the Crown's settlement offer allowed them

to restore and give practical effect to their kaitiaki responsibilities (Te Rūnanga o Ngāi Tahu, 1997a).

The Office of Treaty Settlements (2004) outlines several factors the Crown considers when developing its quantum offer this includes: the Crown takes into account the amount of land lost to the claimant group through the Crown's breaches of the treaty and its principles, the relative seriousness of the breaches involved (raupatu with loss of life is regarded as the most serious), and what the Crown has given in existing settlements for similar grievances. Other factors the Crown considers are the size of the claimant group today, whether there are any overlapping claims, and any other special factors affecting the claim. After the Crown has presented its offer, there will usually be a period of negotiation on the amount to be offered. The mandated representatives may wish to draw various factors affecting their claims to the closer attention of ministers. The ministers will if they think it appropriate revise the offer (Office of Treaty Settlements, 2004).

McKenzie (2019) has a different formula to that outlined by the Crown. He claims that the Crown when determining the financial redress to offer iwi adopts a formula in which Māori have had no input in the design. The formula focuses on three specific areas those being the apology, money, and cultural sections and has already been pre-determined based on the breaches that took place. He said the Crown looks at how big the land loss was, how many you have in your tribe and that's all calculated into a formula. You are then given a set amount of money and then you are left to try and structure a settlement within the parameters of a range of set Crown boundaries.

When it came to negotiating a better deal for the iwi, Greg White (Crown Forestry Rental Trust, 2003) from Ngāti Tama spoke about challenging Douglas Graham, the Minister for Treaty of Waitangi Negotiations, directly over the amount of low level of land that the Department of Conservation was willing to give up. The initial offer was for 2.8 hectares of land, which was described to the Minister as a rock in the middle of the ocean that was eroding. He challenged the fairness of the offer after advising the Minister that the Department of Conservation held 78,000 hectares of Ngāti Tama land. As a result of his remonstration, they were offered 2,000 hectares of land. When talking about their financial settlement, Ngāti Manuhiri tells the story of their chief negotiator Laly Haddon sitting in a shed up north with the rain pelting down outside eating tomato sandwiches

with then Minister Douglas Graham. During discussions, Laly expressed dissatisfaction with the quantum that had been offered by the Crown. Following the meeting, the Crown quantum offer had increased from $6 million to $9 million (M. Hohneck, personal communication, July 08, 2011).

Cultural recognition is a redress that is intended to meet the cultural rather than economic interests of the claimant group. In negotiations with the Waitangi Tribunal hearings to date, claimant groups have often raised several concerns as part of their historical grievances against the Crown. These include the loss of ownership or guardianship of sites of spiritual and cultural significance and the loss of access to traditional foods or resources (this may be the result of loss of ownership of land or environmental changes) and exclusion from decision-making on the environment or resources with cultural significance (Office of Treaty Settlements, 2004). For Rangitāne Tu Mai Ra (Wairarapa Tamaki nui-ā-Rua) the vesting of Pukaha (Mount Bruce) in Rangitāne and subsequently gifting back to the Crown and the people of New Zealand was a significant cultural redress (Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua Deed of Settlement, 2016).

Ngāti Manuhiri had a similar experience with the vesting of Hauturu (Little Barrier Island) to Manuhiri and subsequently gifting the island back to the Crown. It should be noted that if Ngāti Manuhiri had not agreed to gift back the Island they would have been liable to pay for the maintenance of the island which was believed to be more than $1m annually, to ensure the unique nature of the Island as a nature reserve was retained (M. Hohneck, personal communication, August 12, 2016).

The Crown's motive to negotiate with Māori over the land taken was not necessarily because of concerns they held about their past indiscretions. The decision was more likely prompted by several events and factors including international conventions concerned with the protection of human rights (Mutu, 2019b). These comprise the International Covenant for Civil and Political Rights, International Covenant of Economic Social, Cultural Rights, Convention for the Elimination of all forms of Racial Declaration and the 2010 United Nations Declaration of Indigenous Peoples (Mutu, 2019b). The concerns raised from national protests such as the 1975 Land March led by Dame Whina Cooper (Ministry for Culture and Heritage, 2021c) and the 1981 Springbok tour which brought

Māori land and race issues to the fore (Ministry for Culture and Heritage, 2020c). Political forces within parliament and exerted by politicians like Apirana Ngata with his focus on the development of Māori land in the early years of parliament and later Matiu Rata who was instrumental in the establishment of the 1975 Treaty of Waitangi Act (the Act) leading to the formation of the Waitangi Tribunal, were also influential factors (Ministry for Culture and Heritage, 2020d).

Mavis Mullins (2019) claimed that there were very few Crown assets left for them to negotiate over. She described negotiations as trying to find common ground and a win, win situation for all parties. However, when dealing with the Crown she found negotiations process-driven and one-sided with little room to move. She said iwi needed to be clear about those areas they felt they could get some leverage from.

From the iwi negotiators' perspective, negotiations with the Crown always come with a caveat, where the Crown determines even before negotiations commences what is and what is not negotiated. Coxhead (2002) refers to the 1999 Office of Treaty Settlements policy which outlines the Crown's stance when it comes to negotiating the wording of their terms. Negotiators can only proceed only after they accept the Crown's fundamental approach to treaty settlements and negotiations.

Ngāti Manuhiri settlement negotiations were completely one-sided, they were given no opportunity to be involved in drafting the negotiation process despite being constrained to stay within the parameters set by the Crown. The Crown's reluctance to give up anything to iwi without a hard-fought fight dominated the negotiation process on numerous occasions (M. Hohneck, personal communication, August 12, 2019).

Coxhead (2002) claims that to call the treaty settlements a negotiation process is misleading. He asks the question where does negotiation come in once the treaty settlement has commenced? It is the Crown that: sets the process to be followed, sets the amount of money it is prepared to spend, decides whether the iwi have proved their grievance and selects which grievance has the highest priority, sets the price they are willing to pay, decides whether the negotiator has the appropriate mandate to speak on behalf of their iwi, decides whether the plan for distributing the outcome is acceptable and can abolish the bank of the Crown held land earmarked for a possible return at any time.

McKenzie (2019) described the Crown negotiation process as divisive, lacking in transparency and being feared by the people. He said a negotiated settlement is not about success it's about survivability. It is about eking out the bare minimum to allow iwi to be who we are and to own a couple of aspirations in several areas. He said people needed to realise that negotiations are not about justice which was reflected in the pitiful redress of 100 hectares Raukawa received from the 450,000 hectares that had been taken from them. He went on to say that the land the Crown offered back is the worst and least valuable land and before it is returned, iwi needs to ensure they have put their best case forward to justify the return.

In 1988, Alex Frame a former senior law lecturer at Victoria University was appointed by the Crown to establish a Treaty of Waitangi Policy Unit (which was later to become the Office of Treaty Settlements before transitioning into Te Arawhiti) and tasked to establish the framework to begin negotiations with Tainui (Fisher, 2015). Despite Frame's appointment the chief negotiator for Waikato-Tainui the late Sir Robert Mahuta was already raising concerns that the Crown without consulting Waikato-Tainui had already established procedures for negotiations with Tainui. Sir Robert asked to be informed of them and suggested that the board should have been involved in drawing them up (McCan, 2001).

Waikato Tainui trepidation with the Crown's handling of the negotiation strategy was exacerbated further when the Crown produced several reports and background papers which they had not shown to the trust board. The information leaked included indexing the annual payment to the Tainui Māori Trust Board to the annual inflation rate, helping the Tainui Māori Trust Board realise the purpose for which it was established and endeavour to remove Tainui's feelings of alienation through the possible return of an asset like the Waikato River (McCan, 2001).

Sir Tipene O'Regan (2019) spoke about how expensive the treaty process had been for Ngāi Tahu, particularly in the latter part of the tribunal hearings and early stages of negotiations. He said Ngāi Tahu were forced to look offshore for funding in the form of a series of loans through a relationship one of their tribal members had with a Japanese philanthropist who was looking for investments in Aotearoa. Through this relationship, Ngāi Tahu received funding to enable a lifeline to be extended to the tribe as they waited

for the result of their Waitangi Tribunal hearings. In 2001, following the settlement with the Crown, O'Regan and other representatives of Ngāi Tahu, returned to Japan to pay back their remaining debt to Mr Yamada who insisted the money be used to set up an educational fund (Te Rūnanga o Ngāi Tahu, 2014).

The next stage is the formal negotiation process where both parties put forward their proposals for settling the claim and try to reach an agreement within the limits of its approved negotiating brief. This process is like trying to compose a song when the words have already been written. You can sing it any way you want in any tune, either way, the script doesn't change, it is the same song. In other words, the Crown has already predetermined the outcome.

The final stage is the Ratification and Implementation process. This is the hard sell time, where dreams held by iwi of a fair settlement are dashed when they are presented with the final Crown offer which in no way reflects the financial loss and pain suffered. Before the Crown releases funding, they require the iwi to have established a Post-Settlement Governance Entity (PSGE) which is the entity that manages the settlement assets on behalf of the iwi. The PSGE must have both Crown and iwi approval.

Coxhead (2002) describes the same three stages but has also included a fourth, a "preliminary stage" where iwi negotiators must register their complaint with the Waitangi Tribunal and prove they have been affected by the actions of the Crown which were in breach of the Treaty of Waitangi 1840. Even at this early stage, it is incumbent on iwi to provide proof that they have a legitimate claim. For this to occur preliminary work must be undertaken in researching the iwi history, coordinating and pulling together the necessary resources and personnel, and seeking the mandate of the tribe to negotiate on their behalf must occur. Pangari (2019) was bemused by a situation where iwi has to prove to the very people that took their land the Crown, the validity of their claim, instead of the onus put back on the Crown to explain how the land came into their possession in the first place.

3.2.4 Large Natural Groupings

In 1999, a bitter exchange between the then Minister for Treaty of Waitangi Negotiations Douglas Graham and opposition member of parliament Tariana Turia occurred over the Crown's policy of only working with large natural groupings. Turia was pushing for a hapū, by hapū settlement, with Graham indicating that because of the likely numbers involved and the time taken to resolve them, the Crown had no intention of dealing with settlements at a hapū level, preferring to deal with them at an iwi level (Birdling, 2004). The comments made by the Minister were in direct contrast to the Treaty of Waitangi Act 1975, which provides that any Māori may lodge a claim with the Waitangi Tribunal and save for a few exceptions the Tribunal must inquire into that claim.

The Office of Treaty Settlements (OTS) renamed Te Kāhui Whakatau, sits under the umbrella of Te Arawhiti - The Office for Māori Crown Relations becomes the department that reports to the Minister and negotiates the settlement of historical Treaty of Waitangi claims at the Minister's behest. The OTS has followed the Crown policy by refusing to accept individuals, whānau and small hapū claims and not admitting to their existence in any significant way (Joseph, 2012).

McDowell (2016) claims that this Crown policy is highly problematic as the treaty was signed between the Crown and the rangatira of hapū who represented the interests of Māori society in those times. For the Crown, the advantages of this controversial policy are that it makes the process of settlement easier to manage and work through, helps them deal with overlapping interests and reduces the cost of negotiations for all parties (Office of Treaty Settlements, 2004**).** The disadvantages are that the interests of smaller claimant groups are not recognised which has led to litigation and dispute in almost every settlement (Joseph, 2012).

The problem is exacerbated further by the fact that the Crown has no definitive definition of what comprises a large natural grouping (Andrew, 2008). Therefore, leaving the Crown if it is of a mind to do, to favour the merits of one iwi over that of another. The Waitangi Tribunal has formally highlighted the shortcomings of settlements including the operations of the office of treaty settlements. In two particular cases, Tamaki and Te Arawa, the Tribunal argued that the Crown was "picking favourites" and side-lining smaller hapū or iwi (Bargh, 2012).

In the Waikato-Tainui treaty settlement, the former military bases of Hopuhopu and Te Rapa Air Base had been offered back to them by the Crown. Two Waikato-Tainui hapū, Ngāti Whawhakia and Ngāti Wairere argued that since the Hopuhopu and Te Rapa military bases were located in their communities the land should be directly vested in them. In an attempt to stop the vesting of the land the case went to the Māori Appellate Court which accepted that the Crown intended to return the lands as part settlement of the Tainui raupatu lands claim and that the settlement was with Tainui and not any individual hapū (Fisher, 2015).

As justification for the policy the Crown relies on the Waitangi tribunal's findings in the Tangahoe Settlement Claims Report 2000. In this report Te Rūnanganui o Te Pakakakohi Trust Incorporation and Te Iwi o Tangahoe Incorporation alleged that the Crown had breached their rights under the Treaty of Waitangi by not hearing their separate treaty claims. The tribunal, however, supported the Crown's decision to recognise the Ngāti Ruanui body that had received the mandate to negotiate on their behalf, noting that the majority of the Pakakohi and Tangahoe people had approved the treaty settlement. It should be noted that the tribunal also recommended that discussions between all parties continued to ensure the Pakakohi and Tangahoe traditions were recognised in the Ngāti Ruanui Deed of Settlement and reflected in Taranaki's history. If this were not to occur a new grievance would arise out of the settlement of the old one (Waitangi Tribunal, 2000).

3.2.4.1 Inadequacy of treaty settlements

A major criticism of treaty settlement, even for the larger iwi who settled early, is that they do not compensate for actual losses suffered. The Crown has come up with several reasons as to why it is difficult to assess the economic loss Māori suffered as a result of their land being taken. Factors which they consider include the time that has elapsed, the effects of various causes on the economic status of iwi would be a complex matter, overlapping between many claimant groups and also the benefits of European settlements to Māori make it impossible to determine a specific loss to each of the iwi groups. They

note observers have placed the sum in the tens of billions of dollars (Office of Treaty Settlements, 2015).

The Office of Treaty Settlements (2015), highlights how the Crown has indicated if they were able to develop a formula that could work out the losses Māori suffered and figures that amounted to those quoted by the observers it would not be practicable or acceptable to the New Zealand public. The Crown has taken all the circumstances into account and has focused on what they perceive as a fair level of redress.

McKenzie (2019) provided a contrary account to that given by the Crown when it came to working out the settlement package. He says the Crown has a very simple formula for deciding your package. They take into account, how big are you tribally, how did you lose your land, how many people you have, were you invaded and killed or did they steal it by the courts, or taking bits and pieces through the public works act? He then says that someone in the treasury enters that into a calculator and comes out with a number, the number is offered by the Minister, that number is offensive and embarrassing for every tribe that has been offered that first offer. So the strategy for iwi is to use the different layers available to them to try and increase that number. He says in the dark days that may include anything they could to get leverage, if your neighbours were settling you go and oppose them just to get a little leverage on the Crown, this was a difficult time. He says you have to assess the tens of thousands of properties owned by the Crown, value them, prioritize them, check for commercial sustainability overlay that with ones that are core and non-core so that you can assess which ones might be available to be returned, see which ones that you can afford to buy and when that is all said and done, you can afford to buy 1% of them (McKenzie, 2019).

In 1996, at the signing of the Ngāi Tahu Agreement in Principle, Chief Negotiator Sir Tipene O'Regan commented that the Ngāi Tahu settlement could hardly be called fair. The advice they had received from their experts estimated the loss to Ngāi Tahu between $16 – 18 billion. The Crown in response had estimated Ngāi Tahu's loss between $14-16 billion. The $170 million Ngāi Tahu had received in their settlement was a fraction of the quantifiable loss, as settlements are for all groups; but given the political and financial imposed Crown constraints were the best that could be achieved at that time (Fisher, 2017).

Te Aho (2017) referred to the cash quantum of $170 million Waikato received as part of their treaty settlement and the Crowns acknowledgment in the Waikato-Tainui Deed of Settlement that the contribution of the confiscated land to the development of New Zealand was estimated to have a value as at 1995 of $12 billion. To achieve these settlements Māori were forced to work within a structure they had no involvement in developing, for meagre compensation that did not recognise the political, economic, cultural, environmental and spiritual loss they have suffered. Te Aho (2017) has described this process as a form of contortion.

To add insult to injury Māori are compelled to agree that they will not be fully compensated for the loss and prejudice they have suffered and the remaining compensation they miss out on receiving is used to contribute to New Zealand's development. Mutu (2019b) claims that the behaviour of the Crown is disingenuous by setting up a process where Māori have very little choice but to accept and then implying that iwi or hapū would willingly give up almost all their land and compensation to contribute to the development of New Zealand.

3.2.5 Crown's misbehaviour

The behaviour of the Crown officials during the treaty settlement process caused consternation for several iwi negotiators. One of the constant complaints was the turnover in staff at the office of treaty settlements, which meant progress on negotiations being held up as the new staff tried to get themselves up to speed with what had been agreed upon (M. Hohneck, personal communication, August 12, 2016). McKenzie (2019) spoke of the rudeness of some public officials towards their negotiators.

Henry (2019) went back in history and spoke of the arrogance and behaviour of the Crown officials who accompanied the then Governor-General Lord Ranfurly when he sailed up the Whangaroa harbour to have a picnic on a parcel of beach-land owned by the iwi. It is alleged that Lord Ranfurly commented that it would be good if other people could experience the same enjoyment he did picnicking on the beach. As a consequence, the iwi was approached by his officials at the time about gifting an area of the land for a

scenic reserve. The iwi offered the Crown 10 acres for this purpose. The Crown decided to take 706 acres of the land which they named Ranfurly Bay Scenic Reserve, including important wāhi tapu and urupā belonging to the iwi. As compensation, the iwi received a total of £1,060 from the Crown but lost £40 per year from a 30-year lease of the block (Henry, 2019).

More recently Henry (2019) spoke of a recent example their iwi encountered during their negotiations with the Crown when trying to get the Kowhairoa peninsular returned to them. Initially, the Crown officials offered the Eastern and Western sides of the peninsular but not the land in the middle. It was not until 2013 when they brought the matter of the middle section of the peninsular land to the attention of the then Minister for Treaty of Waitangi Negotiations Chris Finlayson and asked him if they could have the rest (middle piece) of the land back; the minister queried his officials and was unable to get a satisfactory response as to why the land was not returned to iwi. He then told his officials to give the rest of the land back. Henry (2019) claims that they found out later why they had not been given the land back earlier because the Department of Conservation was investigating giving mining rights and they assumed that the middle of the block of land previously refused to them could have been the target of those mining rights.

Raukawa reflected on the actions of the Crown in giving their land to another iwi without any consultation or discussion with Raukawa.[3] In this instance Lake Wairarapa and Lake Onoke had been used by mana whenua for food sources until Pākehā settlers drained Lake Onoke to create further farmland. Wairarapa Māori food sources were severely affected, and the Crown agreed after petitions and court challenges to give them other land in their area. The Crown failed to deliver on their promise instead transferring them land around Pouakani, an area where they were not mana whenua. The problem was further inflamed when the Waitangi tribunal agreed that the land should be returned to Ngāti Kahungunu for historical breaches. Raukawa took the case to the High Court which agreed that the land should not have been given to Ngāti Kahungunu because they were not mana whenua.[4]

[3] *Raukawa Settlement Trust v The Waitangi Tribunal* [2019] NZHC 383 [12 February 2019]
[4] ibid

Sir Tipene O'Regan spoke about the behaviour of the Crown under three successive governments who had used the fact that Ngāi Tahu was facing financial challenges and scarcity of resources during their treaty settlements negotiations to try and starve them into submission (Price, 2001). Negotiators for Ngāi Tahu also described some Department of Conservation officials involved in treaty negotiations as extremely arrogant. At every step of the way, Ngāi Tahu had to take the initiative and be creative in how they were putting forward ideas (Price, 2001).

Mahuta (1995) expressed frustration with the Crown's insistence to revalue the settlement sum Prime Minister Fraser made with Tainui in 1946 as the basis for any future negotiated outcome. Mahuta (1995) insisted that the 1946 legislation failed to account for the recent developments in treaty jurisprudence and the inadequacy of the settlement in today's context. The Crown then came back with an offer to the value of $20 million which comprised the return of 3,000 acres of Coalcorp lands which they valued at $10 million, a monetary settlement based on the 1946 formula capitalised at an amount of $6.7 million and legislation to give effect to the offer and an undertaking to review jointly Tainui's recovery from the effects of raupatu. The offer from the Crown was seen as woefully inadequate and would only be accepted if it were to be treated as initial payment in a much larger settlement offer (Mahuta, 1995).

Mahuta (1995) also raised issues about the tactics adopted by the Crown in delaying or deliberately slowing down the negotiation process. These actions were attributed to a poor understanding of the issues on the part of the Crown and also to the machinery of government being extremely slow (Fisher, 2015). It is also alleged that Mahuta told the Crown that the delays they had caused in settling had severely corroded the robustness of the Tainui Māori Trust Board's mandate which led to challenges in the Māori Appellate Court from Ngāti Whawhakia and Ngāti Wairere. He is also reported to have said in an internal hui that it was the Crown's delays that had delayed Waikato-Tainui wider negotiation process (Fisher, 2015).

3.2.6 Historical Account

The historical account is set out in the deed of settlement and is an agreed statement between the Crown and Māori of the events that lead to breaches of the Treaty of Waitangi. Contained within the historical account is the Crown expressing its regret, an unreserved apology, and acknowledging the breaches, losses, and grief experienced by the iwi settling the treaty claim (Office of Treaty Settlements, 2015). Henry (2019) claims that the historical account is supposed to be a mutually agreed true history of the tribe of how it came to lose its mana and rangatiratanga and the role the Crown played and the apology made as a consequence of those grievances.

For Ngāti Manuhiri the process of drafting their historical account began with engaging a suitable historian who had an in-depth knowledge of their history and people. During the drafting of the report regular contact was kept between the historian and members of the hapū to ensure the accuracy of the report. When the draft document had been completed it was then subjected to further review by hapū members.

The draft document was then passed to the Crown, who advised they had several historians in mind to review it and inquired whether Ngāti Manuhiri had any issues if one of these historians was employed to review it. The historian engaged by the Crown then reviewed the document and highlighted any contentious areas. The edited document was then sent back to the Ngāti Manuhiri historian and hapū members to comment.

Before the historical account could be approved Ngāti Manuhiri negotiators and historians met with Crown negotiators and representatives to agree on a final edition. From Ngāti Manuihiri's perspective, their interaction with the Crown to finalise the report was an emotional occasion and presented an opportunity for iwi to express the hurt and mamae caused by the Crown when their land was taken. Finalizing the historical account was also very frustrating for some hapū members as the Crown officials would try and change wording which showed the Crown acted unfairly and illegally in some cases (M. Hohneck, personal communication, August 08, 2016).

Fisher (2015) when discussing the preamble component of the Waikato-Tainui Deed of Settlement highlighted the compromises that had to be made in the drafting of the official

historical account. He said from Waikato-Tainui's perspective they were intent on ensuring an accurate portrayal of relevant events was contained within the document insisting certain wording from the Sim Commission be included. The Crown acting on the advice of their officials, particularly the Crown law office was resistant to terms and wording that portrayed them in a bad light.

3.3 Full and final

The disappointment of receiving inadequate redress from a flawed treaty process has caused some negotiators to consider whether the settlement reached with the Crown is full and final. Written in each of the deeds of settlements are specific clauses where iwi agree they will not re-litigate their treaty claims before the Waitangi Tribunal or Court.

When reflecting on the Raukawa settlement with the Crown, their negotiator Chris McKenzie said the settlement negotiated may be full and final for the day because that was the best way that they were able to obtain, but that would not prevent following generations to continue to strive for justice (McKenzie, 2019).

Ngāti Manuhiri expressed similar sentiments about promises and commitments made today that would not be relitigated, will not or shall not prevent their tamariki and mokopuna from pursuing further justice in years to come (M. Hohneck, personal communication, August 12, 2016).

3.4 Chapter Summary

The imbalance of power between the Crown and iwi is no better demonstrated than through the treaty settlement process. The complaints raised by the iwi negotiators for the Waikato and Ngāi Tahu treaty settlements were the same complaints raised over 20 years later by current iwi negotiators (personal communications, Te Aho, Morgan, Hohneck, Te Rangi, & McDonald, 2016). Even after all this time, the Crown had no intention of changing its ways, "might is right," (Te Aho, 2017).

A predetermined negotiation process, insufficient funding of treaty settlement negotiations, iwi set against iwi over cross-claimant issues and treaty settlement compensation which equates to no more than a two to three-cent return on every dollar value of land that was confiscated is unacceptable. This system is neither fair nor just and quite rightly will not be accepted by our tamariki and rangatahi who will continue to challenge and fight until this system changes.

The next chapter examines the changes that have gradually occurred over time that have affected Māori in Aotearoa. These changes came about through protest demonstrations objecting to the taking of more Māori land and race issues calling for race equality. Changes by our politicians also had a marked impact on Māori creating a pathway for grievances to be heard. The push for fairer and more just treaty settlements presents an opportunity for a more pragmatic approach to be adopted to realise this goal. This chapter examines these approaches.

CHAPTER FOUR

THE CALL FOR CHANGE

4.0 Introduction

For change to occur people have to be prepared to rebel against the status quo and have the courage to demand change. The history of Aotearoa can lay claim to a number of events where people and politicians have brought about change for the betterment of Māori. From demonstrating and marching through the streets to the implementation of policy designed to improve the lives of Māori, Aotearoa has more than enough people with the desired courage. If treaty settlements are to fairly reflect the pain, suffering and cost iwi have suffered at the hands of the Crown since 1840, things have to change.

4.1 History has consequences

4.1.1 Change initiated by the people

History has been shaped by international pressure, political intervention and people prepared to challenge the status quo. History will record their actions as having a significant effect on the growth and development of Aotearoa. These changes include:

In 1975, Dame Whina Cooper the former president of the Māori Women's Welfare League at 80 years left Te Hāpua in the far north to lead the Māori land march to parliament in Wellington, protesting against the continuing loss of Māori land (Ministry for Culture and Heritage, 2021c). Dame Whina and her actions gave Māori a voice and drew the public's awareness to the injustice of the land loss by Māori through the actions of the Crown.

In 1977, the Ōrākei Māori Action Committee led by Joe Hawke occupied Takaparawhā (Bastion Point reserve). It was the position of Ngāti Whātua that the land had been unjustly taken from them. Ngāti Whātua had given the land to the Crown as a defence site during the Russian scare of the 1880s (Ministry for Culture and Heritage, 2020b). The invasion never occurred, and the land was never given back. The significance of this occupation and subsequent arrests of Māori is that it became the first case brought before

the Waitangi Tribunal, following the expansion of the Tribunal's jurisdiction to cover retrospective issues dating back to the signing of the Treaty of Waitangi in 1840. In 1987, the Tribunal recommended the return of Takaparawhā to Ngāti Whātua, which the Crown agreed to, the following year (Ministry for Culture and Heritage, 2020b).

In the 1980s, it was the collective will of the people in Aotearoa who not only opposed apartheid but also the proposed tour to Aotearoa in 1981 of the race-based South African Springbok rugby team. The tour caused a mind shift about race relations in Aotearoa and divided the country in what was believed to be the biggest civil disturbance since the 1951 waterfront dispute (Ministry for Culture & Heritage, 2020c).

Rob Muldoon the Prime Minister at the time, buoyed by National's landslide victory at the recently held elections was of the view that the Springboks should tour, even if there were threats of violence and civil strife. The actions of the protestors reverberated around the world. When Nelson Mandala who was a prisoner on Robben Island heard that the rugby match in Hamilton had been cancelled through the efforts of the anti-tour protestors, he is reported as saying, "it was as if the sun had come out" (Ministry for Culture & Heritage, 2020d).

4.1.2 Change initiated by political and legal intervention

In 1975, the late Labour Minister Matiu Rata was instrumental in establishing the Treaty of Waitangi Act 1975 (the Act), to improve the Crown and Māori relationship. The Act led to the establishment of the Waitangi Tribunal as a division within the Department of Justice, consisting of a chairperson (chief judge of the Māori Land Court) and up to sixteen appointed members, and civilian staff. The Tribunal provided the forum for Māori claims of breaches of the Treaty of Waitangi to be heard (Ministry for Culture & Heritage, 2021c).

Matiu Rata's perseverance also set in motion Māori land claims against the Crown. In 1985, the David Lange-led Labour Government amended the 1975 Treaty of Waitangi Act and greatly increased its scope. The 1985 Treaty of Waitangi Amendment Act made its jurisdiction retroactive to 6 February 1840, the date of the Treaty cession, and

increased the Tribunal from three to seven members with four seats reserved for Māori (Lashley, 2000).

In 1986, the State-Owned Enterprises Act created state-owned enterprises and it was intended that Crown assets administered by the various parties would be transferred (McHugh, 1991). At that time the Crown denied that the legislation was a precursor to the full privatisation of these public assets (Orange, 2004). The Māori Council, following objections by Māori who believed the actions of the Crown would threaten future restitution recommendations from the Waitangi Tribunal, sought for the matter to be litigated in the Court of Appeal. The Court of Appeal was unanimous in its decision that specific assets to state-owned enterprises could not proceed without a system in place to consider whether it would be consistent with the principles of the Treaty (Laking, 2015).

The introduction of the mixed-member proportional (MMP) voting system in 1993 replaced the traditional first past the post (FPP) system. This new voting system allowed more political parties to emerge, ensuring that parliament would become more representative of the community at large (Alves, 2017). This new voting system led to the establishment of the Māori party in 2004.

In 1997, an application was made to the Māori Land Court, that the foreshore and seabed of the Marlborough Sounds be designated as Māori customary land under the Te Ture Whenua Māori Act 1993. The subsequent ruling by the New Zealand Court of Appeal in 2003, that amongst other things: the Māori Land Court had jurisdiction to determine and investigate title to the land and the definition of land in Te Ture Whenua Māori Act 1993, did not necessarily exclude foreshore and seabed. This Court of Appeal decision was met with an immediate response by the Crown.[5] Fearing that the public would be denied access to the coastal beaches of Aotearoa the Helen Clark led Labour government-initiated steps to address the issue by establishing the Foreshore and Seabed Act 2004. This Act secured the Crown's ownership status of the land and thus ensured public access to Crown-owned land (Alves, 2017).

[5] *Ngati Apa v Attorney-General* [2003] NZCA 117.

In that same year 2004, Tariana Turia a Labour member of parliament unhappy with her party's actions over the establishment of the Foreshore and Seabed Act 2004, left the Labour party. Turia along with academic Dr Pita Sharples and other influential Māori dissatisfied with the Crown's decision was instrumental in establishing the Māori party (Curtin & Miller, 2012).

In 2022, the Green party in Aotearoa released for discussion a document titled "Hoki Whenua Mai" which suggests introducing a new law to assist Māori to get ownership of land that was taken from them (Hewett, 2022). The document proposes the Crown give the Waitangi Tribunal the power to revise settlements, return private land, establish a Hoki Whenua Mai fund, give mana whenua first right of refusal over raupatu land, and establish a registry for private landowners that gives mana whenua first right of refusal, should they sell. Davidson and Kerekere (2022) highlight the fact that due to Crown policy Māori has been dispossessed of their land for nearly two centuries. They say this Crown policy has caused underlying, deep, foundational harm that Māori continues to experience daily.

The Green Party have said the Treaty of Waitangi can be honoured in full if the injustices caused by colonisation are dealt with, they include:

- Conducting an inquiry into the full extent of the dispossession of whenua.
- Revisiting settlements to ensure the adequacy of redress.
- Additional redress at the level of hapū, whānau, and Māori collectives, outside the treaty settlement process.
- Enabling the return of whenua not owned by the Crown (Hewett, 2022).

Davidson and Kerekere (2022) believe the Green Party proposal seeks to repeal the 1993 amendment to the Treaty of Waitangi Act to enable privately owned land to be purchased for redress. The amendment would also seek to alter the treaty settlement process to remove the requirement for full and final settlement clauses which they say are consistent with the ongoing relationship envisioned by Te Tiriti o Waitangi. The amendment also offers additional pathways for the return of land outside treaty settlement processes.

McConnell (2022) said the Green party will have tough negotiations ahead if they hope to convince the Crown to reassess the treaty settlements and buy back the land stolen from Māori. Both the National and the Labour parties do not support the Greens initiative. McConnell (2022) reports that the Crown-Māori relations minister Kelvin Davis has said reassessing treaty settlements would create an infinite loop of negotiations and says it is time to move on. Christopher Luxon the National leader has said revisiting treaty settlements would be going back and unwinding a whole bunch of history. In contrast, McConnell (2022) states that Debbie Ngarewa-Packer the co-leader of the Māori Party has said it is good to see the Greens supporting the kaupapa after resisting the return of land from the Conservation estate.

4.1.3 International covenants, conventions and declarations.

As alluded to earlier in this thesis, the Crown has aligned itself to several international Human Rights covenants, conventions, and declarations. The Crown has also reserved the right not to apply or adopt certain articles from these covenants, conventions, and declarations if the circumstances dictate that they may not be able to address all criteria.

In 1972, New Zealand ratified the 1965 Convention on the Elimination of All Forms of Racial Discrimination. The Convention promotes and encourages universal respect for and observance of human rights and fundamental freedom for all, without distinction as to race, sex, language, or religion. New Zealand has indicated they have no reservations about the convention (United Nations Human Rights, 1965).

In 1978, New Zealand ratified the 1976 International Covenant on Civil and Political Rights, which affirms the right for people to enjoy a wide range of human rights, including those relating to freedom from torture and other cruel, inhuman, or degrading treatment or punishment. New Zealand has reserved the right not to apply article 10 (20 (B) or Article 10 (3) where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable or where the mixing of juveniles is considered to be of benefit to the persons concerned (United Nations Human Rights, 1976a).

In 1978, New Zealand ratified the 1976 International Covenant of Economic Social and Cultural Rights. New Zealand has reserved the right not (to) apply article 8 to the extent that existing legislative measures, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with that article. In 2003, New Zealand withdrew the reservation regarding postponing article 10(2) as it relates to paid maternity leave or leaves with adequate social security benefits (United Nations Human Rights, 1976b).

The merits of the 2007 United Nations Declaration on the Rights of Indigenous Peoples, are expanded on later in this thesis. Of note was the reluctance of four countries, Canada, the United States of America, Australia, and New Zealand, who refused to ratify the declaration at that time (Johnsen, 2021).

4.1.4 Changes to the treaty process

How is it that the entity, the Crown, who took the land from Māori, can now require Māori to prove that what they alleged happened to them at the hands of the Crown, did occur? How can the Crown then insist that Māori must prove every wrongdoing supported by factual evidential proof of their allegations against the Crown before they will accept Māori have a grievance? How is it that Māori having proven normally at their own expense, that a genuine case against the Crown exists, must now wait until the Crown determines how much compensation will be paid? Where does the Crown get the temerity to state full compensation for the land taken from Māori will not be paid, and expect Māori to accept this position? Where does the Crown get off after inflicting atrocities against Māori think a sanitised apology will suffice and resolve all Māori grievances? The writer supports the following changes to the current negotiation process:

1. Rangatira to rangatira
2. Independent arbitration
3. He Puapua (Article 28 UNDRIP)
4. Constitutional Change entrenching the Treaty of Waitangi

4.1.5 Rangatira to rangatira

The success of the Tainui-Waikato settlement was largely due to the involvement of Doug Graham Minister for Treaty of Waitangi Negotiations taking a hands-on approach to negotiations. According to Frame (2009), Doug Graham highlighted a decisive breakthrough in negotiations with Tainui negotiator Robert Mahuta only came through direct negotiations between them both, without the interposition of officials as a buffer.

Te Aho (personal communication, March 12, 2016) when discussing treaty settlements said it was important if you want things to happen to speak to the key Crown officials, whom he identified as the Prime Minister, Minister of Finance, and Minister for Treaty of Waitangi Negotiations. Willie Te Aho and his comments were supported by the public servant (PS2, personal communication September 06, 2016) interview as part of this research, who spoke about the political importance of the Treaty of Waitangi committee which he described as a subcommittee of the cabinet. This committee was chaired by the Prime Minister and included the Finance Minister and Minister for Treaty of Waitangi Negotiations. It was this committee that the Minister for Treaty of Waitangi Negotiations had to persuade that a treaty settlement redress should happen.

Morgan (personal communication, March 15, 2016) spoke about the success of the Waikato River Agreement and the relationship he and Lady Reiha enjoyed with Labour party ministers Parekura Horomia and Michael Cullen. He said it was only through this relationship with these key Crown ministers that they were able to obtain a significant increase in the compensation paid. Hohneck (personal communication, August 12, 2016) highlighted the relationship Ngāti Manuhiri chief negotiator at the time Laly Haddon had with Douglas Graham the Minister for Treaty of Waitangi Negotiations, rangatira to rangatira, and through this association, they obtained a significant increase in the compensation paid.

4.1.6 An Independent arbitrator needs to be appointed

Treaty settlements become legally binding when it has been agreed on by way of a vote from the iwi involved, the documents have been signed off by iwi and the Crown and parliament have passed the law (Office of Treaty Settlements, 2015). However, before

the signing ceremony, the Minister for Treaty of Waitangi Negotiators sends a letter to the iwi negotiators acknowledging the result of the vote, and a similar letter is sent to the groups with overlapping claims (Te Arawhiti, 2019). From the perspective of some iwi negotiators this letter is perceived as an open invitation for those with overlapping interests to signal that they are not happy with the decision, despite these matters being raised, discussed and issues supposedly resolved before settlement.

Hohneck (personal communication, August 12, 2016) raised this issue with the Crown after having spent considerable time with those claiming overlapping interests and having worked and agreed on an acceptable compromise. To then have the whole settlement process placed in jeopardy through the actions of an iwi with a limited ancestral connection to Ngāti Manuhiri, holding up the process to leverage an economic advantage for themselves, is unacceptable. The fact that the Crown was not prepared to resolve the issue before settlement, instead leaving the matter open for further discussion at a later time after Ngāti Manuhiri's settlement, was a cause of further angst and frustration.

Similar concerns were raised by the Ngāti Whātua Ōrākei deputy chair Ngarimu Blair, who said Ngāti Whātua Ōrākei have had enough of the Crown using whenua within their small rohe as compensation for the breaches of the Treaty of Waitangi of another iwi. Ngāti Whātua Ōrākei does not accept this situation and as a consequence would be challenging the Crown in the Auckland High Court (Blair, 2021). One of the key issues Ngāti Whātua Ōrākei will be arguing is that the Crown's adherence to a general policy on "overlapping claims" disregards basic tikanga considerations (Harawira, 2021).

These cross claimant examples highlight the behaviour of the Crown who have no qualms if necessary in extending treaty settlements despite the lack of evidence as in the case of Ngāti Manuhiri, or utilising the land of mana whenua, as in the case of Ngāti Whātua Ōrākaei to resolve the issues of other claimant groups. The argument for an entity separate from the Crown that has no bias or prejudices and is prepared to arbitrate on the facts presented by both parties is well overdue.

In Aotearoa, several legal firms offer domestic and international arbitration services, Meredith Connell, Chapmantripp, and Bankside Chambers being such examples. A further google search reveals several leading firms internationally offering similar skills

and experience. Given the enormity of the task and the need for complete objectivity, I believe the entity concerned needs to not only have the tick of approval from the Crown and Māori but must be internationally recognised.

The Permanent Court of Arbitration (PCA) based in the Hague in the Netherlands, was established by treaty in 1899 and is an intergovernmental organisation that provides a raft of dispute resolution services to the international community. Closer to home the PCA served as a registry to the proceedings conducted by a review panel about an objection by the Republic of Ecuador to a decision of the Commission of the South Pacific Regional Fisheries management organisation. New Zealand though having no direct interest in the issues raised by the Republic of Ecuador to the decision of the Commission provided a memorandum to earlier decisions regarding the fishery that New Zealand considered relevant and comments regarding the current objection (Memorandum of New Zealand, 2018).

4.1.7 He Puapua and the rights of indigenous people

In 2007, the United Nations adopted the Univeral Declaration on the Rights of Indigenous Peoples (UNDRIP or Declaration), New Zealand was one of four countries the others being, Australia, Canada and the United States, that voted against the declaration (Johnsen, 2021). Johnsen (2021) highlighted that the Helen Clarke led Labour government was in power at the time and this decision was made three years after the foreshore and seabed controversy.

New Zealand's reason for not signing at the time was contained within Article 28 of the Declaration which read:
"Indigenous people have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources that they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories, and resources equal in quality, size,

and legal status of monetary compensation or another appropriate redress" (United Nations, 2007).

At the time Labour claimed that the Declaration was incompatible with New Zealand's constitutional and legal systems and treaty settlement policy (Johnsen, 2021). O'Sullivan (2021) said the Crown's real reason was that the article would justify having to return much more Māori land that was already occurring under the Treaty of Waitangi Settlements.

Three years later in 2010, the National party through the Māori affairs minister at the time Peter Sharples endorsed the declaration. During his speech to the United Nations forum Sharples said the mana and moral authority of Māori to speak in international forums on justice, rights and peace matters had been restored (Sharples, 2018). John Key remarked at the time that the declaration would not compromise the fundamentals of the Crown's approach to resolving treaty claims (Watkins, 2010).

In 2019, the Labour party commissioned a report to inquire and report on appropriate measures to achieve the goals set out by the Declaration. The report titled He Puapua encapsulates a wide range of rights and freedoms including the right to self-determination/rangatiratanga, religious customs, health and language, education, culture and identity, and rights to economic development (Te Puni Kōkiri, 2021).

Hayden (2022) notes He Puapua has been described as a roadmap to achieve Vision 2040, the year by which it hopes the report's proposals are achieved. The added significance of the year 2040 is that it also marks the 200th anniversary of the signing of the Treaty of Waitangi. The report highlights that our current systems are not working for Māori, evidenced by negative statistics and the personal experiences of those Māori living in hardship. It goes on to say that there is a growing recognition of and momentum for transformational change that calls for sustained support for Māori led solutions, greater recognition of te ao Māori, and implementation of Te Tiriti as the foundation for improving and enduring Māori Crown relationships. The report also calls for strengthening the powers of the Waitangi Tribunal by making them binding and the introduction of a Tiriti/indigenous rights commissioner and court (Moir, 2021).

Labour member of parliament Willie Jackson (2021) described He Puapua as a collection of ideas, suggestions, aspirations, and hopes for Māori. He said the report was provocative, would be discussed widely, and was the catalyst in terms of where we are today, he went on to say that it was not government policy. The leaders of the National and Act political parties described the report as divisive and separatist (Scotcher, 2021).

Whether by coincidence or not, the Labour government has instigated a major overhaul of the health system and is in the throes of usurping the role of councils' management of water. The proposal sees the abolishment of district health boards and the establishment of a Māori Health Authority (Braae, 2021). Associate health minister Peeni Henare said Māori had suffered under the current health system and the new entity would help change that by giving Māori an independent voice. The Māori Health Authority will have joint decision-making rights to agree on national strategies, policies, and plans that impact Māori at all levels of the system (Braae, 2021).

In regards to the management of water, the Crown is proposing legislation that the three water services, drinking water, stormwater, and wastewater currently managed by councils, will be managed by four new publicly owned water entities. Māori is also guaranteed greater involvement including amongst other things, statutory recognition of the Treaty of Waitangi and the establishment of mana whenua groups for each of the four entities. The mana whenua group will help guide strategic performance expectations alongside local government and will have equal voting rights to the local government (Department of Internal Affairs, 2021).

4.1.8 Constitutional change

The law that governs New Zealand's public administration and the relationship between the individual and the state is constitutional law. New Zealand has no written supreme constitutional charter that establishes the fundamental laws, formally establishes and empowers the institutions of government, and guarantees the civil and political rights of citizens (New Zealand Constitution Law, 2022).

New Zealand's constitution is not found in one document. Instead, it has several sources, including crucial pieces of legislation, several legal documents, common law derived from court decisions as well as established constitutional practices known as conventions. Increasingly, New Zealand's constitution reflects the Treaty of Waitangi as a founding document of government in New Zealand (Palmer, 2012).

Margaret Mutu (2019b) talks about the widespread support for constitutional change among Māori and a large number of non-Māori. She refers to the National Iwi Chairs Forum (the Forum) which was established following outrage from Māori when the Crown confiscated the country's foreshore and seabed from Māori in 2004. The Forum indicated a desire to revisit the country's constitutional arrangements that Māori had been discussing for several decades. This discussion led to the establishment of the independent Working Group on Constitutional Transformation - Matike Mai Aotearoa.

The Forum's 2016 report, proposes six indicative constitutional models based on tikanga and Te Tiriti and has a focus on improved relationships that reflect self-determination, partnership, and equality. Māori can practice their tino rangatiratanga and mana including their sovereignty in a sphere of influence referred to as rangatiratanga. This allows Māori to make decisions according to their laws (tikanga). The Crown makes decisions for its people in its sphere of influence referred to as kāwanatanga according to its laws. In several of the other models, there is a third relational sphere where Māori and the Crown make joint decisions (Mutu, 2019b).

In 2013, the Right Honorable Sir Geoffrey Palmer QC's paper, "Māori, the treaty and the constitution" was delivered to the Māori Law Review symposium on the Treaty of Waitangi and the constitution. The paper spoke of the place the Treaty of Waitangi had played in the history of Aotearoa (Palmer, 2013). Initially declared a simple nullity for many years by the courts of Aotearoa because no body politic existed capable of ceding sovereignty, nor could the thing exist itself (Wi Parata v The Bishop of Wellington, 1877). However, later recognised as a wrong approach to international law. The paper highlighted that for the treaty to be legally recognised, depended upon it being incorporated by statute into Aotearoa domestic law.

The only part of the treaty translated into statute law was the Crown's right of pre-emption in Article II of the Treaty, which was embraced in similar terms in the Land Claims Ordinance 1841, and later in the Constitution Act 1852. Further examples include section 4 of the Conservation Act 1987 which requires that the Act should be interpreted and administered as to give effect to the principles of the Treaty of Waitangi. Similarly, the Environment Act 1986, requires a full and balanced account is taken of the principles of the Treaty of Waitangi when it comes to the management of natural and physical resources (Palmer, 2013). Palmer (2013) was of the view that like the Bill of Rights the treaty should become part of Aotearoa's new superior law Constitution. He went on to emphasise the need for political courage if we are to go forward.

In 2018, Geoffrey Palmer together with Andrew Butler proposed making several changes to their book "A Constitution for Aotearoa New Zealand" which was published in 2016. The changes they sought arose from the extensive interaction they had with groups and people and the feedback they had received from the hundreds of submissions through their website (constitutionaotearoa.org.nz). They suggested among other things, that the constitution should be superior law which means that it would sit above all other laws, and other laws must comply with it. They submitted that it should be entrenched meaning that it could only be changed if a 75% majority of Members of Parliament agree, or if a change gets more than 50% support in a referendum of the voters (Palmer & Butler, 2018).

From a Māori perspective, they believed that the constitutional position of Te Tiriti o Waitangi remained unclear and needed to be clarified. They called for a national conversation to be held for a better understanding of what is covered by the treaty and for those understandings to be stated in the constitution. This would enable greater clarity around what, in practical terms, the treaty means in contemporary New Zealand (Palmer & Butler, 2018).

4.2 Chapter Summary

Change is a constant. The fact we have politicians discussing openly Māori issues and recognising that Māori have been poorly compensated for their treaty settlements and are

prepared to change this situation is encouraging. An Independent arbitrator to mediate between the Crown and Māori over treaty settlements and the entrenchment of the Treaty of Waitangi are proposed changes that will bring about a major change in Aotearoa.

The next chapter focuses on the topic of this research, “Public Servants” and traces their origin, growth and development since the signing of the Treaty of Waitangi in 1840. Major decisions that have impacted Māori have their genesis in the deeds or misdeeds of public servants.

CHAPTER FIVE

PUBLIC SERVANTS

5.0 Chapter Introduction

"The job I am doing is a public service. I have always believed there is no profession I know of that can do so much harm to people or one that can do so much good to people at the same time. And it can be done at tremendous speed." Winston Peters. (Watkins. 2020, August 09).

5.1 The Crown, Public Service and Public Servants

The arrival of sealers, whalers, missionaries and merchants to Aotearoa in the 1700s and early 1800s signalled the beginning of trade with Māori. Mutu (2019b) describes the Māori tikanga process where settlers were welcomed in Aotearoa and given land to live on so they could contribute to the well-being of the country. Unfortunately, the vast majority chose not to abide by the law of the land, instead adopting the European cultural "Doctrine of Discovery". A doctrine that endorses the supremacy of white people over all other races, cultures, religions and dispossession of native land (Mutu, 2019b). Ngata (2019) reports that the doctrine is an international legal concept derived from a number of Catholic laws issued by the Vatican in the 15th and 16th centuries. It allowed the sovereignty of Europe and Britain to conquer and claim lands, and to convert or kill the indigenous inhabitants of those lands. Ngata goes on to say that the doctrine provided a precedent for the alienation of land by the Crown in Aotearoa.

The lawlessness of the settlers eventually led to delegations of Māori rangatira (chiefs) sailing to Britain seeking an audience with King George IV followed by King William IV and after his death, Queen Victoria. The purpose of these visits was to seek protection from the disorder caused by these new British settlers and to raise the spectre of a takeover by the French of Aotearoa. The delegation's requests were normally referred back to the governor or government of Aotearoa to address (The Treaty, in brief, 2017).

Orange (2004) claims at that time the London-based New Zealand Company were looking to purchase Māori land to allow for the settlement of British citizens in Aotearoa. The threat of European investors purchasing large amounts of land in Aotearoa prompted the British government in 1839 to act.

In January 1840, acting on the instructions of Lord Normanby Lieutenant-Governor William Hobson was tasked to take possession of Aotearoa with the consent of local Māori (The Treaty, in brief, 2017). Hobson had been instructed to explain to Māori why they should support the Treaty of Waitangi, to highlight the dangers they would likely face from unruly Pākehā settlers, also the need to have laws and to recognize the Queen as Sovereign of Aotearoa to ensure their protection (Ministry for Culture & Heritage, 2016).

With the assistance of his secretary James Freeman and James Busby (the British resident in Aotearoa at the time), Hobson drafted the English version of the treaty. They then engaged the assistance of missionaries Henry Williams and his son Edward Williams to draft a Māori version of the Treaty of Waitangi (Ministry for Culture & Heritage, 2016). It could be argued that Hobson, Freeman, Busby and the Williams comprised the first "public services" and "public servants", working for the Crown represented by Queen Victoria of Britain.

From the drafting of the Treaty of Waitangi in 1840, the role and presence of the Crown, public service and public servant began to evolve. Prebble (2010) says once the British had obtained consent from Māori, they were quick to establish Crown jurisdiction, the rudiments of parliament, courts, cabinet government and public service.

It was the public servants who were involved in the drafting of the Pākehā and Māori versions of the treaty, and to this day confusion still reigns over the interpretation of what particular words mean. It was public servants who were instrumental in drafting legislation like the Native Lands Act 1862 and the Suppression Rebellion Act of 1863 which legitimized the theft of Māori land. It is the public servants now meeting with iwi treaty settlement negotiators and demanding they provide evidence and proof of their grievance to the very entity that created the injustice.

5.2 Crown

The term Crown means different things to different people. Does it only apply to our elected government officials based at the beehive in Wellington? Or does it refer to the multiple public service entities and their public service staff who work in Wellington (and around the rest of the country) for the Minister in charge of their departments? Hayward (1995) says the term Crown is associated with the arrival of the Queen of England to Aotearoa who was identified in the Treaty of Waitangi at the time of its signing. The Queen's authority was used by the British and colonial ministers of the Crown after the treaty signing.

As the activities and functions of the Crown began to increase and expand, the question of who or what is the Crown also became a matter of considerable significance. The Office of Treaty Settlements (2006) says the executive branch of the government comprises the Governor-General as the Queen's representative as the head and the Cabinet which includes the Prime Minister and Ministers for Treaty of Waitangi Negotiations, Finance, Māori Development, Conservation and other ministers and their departments is the Crown.

The term Crown, Public Service and Public Servant are interchangeable with different perceptions held depending on what the individual's interaction is with the various public entity. Hayward (1995) talks about the consistency in the identity of the Crown, he says on inspection there are several organisations and individuals involved in treaty negotiations in Aotearoa which are identified as being the Crown. He says that the Crown was most often used as a metonym for government, it was also applied to a wide range of individuals and institutions involved in treaty negotiations. Prebble (2010) provides a broader definition when speaking about the perception of the public and their dealings with Crown officials. He cited as examples the occasions when a member of the public out fishing on a remote east coast beach was challenged by a fisheries officer because they are suspected of poaching; or the clerk who works in the Work and Income office in Manukau who declines an application for a benefit or the Department of Conservation

ranger who collects hut fees. In each of these instances, the public believes that they are dealing with the Crown.

Prebble (2010) said the home of the Crown in Aotearoa is Wellington; this is where members of parliament meet, where numerous subcommittees are formed and reformed, sometimes as working groups, sometimes as officials' committees and sometimes as ministerial or parliamentary groupings. He says the business of the Crown involves a lot of people undertaking a variety of duties.

5.3 The Genesis of the Public Service

The State Sector Act 1998 (repealed with the new Public Service Act 2020), section 27 - defines public service as comprising departments (and any agencies that are part of those departments). Prebble (2010) simplifies the definition further by saying most people would understand that when referring to public service you are talking about the various department and agencies of government.

The civil service in Aotearoa originated as an arm of the New South Wales government at the time of the colony's founding in January 1840 (State Services Commission, 2013). The terms civil service and civil servant were commonly used until 1912 when they were officially replaced with public service and public servant (Shaw, 2012). Until the early 1900s, the civil service operated based on political patronage. Initially, this meant that the governor had the personal power to hire, fire, promote and discipline civil servants (Shaw, 2012).

By the end of 1840, the civil service numbers had increased to 39 staff, all of whom were based in Auckland and were personally controlled by the governor of the colony (Ministry for Culture & Heritage, 2016). From 1840 to 1953, the Crown Colony grew slowly but exploded during the provincial period (1853–76), with 1602 persons employed by 1866, by the central government. The services the state provided at that time included a judicial and criminal system as well as infrastructure to administer property ownership and record it. It also provided taxation and postal services as well as public works and mental hospitals, among other things. Some provinces were abolished in 1876, and the central government took many of their tasks (Henderson, 1990).

According to the State Services Commission (2013) the ability to speak Māori in those early days was a necessary skill for employees undertaking the business of the State. Henry Kemp, arguably the first New Zealand-born civil servant was fluent in te reo and responsible for purchasing 15,551,400 acres of land for £2000 from Ngāi Tahu, leaving them with a paltry 6,359 acres. This was despite receiving directions to ensure Ngāi Tahu were left with sufficient land to live on (Te Rūnanga o Ngāi Tahu, 1997b).

Polasckek (1958) said males were the majority workforce at the time and believed their job in the public service was a lifetime commitment. Those applying would be required to pass an entrance examination and would have to put aside their own political opinions in the interests of an impartial public service. Though it was claimed during Prime Minister Richard Seddon's term in office 1893-1906 he would regularly bypass this process by temporary appointment and the service was rife with favourable appointments (Prebble, 2010). The State Services Commission (2013) describes the skill level of the Crown's employees at that time as being diverse and varied, from highly qualified top managers to technologists, typists, and teachers to road workers and quarantine inspectors evaluating animals at ports.

In 1914 the public service comprised 33,000 permanent employees who were employed in several areas including teachers, police, railway workers and post and telegraph staff. There were also 16,000 temporary staff who were employed in railways and public works (The Public Service, 1914).

It took the intervention of the Second World War for the male dominance of the Public Service to weaken, with most of the eligible young men being called to military service. This led to women in their thousands being recruited to join the public service full time and the old rule that women who married had to immediately resign, dropped. (State Services Commission, 2013).

In the 1980s, Aotearoa earned the label of a world leader in public management as a result of the significant reforms in the public sector. These free-market reforms were introduced by the David Lange led Labour party following the July 1984 snap election defeat of Prime Minister Robert Muldoon's National Government. During this period legislation,

including the State Sector Act 1988 (repealed with the new Public Service Act 2020), the Reserve Bank of New Zealand 1989, the Public Finance Act 1989 and the Fiscal Responsibility Act 1994 were introduced. Before the introduction of these reforms Aotearoa was a heavily regulated economy, the public management system lacked clarity around the Crown's strategic objectives and budget statements were usually yearly focused (Whitcombe, 2008).

For the public service, the 1980s reforms meant Aotearoa's heavily regulated economy was transformed. Government departments were corporatized and restructured into commercially driven organisations while others were sold off to private investors. For the public servant, their job for life was no longer guaranteed. Aotearoa financial market was deregulated, and foreign exchange controls and tariffs were removed. Local producers had to compete with cheaper imports into the country. The impact on the manufacturing industry was the loss of thousands of jobs and the loss of farms for some farmers. But the group that felt the reforms hardest were those Māori who had been employed in several previously government-managed industries and other industries like the freezing works. From an unemployment rate of 10% before 1992, the unemployment rate had increased to 25% for Māori (Whitcombe, 2008).

By 2018, public sector staff numbers had increased considerably to 403,000 people (headcount), comprising 18% of New Zealand's total workforce (2,238,000) (State Services Commission, 2018). The majority (88%) worked in the State Sector (354,000) and 12% in the Local Government (49,200) Workforce (State Services Commission, 2018). Compared to previous years, there were now numerous departments working in the public service including the Ministry of Social Development, the Ministry of Education, the Ministry of Justice and the Ministry of Business, Innovation and Employment (Public Service Act, 2020). Prebble (2010) maintained that the roles and functions that each department performed had also changed considerably, departments like the Inland Revenue Department could compel households and businesses to pay taxes, police could imprison people and use force to maintain order and agencies like children and young person's services could take children away from their parents.

The Public Service Act (2020) states that its main purpose is to support the duly elected government to form and administer its policies and provide efficient, effective and lawful

services that enable them to follow their long-term public interest objectives. Palmer and Palmer (2004) said that many government departments act like the machinery of the executive government by providing the ministers with information and advice and following and acting upon any directions they receive. Each of the departments is headed by a chief executive responsible for the department's performance and ensuring the five public service principles of political neutrality, free and frank advice to the Minister, merit-based appointments, open government and stewardship are followed (Public Service Act, 2020). Palmer and Palmer (2004) also stressed that public accountability and public debate on behalf of the Crown rested with the ministers.

Prebble (2010) says Parliament and the public service may make up parts of the machinery of the Government, but they are within different branches of Government. Parliament is the legislature, and the public service is part of the executive; the public service does not serve Parliament. The public service works for ministers and ministers account to Parliament. It is the tens of thousands of public servants and the hundreds of thousands in the state service in general who do the work of governments. They act under the authority of parliamentary statutes but not under the parliamentary direction (Prebble, 2010).

Norman (2005) said the effectiveness of the economies of countries and cities is defined by the effectiveness of their public service. He points to the variety of roles they perform including, maintenance of law and order, management of the environment, education, health and social welfare systems to name a few. Prebble (2010) spoke about the hierarchical system that operates which places these activities in some order under the authority of ministers and using the power granted by parliament.

5.4 State Sector Act

In 1912, following the Hunt Royal Commission, the Public Service Act was enacted. This Act signalled the end of public appointments by members of parliament with their own bias and the establishment of a system based on statutory rules, procedures and regulations. Government departments originally administered by ministers were merged into public service. Appointments within the department were now made on merit and the

hiring, firing and promotion of public servants were now managed by the newly created Public Service Commission (Shaw, 2012).

Following the 1962 review by Justice Thaddeus McCarthy who had been tasked to look at a more efficient, effective and improved public service, the Public Service Act 1912 was replaced by the State Services Commission. The role of the Commission among other things would be to advise on management, auditing, staffing, pay to fix across central public services and labour relations (State Services Commission, 2013).

In 1987, the David Lange Labour Government sought to make changes to a public service they saw as highly conservative and centralized. The State Sector Act of 1988 (repealed with the new Public Service Act 2020), was enacted and permanent heads of government departments were now replaced by chief executives on fixed-term contracts. These chief executives were responsible for employing all of their personnel and for the efficiency and successful operation of their departments. Public jobs were no longer regarded as "jobs for life" and labour relation rules were implemented (State Sector Act, 1988).

How departments controlled their funds was also drastically altered. Previously, each department was financed based on the cost of its inputs, such as overhead and wages. The Public Finance Act of 1989 flipped that structure on its head, focused on outputs and results, which meant departments were financed based on the cost of the goods and services they delivered (Shaw, 2012). The Act also changed the form of the public service and gave ministers some say over their department chief executive appointments (State Sector Act, 1988).

Kelsey (1993) said that government departments no longer functioned as solid bureaucracies led by tenured officials. Instead, the new state sector entrepreneurs were forced to implement private sector line management, which included primary responsibility for hiring, negotiating, and holding employees accountable. It didn't matter if they had little or no prior familiarity with the substantive activities of their department. They were just there to manage the public sector and introduce market efficiencies to it.

The glaring omission from both of the Acts was the lack of recognition in any form of the Treaty of Waitangi (Kelsey,1993). The only acknowledgement of anything Māori is

located in section 56 (2) (d) of the General Principles (State Sector Act,1988) heading, which states that chief executives must recognize the goals, aspirations, and employment requirements of Māori people as part of being a good employer, as well as the need for greater Māori involvement in the public service.

Henare (2014) described the State Sector Act (repealed with the new Public Service Act 2020), as an oddity not reflective of the social fabric of New Zealand society since it did not acknowledge the treaty. He advocated for the need for a treaty clause to be part of the Act that recognized Māori citizens' rights to be Māori and the importance of Māori public servants. Mahuta (2014) expressed disappointment that the State Sector Act (repealed with the new Public Service Act 2020), did not recognize the Treaty of Waitangi. She highlighted that if relationships and partnerships between the Crown and Māori were going to develop, what was required was a transformation within the state sector and that change depended on recognition of the treaty within the State Sector Act.

In 2019, the Labour Party indicated that they would shortly introduce legislation to replace the State Sector Act and in 2020 the "Public Service Act" was enacted. The new act specifically set aside provisions within the legislature recognising the public service commitment to Māori. A characteristic of the new act is the requirement on public servants to assist the Crown in fulfilling its responsibilities under Te Tiriti o Waitangi/the Treaty of Waitangi. The Honourable Chris Hipkins who was the Minister in charge of the public service at that time said what is beneficial to Māori is beneficial to Aotearoa, and when Māori outcomes are enhanced, the country is strengthened (Beehive.govt.NZ, 26 June, 2019). His comments echo those of Mahuta (2014) made five years earlier when she spoke of the importance of the new relations between the Crown and Māori in post-settlement settings.

5.5 Public Service responsible for treaty settlement negotiations

In 2018, the Labour government initiated a complete overhaul of Māori and Crown relations and established a new agency to oversee the Crown's work with Māori in a post-treaty settlement era (Te Arawhiti, 2019). This new entity usurped the role and functions

of the office of treaty settlements; the entity previously responsible for dealing with treaty settlement negotiations on behalf of the Minister for Treaty of Waitangi Negotiations.

The agency created was, 'The Office for Māori Crown Relations – Te Arawhiti' with the Honourable Kelvin Davis as the minister in charge. Te Arawhiti brought together the following government departments: Māori Crown Relations Rōpū, the Treaty Settlements Rōpū, the Takutai Moana Rōpū and the Settlements Commitments Rōpū.

The strategic focus of Te Arawhiti is centred on three foundations, the first "is Reset", which is about the mahi that needs to be done. This includes settling historical treaty claims, resolving contemporary claims that have been allowed to drag on and engaging with Māori on takutai moana. The second "Sustain", was all about supporting the treaty settlement doctrine. This meant ensuring Crown agencies are supported when actively engaging with Māori and at the heart of the policy development is the relationship between Māori and the Crown. Lastly, "Build" encourages more public service staff to work with Māori, broker Māori Crown relations and assist all agencies in the community to work together (Te Arawhiti, 2019).

Te Arawhiti's key responsibilities are:

- Completing treaty settlements (under the leadership of the Minister for Treaty of Waitangi Negotiations);
- Administering the Marine and Coastal Area (Takutai Moana) Act 2011 (under the leadership of the Minister responsible for applications under the Act);
- Ensuring that the Crown fulfils its treaty settlement commitments;
- Developing principles of participation, co-design and partnership that ensure agencies generate optimal solutions across social, environmental, cultural and economic development;
- Ensuring public sector capability is strengthened;
- Ensuring the involvement of public sector agencies with Māori is meaningful;
- Providing independent opinion from all governments on the health of the Māori Crown relationship;
- Providing strategic leadership and advice on contemporary treaty issues;
- Brokering solutions to challenging relationship issues with Māori;

- Coordinating significant Crown/Māori events on behalf of the Crown;
- Providing strategic advice to the Minister for Māori Crown Relations: Te Arawhiti on the risks and opportunities in Māori Crown partnerships; and
- Any other matter for which the Minister for Māori Crown Relations: Te Arawhiti has a portfolio interest, such as work on the constitutional and institutional arrangements supporting Crown/Māori (Te Arawhiti, 2019).

5.6 Public Servants

The term 'civil servant' dates from 1785, when it was used to describe employees of the East India Company who did not work for the army or the navy. It was first recognized in Aotearoa in the 1858 Pensions Act, where a retirement pension was made available to civil servants who were unable to work due to poor health or old age (Shaw, 2012).

The State Sector Act 1988 (repealed with the new Public Service Act 2020), describes a public servant as an employee of the public service and includes the chief executive or a person appointed to a statutory role. The Electoral Act 1993, defines public servants more broadly including persons deployed in the Education Service as well as employees of tertiary education institutions and school boards of trustees.

Hartley et al. (2013) claims that the public service is accountable to governments that by definition are political in nature. For public servants, this presents a difficulty as they are regularly involved with politicians both formally and informally. Public servants need to be astute as they are expected to be politically neutral and not show any bias whilst serving the interests of the Crown in power. They are also expected to work across a wide range of diverse groups including, other government entities, consumer lobbyists and advocates, and media all with competing interests. Given the changing work scenarios, the need to possess both technical and political skills in negotiations is essential.

Prebble (2010) maintains that the public servant must be subordinate to political leadership as determined by the principles of the rule of law and the consent of the people. This is communicated through the responsibilities of the chief executives of public service

departments to ministers or through a board to the minister in the case of Crown entities. In turn, the Minister is responsible to Parliament. Ward (1999) talks about the public official's effectiveness and their ability to constantly filter advice ministers receive through party political lenses as they work out how it can best be used. The good official recognises that and adjusts the advice to meet the minister's needs.

Bromell (2010) admits that, as an advisor to the Crown the public servant must ensure what they are saying is the truth and that the advice is free and frank. To ensure the confidence of present and future ministers, parliament and the public is maintained, the advice must also be professional and politically neutral.

Prebble (2010, p. 34) described the functions of the public servant as follows:

- They are loyal to the Government of the day.
- They accept the authority of the Government and work to the best of their ability to carry out the Government's program in the office, within the law.
- All public servants are non-political members of the executive, so they are not involved in the political contest.
- All public servants are accountable to their minister, who is a member of Parliament and is accountable to Parliament for his work (some are indirectly accountable to a minister through their board).
- It is inevitable and commonplace that officials are swept up in parliamentary contests.
- Public servants are administrators who come from a managerial culture.
- Ministers and Public Servants who work together can surprise each other with their different assessments of priorities.

Alan Duff (1997) had a different view of public servants than Prebble. He described public servants as a wolf dressed in their clothing:

His forehead drips with the sweat of your efforts, his teeth with your blood. He is everywhere and forever. He is a form of super-virus; you can't kill him. Only aiming for reduced Government will save us from it, though never fully. He always finds a way to invade the host cell and assail it with his array of tricks. He is Mother Nature's way of

keeping the DNA of mediocrity and immorality alive and flourishing. He is the grouped-together collective of nobody to become a single force of someone. Mess with him, even poke out your tongue, and you'll find out. He inhabits a zone called your place and renamed it our place (Duff, 1997).

Throughout treaty settlement negotiations the public servant iwi negotiators deal with is the Chief or Lead Crown-appointed treaty negotiator (Crown negotiator). The Crown negotiator reports to the Minister of Treaty of Waitangi Negotiations and is contracted by the Director of the Office of Treaty Settlements and works closely with the office of treaty settlements staff. The Crown negotiator is responsible for establishing strong relationships with iwi negotiators and Māori leaders, settling negotiations strategies and closing negotiations (Office of Treaty Settlements, 2017).

5.7 Māori Public Servants

In the 1980s, due to the economic reforms, Māori working in the public services including the post office, railways and forestry suffered major job losses. These reforms continued into the early 1990s affecting other industries like the freezing works where Māori again suffered job losses. In 1986, Māori comprised 8% of the total workforce and by 1992 they accounted for 26% of the decline in employment. In 1992, the general unemployment rate was 10% and Māori was at 25% a dramatic increase (Keane, 2010).

In May 2019, Māori made up 15.5% of the public service and tended to be concentrated in several major government departments, such as the Ministry of Social Development, Oranga Tamariki, and Corrections. They mostly performed frontline functions in these departments, such as social workers, probation workers, and prison officers and were underrepresented among senior staff and chief executives within the public service, with Te Puni Kōkiri being the only exception (Public service workforce data report, 2018).

Given the significance of the role and the importance of the outcome for Māori the expectation when meeting with staff from Te Arawhiti (formerly office of treaty settlements) or other related treaty entities is that there would at least be some sprinkling

of colour across the table. Gardiner (1996) distinguishes the class of public servants and strongly advocates for a Māori presence within the state sector. He says that bureaucrats and politicians alike should be aware that when designing solutions for Māori, it is not simply a matter of using the template used for non-Māori. By now, such practices should be well and truly discredited. Māori public servants point out the unique characteristics that make Māori what they are.

During the term of Ngāti Manuhiri's treaty settlement negotiations, the presence of a Māori public servant involved in the process was almost non-existent. The office of treaty settlements had appointed a non-Māori lead Crown negotiator as well as two non-Māori staff members who were tasked to work alongside Ngāti Manuhiri negotiators to clarify and refine the details of agreements and undertakings made. The lead Crown negotiator had a dual reporting role initially to the Minister for Treaty of Waitangi Negotiations "The Right Honourable Douglas Graham" and then with Graham's successor "The Right Honourable Chris Finlayson" both non-Māori. His other reporting role was to the director of the office of treaty settlements again a non-Māori. The only time a person other than a non-Māori was involved in OTS was when a staff member of Pacific islander ethnicity assisted in a specific phase of the treaty negotiation work. There was no Māori staff involved in discussions held with representatives from the Ministry of Education and the Ministry of Justice (M. Hohneck, personal communication, August 12, 2016).

The Department of Conservation was the only public department that had two Māori staff involved in some of the lower-level discussions for a short period. Both staff members were eventually replaced by non-Māori Department of Conservation staff (M. Hohneck, personal communication, August 12, 2016). Whether Māori staff would have made any difference in the negotiation process is a moot point, their absence was not only noticeable but a sad indictment on the Crown who tout diversity and inclusiveness as essential to providing better policies and services to improve the lives of all New Zealanders (Te Kawa Mataaho Public Service Commission, 2022).

Gardiner (1996) spoke about the drive within Te Puni Kōkiri to recruit young and well-educated Māori to secure their identity. He went on to say that the main issue these young Māori faced when meeting with their peers, was the assumption they were on the Māori side of the discussion, and as a consequence, their advice was discounted accordingly. He

said there seem to be different criteria applied and noted that non-Māori public servants who are, conservationists, environmentalists and free-marketeers are not required to reveal their conflicts, unlike Māori are expected to do.

Henare (2014) describes the benefit of Māori public servants working in the public service. He talks about the signing of the Treaty of Waitangi in 1840 and the commitment Māori made at the time and which they continue to honour today, that all settlers who live in Aotearoa would be protected under the treaty. He says all Māori public servants were there to protect the people and uphold the treaty's principles.

5.8 Iwi expectations of public servants involved in treaty negotiations.

Throughout this research, there have been comments made by iwi negotiators about the behaviour of the public servants involved in treaty settlement negotiations. Sir Tipene O'Regan spoke about the financial hardship and the lack of resources Ngāi Tahu faced, and the Crown's efforts to try and starve them financially from settling (Price, 2001). Mahuta (1995) spoke about the deliberate efforts of the Crown to prolong and deliberately delay the treaty settlement process. Hohneck (personal communication, August 12, 2016) complained about the staff turnover in the office of treaty settlements which meant any new staff members joining the team had to be briefed again on the settlement progress.

Iwi Negotiators for Te Arawa (Waitangi Tribunal Report, 2007b) when addressing the Waitangi Tribunal had the following comments to make about their expectations of public servants involved in treaty settlement negotiations:

> "We expect from the office of treaty settlements (OTS) officials a sophisticated understanding of the many dimensions of the Māori world within which they are operating when they negotiate settlements. We think such a high standard is appropriate. If that means half-informed good intentions, it is not enough for the Crown to act in good faith. To act fairly and protect the interests of all groups with which they deal in the context of a settlement, OTS officials must be highly skilled. They must have a sophisticated understanding of how Māori communities operate in general, particularly how the ones in question operate. If they do not

> have these understandings, how will they appreciate how much there is to know or develop an instinct for when they do not know enough? It is a hard job and a demanding one because the honour of the Crown is on the line, and the durability of these settlements, and the quality of the relationships that spring from them, will depend in large measure on how well these officials perform. It is, as they say, a big ask. But it is one underpinned by the treaty principle and the imperative of fairness. We should not hesitate to insist on high standards when lower ones can have such serious and long-lasting consequences (Waitangi Tribunal Report, 2007b, p. 25)."

5.9 Treaty Settlement Process

According to Belgrave (1992), negotiations between Māori and the Crown commenced before the signing of the Treaty of Waitangi in 1840, and have continued up to the current period of treaty settlements. For the first two decades, the Crown and iwi Leaders dealt with each other directly instead of involving a broad range of iwi. Despite the treaty promising a relationship between rangatira and the Crown, except George Gray, governors sought to distance themselves from day-to-day negotiations with iwi. Instead preferring to work through intermediaries, protectors of aborigines and later native land purchase officers. The Crown also used the courts, commissions of inquiry and select committees to also distance itself from direct negotiations. Belgrave (1992) describes the early period of direct negotiations between the Crown and Māori as strained. Trying to navigate through the complexity of traditional Māori rights and at the same time cognizant of the insatiable demand of settlers to obtain land free of native title cited as the causes.

Following the enactment of the Treaty of Waitangi Act in 1975 and the establishment of the Waitangi Tribunal, Māori now had an avenue for their grievances against the Crown to be heard. Initially, the Tribunal could only investigate Crown and other state-managed entities' breaches of the treaty that happened after 1975. The Tribunal as a permanent commission of inquiry had the authority to accept and report on claims and recommend alleged breaches of the Treaty of Waitangi principles by the Crown (Ruru, 2010).

The limited powers of the Tribunal frustrated Māori and led the Labour Government in office at that time to propose an amendment to the Treaty of Waitangi Act 1975. The change sought was to give the Tribunal retrospective powers to investigate all historical claims and settlements back to 1840 (Wheen & Hayward, 2012). While the treaty settlement process resolved many notable deeply entrenched resentments, it has also been criticized by various people, ranging from those who believe the reparation is grossly inadequate to compensate for Māori setbacks to those who believe there is no value in rehashing excruciating and acrimonious racial issues (L. Haddon, personal communication, August 09, 2010).

In the 1980s, the importance of the Treaty of Waitangi to Māori proved to be the catalyst for subsequent litigation in the Courts of Aotearoa. Wheen and Hayward (2012) said the first legal challenge involved the attempted transfer of some state functions to new state-owned enterprises by the Crown. The rationale for the change is to allow the new entities to operate as profitable businesses. The subsequent challenge by Māori that the possible transfer of land by the Crown to the new entities was in breach of the treaty principles was subsequently upheld by the Court of Appeal (New Zealand Māori Council v Attorney-General, 1987). The decision required the Crown to enter into negotiations with Māori. The second legal challenge resulted in the establishment of the Crown Forestry Rental Trust and confirmed that treaty principles would apply when transferring forest assets. The final legal challenge was the introduction of a quota management system for fisheries which became the forerunner to the later Sealord deal negotiated between the Crown and Māori (Wheen & Hayward, 2012).

Wheen and Hayward (2012) argued that the Crown was under some pressure because of Māori successes in the courts and began a deliberate strategy to regain political control over treaty claims. In 1990, the Minister of Justice Geoffrey Palmer announced a new process for dealing with treaty claims. To avoid the long and difficult process of an inquiry by the Waitangi Tribunal claimants could now negotiate directly, with the Crown (Belgrave, 1992). Scholtz (2006) has described land claim negotiations as a bartering site that allows the Crown to enter into a good faith effort to address past wrongs and build an enduring basis with indigenous people. McLay (1995) when commenting on the role of negotiations in treaty claims said there is an expectation that negotiators will play an

active and influential role not merely in the implementation of policy, but the policies design.

McDowell (2018) admits at that time the Minister for Treaty of Waitangi Negotiations, Douglas Graham believed that settling treaty settlements was a political decision for the politicians and not one for the courts or for Māori to decide. He says the main reason why the Crown decided to settle treaty claims was to side-track Māori away from their legal rights, restrict their financial liability, and placate non-Māori acceptability of treaty settlements. The Minister believed that once Māori were in the direct negotiation process, they would be powerless and at the mercy of the Crown, whose main goal was self-preservation. Mutu (2018) maintains that the treaty claims process was introduced by the Crown to claw back Māori legal rights; extinguish all Māori claims and entrench colonization.

Wheen and Hayward (2012) outlined the challenges for the newly elected National government in 1990, which had campaigned on a policy of settling all Treaty of Waitangi claims. Douglas Graham was appointed the first Minister for Treaty of Waitangi Negotiations and remarked at that time they were well aware of the task that lay ahead of them but had very little knowledge as to how they would go about it. The National Government with very little time to consider the intricacies of the task ahead was immediately involved in negotiations with Māori, initially with the 1992 Sealord deal. Mikaere (1997) says the Sealord deal was to have major ramifications for future treaty settlements. As part of the agreement, Māori accepted the fiscal constraints the Crown faced and acknowledged that future treaty settlements would be affected by the deal.

5.10 Fiscal Envelope

In 1994, the National Government publicly called for a debate on resolving all treaty settlement claims. The government had signalled earlier in the 1992 Sealord deal that it was considering a total sum to cover all settlements and indicated that whatever figure they arrived at could not be regarded as replacement compensation for what Māori had lost (Hill, 2009).

In 1994, the Crown published the "Crown Proposal for the Settlement of Treaty of Waitangi Claims" which outlined the figure of $1 billion to be set aside to resolve all outstanding greaty claims. In 1995 the "Treaty proposal" which became known as the 'Fiscal Envelope" was taken to Māori throughout Aotearoa for consultation with the only non-negotiable issue being the $1 billion fiscal cap.

Kelsey (2002) when commenting on the fiscal cap said a genuinely based treaty settlement would have involved discussions between the Crown and iwi on terms of parity with each able to pick their representatives to speak on their behalf. Instead, the non-Māori government unilaterally decided what the treaty means, what the grievance process used would be and what the outcome would be on a take it or leave it basis.

The Crown tasked the Chief Executive Officer of Te Puni Kōkiri Wira Gardiner along with his staff (the majority of whom were Māori) to assist them as they travelled around the motu consulting with Māori. During their travels, Gardiner and his staff were challenged repeatedly by Māori who questioned the role they played in assisting the Crown to deliver their message. There were frequent calls accusing Te Puni Kōkiri staff of being kupapa and traitors. At the consultation hui held up at Waitangi, people tried to spit at Gardiner and he was involved in a physical confrontation with one of the protestors who were strongly opposed to the Crown's proposal (Gardiner, 1996).

Gardiner (1996) highlighted several issues his staff encountered as they travelled the country with the Crown. He spoke about the split loyalties that existed at that time, owing first loyalty of duty to their employer the Crown, but cognizant of their obligations and duty to their tribe. The problem was exacerbated even further when helping to deliver the Crown's message but at the same time secretly agreeing with the view of the Māori. Ward (1999) highlighted the various emotions experienced by Māori public servants who were called upon by protestors to leave their jobs without any consideration of how important a role Māori staff played in the development of policies for the mainstream agencies.

In response to Māori's response to the Crown proposal, Coxhead (2002) spoke of Sir Hepi Te Heuheu calling a hui at Hirangi Marae in Turangi in January 1995. The hui was attended by several prominent Māori who raised several concerns about the "Fiscal Envelope." This included a lack of consultation with Māori, the unilateral decision taken

on how claims would be settled, settlement principles that did not recognise the Treaty of Waitangi and a proposal designed to appease the general populace. As to be expected the response from Māori was a complete rejection of the Crown's proposal document. The Crown also received approximately 2,077 submissions to the proposal, many of whom rejected the Crown's proposals as flawed because of the lack of consultation involved, the unjustness of the fiscal envelope and called for the Crown to renegotiate with iwi (Coxhead, 2002).

5.11 The influence of the public servant on treaty settlements

In 2015, Professor Margaret Mutu and Doctor Tiopira McDowell supported by kaumātua, kuia and research assistants, initiated major research on the impact that treaty claims, settlement policy and the process had on Māori (Mutu, 2019b). Valuable Information about the impact of the Treaty of Waitangi and interaction with the Crown and public servants was provided by over 150 claimants and their negotiators (Mutu, 2019b).

Those iwi negotiators involved in the treaty settlements with the Crown had the following comments to make about the impact of the Crown and the public servants on treaty negotiations:

- Public Servants and ministers frequently mislead claimants and misrepresent facts to entice claimants into negotiations and then push settlements through.
- Crown adopts divide-and-rule tactics and pursues them ruthlessly. Claimant negotiators report almost without exception that the divisions and conflict caused will take generations to repair and heal.
- The Crown requires negotiations to be conducted confidentially. This puts negotiators under enormous pressure from their people who demand openness and honesty in all matters.
- Negotiators report that there is no negotiation, the Crown dictates.
- Deeds of the settlement are lengthy, dense, legal documents that obscure numerous undisclosed conditions imposed by public servants, including the removal of rights.

- Public servants conducting the negotiations fully exploit the gross inequality between the Crown with its endless resources and the material poverty of claimants, often running claimants into the ground financially to facilitate the imposition of a 'settlement.'
- Negotiators frequently report being bullied by public servants and Crown agents and many reports having settled under duress. As a result, many do not accept the Crown's apologies as they are meaningless.
- The Crown refuses to recognise or uphold mana and tino rangatiratanga in negotiations or settlements and refuses to discuss or negotiate the settlement of colonisation.
- Many report the Crown refusing to discuss Waitangi Tribunal reports upholding their claims. International standards New Zealand has agreed to, such as the United Nations Declaration on the Rights of Indigenous Peoples, are also banned from both negotiations and settlements (Mutu, 2019b. p. 11).

5.12 Crown guidelines

The Crown process of dealing with treaty settlements is outlined in a booklet described by several iwi negotiators as the "Red Book" (Office of Treaty Settlements, 2006). The book title is written in both Māori: Ka tika ā muri, ka tika a mua, He Tohutohu Whakamarama i nga Whakataunga Kerēme e pa ana ki te Tiriti o Waitangi me nga Whakaritenga ki te Karaunau and English: "Healing the past, building a future, A Guide to Treaty of Waitangi Claims and Negotiations with the Crown." The booklet provides a historical background to treaty grievances and settlements and outlines how the settlement policy has evolved. The book aims to provide claimants with sufficient information to enable them to settle their treaty claims (Office of Treaty Settlements, 2006). The booklet contains very little iwi input into the negotiation process and outlines the mandatory steps the Crown insists claimants must follow for a treaty settlement to occur.

Another booklet designed to assist those claimants considering filing a treaty settlement claim is "Aratohu Mo Nga Rōpū Kaitono, Guide for Claimants Negotiating Treaty Settlements," which was commissioned by Crown Forestry Rental Trust in 2007.

Contributors to the booklet include claimants, Crown negotiators, public sector personnel and legal minds, and were also subjected to peer review by a similar number of experts.

Although instructive in nature, the narrative in "Aratohu Mo Nga Rōpū Kaitono, Guide for Claimants Negotiating Treaty Settlements," leaves the reader with the impression of a group dancing to or pandering to the beat of the Crown drum. Throughout the book, the burden of proof or responsibility to prove the legitimacy of their claim rests entirely with the claimants. The government seemingly accepts no culpability or accountability for their actions. The situation can be likened to the "Sword of Damocles," where at any moment impending disaster (with the sword dropping) awaits those claimants who fail to follow the Crown process (Hirst, 2021). The reality being when the Crown does not get its way, its response is to quit negotiating and put the claim on hold. Furthermore, the Crown could change the settlement process at any time without repercussion because of the courts' reluctance to treat the Settlement process as anything other than political and therefore non-justiciable (Mutu, 2019b).

Ester Grey of Te Uri o Hau (Crown Forestry Rental Trust, 2003, p.10), compared the negotiation process to that of a game of poker, where the Crown had all the cards and always won the game. She went on to say that the settlement redress was already predetermined before negotiations even commenced.

Harris and Takarangi (Crown Forestry Rental Trust, 2003, p.47) spoke about the negotiations with the Crown being a one-sided process where they had very little say in the composition of the document. They spoke about the Crown insisting on specific words they wanted in the document for external readers of the document. They said the Crown kept on talking about a fair comprehensive final durable settlement whether the iwi negotiators agreed with it or not.

Professor Margaret Mutu (2019b) identified several reasons why she initiated the research project on the effect the New Zealand treaty claims settlement policy has had on Māori. This included, Māori not being joined or involved in the discussion and literature on the policy and the process, and providing information for those still trying to resolve their Treaty claims.

5.13 Crown restricted at every stage of the negotiation process

Through every stage of the treaty settlement negotiation process, there are hurdles and barriers that iwi negotiators must overcome if they are to proceed through each step toward a completed treaty settlement. A mistake or failure to adhere to Crown policy may not necessarily be fatal but will lead to lengthy delays or in some cases the settlement going to the back of the priority list as the issues are worked through to the satisfaction of the Crown (M. Hohneck, personal communication, August 8, 2016). The negotiator for Ngāti Tama, Greg White, (Crown Forestry Rental Trust, 2003, p.15) highlighted the issue of a particular sentence the Waitangi Tribunal appointed historian had written as part of Ngāti Tama historical account. The Crown refused to accept the historian's evidence despite a lengthy discussion on the issue, in the end, the Crown said to take it or leave it, a view which was supported by the Minister.

In pre-negotiations, it is up to the hapū or iwi to register their claim with the Waitangi Tribunal and at their own expense, usually assisted by professional historians or specialists to build a case that satisfies the Crown they have a legitimate grievance (Ward, 1999). The office of treaty settlements contrary to policy and because of expediency and the reduction of costs will not deal with individual claimants, choosing instead to negotiate with the largest group of iwi making a claim. If the claimants are unable to meet the criteria set by the Crown, their grievance may not proceed, or a larger iwi may subsume them before the Crown can deal with their grievance.

The office of treaty settlements (2015) insist that whoever is responsible for advancing the grievance on behalf of the claimant group must have the mandate of the people they represent and the necessary skills to be able to negotiate. Before the deed of the mandate is accepted the Crown insists on several criteria that must be addressed, this includes, establishing a robust communication process that specifies how decisions are made, how mandated representatives are replaced and how people can report back on issues. Cowie (2012) says it is critical to the success of negotiations that the trust between the mandated representatives and the wider tribal group is maintained.

For treaty grievances to be accepted by the Crown, claimants must provide sufficient evidence to demonstrate that their claim should be investigated further. Claimant groups will need to define and mark their boundaries, marae, and other significant places of interest and establish if they have not already done so a list and number of people who whakapapa to the hapū or iwi. (Office of Treaty Settlements, 2015).

This is the period where the claimant group canvass their people searching for those with the requisite skills in finance, research, and the ability to draft and complete the documentation required for a treaty settlement. If the claimant group does not have the people with the experience or ability to meet these requirements, they must be able to fund the people with the appropriate skills. Unfortunately, there is no government funding available at this time; therefore, claimant groups are left to their own efforts to complete the work.

In contrast, the Crown has every resource including finance at its disposal as it works through treaty settlement negotiations with negotiators. Lawyers that will challenge any move by the negotiators to step outside the predetermined treaty process, surveyors, valuers, historians, accountants, and the list goes on.

5.14 Funding the Treaty settlement process

In the case of direct negotiations with the Crown, the main funding streams for undertaking treaty settlement negotiations include accessing funds through Te Arawhiti (formerly the office of treaty settlements). This funding has to be approved by relevant ministers to the claimant group and is regarded as a contribution to the costs, not the payment of all costs (Office of Treaty Settlements, 2015).

The other funding source is the Crown Forestry Rental Trust (CFRT). The Crown Forestry Rental Trust was established under the Crown Forest Assets Act 1989, following court action from the New Zealand Māori Council and Federation of Māori Authorities who were protecting Māori interests in the Crown's commercial forests. The Act allowed the Crown to sell licenses for forestry but prevented it from selling the land itself until the Waitangi Tribunal recommends who has ownership of the land – Māori or the Crown.

The trust funds come from annual rental fees for licenses to use Crown Forest licensed lands. Until such time that the beneficial owners of the lands have been determined, the trust invests the rental proceeds and holds them in trust. Interest earned on the Crown Forest Licensed Land rental proceeds to help Māori claimants to prepare, present and negotiate claims (Crown Forestry Rental Trust, 2007). Ward (1999) describes the establishment of the CFRT as one of the most important institutions in Aotearoa for dealing with treaty claims because the money made available to claimant groups for research was more than what was available from the Waitangi Tribunal.

Despite the availability of funding the Crown advises all claimants that they will only partly or partially fund the treaty settlement process, which causes considerable angst for treaty negotiators. Ester Gray (Crown Forestry Rental Trust, 2003, p.31) from Te Uri o Hau spoke about being without funding for salaries and having to rely on the Ōtamatea Māori Trust to provide enough funding for them to carry on. Peter Adds (Crown Forestry Rental Trust, 2003, p.33) from Te Ati Awa spoke about the limited financial resources the iwi had and how they were reliant on funding from the Crown to conduct their negotiation. On occasions, they ran out of funds and approached the Crown for funding but were advised they wouldn't be getting any funds for the month, which left them unable to pay their lawyer's fees. The actions of the Crown limited the amount of investigative work they were able to complete and the planning they could undertake. In some instances, the people they were hiring were willing to work without pay until such time the trust could afford to pay them.

Hirini Mead (Crown Forestry Rental Trust, 2003, p.32) said the Crown negotiators believed that when it came to resourcing the treaty negotiations iwi had the same resources as the Crown available to them. He went on to say that iwi lacked the resources for long-drawn-out negotiations and it appeared to be a strategy or tactic of the Crown to run iwi into the ground and debt.

Greg White (Crown Forestry Rental Trust, 2003, p.34) of Ngāti Tama discussed how the disparity in financing provided by the Crown reflects the process in the Crown's favour. Furthermore, iwi incurs additional costs as a result of Crown delays.

Maurice Takarangi (Crown Forestry Rental Trust, 2003, p.36) of Rangitane o Manawatu, said that the negotiation process was slanted in favour of the Crown from the start. He said there was no such thing as a level playing field and the composition and resourcing of the negotiating teams were lopsided. He said that the Crown team were always better resourced and he couldn't remember an occasion when that was not the case.

Margaret Mutu (2009) spoke about the different standards that were applied by the Crown, despite the Waitangi Tribunal revealing the Crown was in violation and violated the Treaty of Waitangi. Compared to non-Māori organisations the Crown expected higher standards of accountability and a far greater level of proof of mandate from Māori organisations before any financial contribution is made. By only partially funding the treaty settlement process, the Crown maintains control over the negotiations by bringing about a situation where claimants have to beg and sometimes cannot complete the necessary additional research that would provide even greater strength to their position.

5.15 Negotiation issues

The negotiation stage is supposedly where the 'rubber hits the road,' where meaningful and fruitful negotiations are held. In reality, this is the point when the negotiator's aspirations of a fair settlement are quickly dispelled. Using Crown jargon, the reasons they give for not paying a fair and just settlement include terms like having to take into account fiscal and economic constraints and the ability of the Crown to pay compensation (Office of Treaty Settlements, 2015). Belgrave (1992) puts it more succinctly when he says that Māori negotiators need to move away from what they believe they are legitimately entitled to, to the figure the Crown is prepared to pay. Mutu (2019b) says it is at the negotiation stage where public servants involved in negotiations with their unlimited access to resources compared to those of the claimants, will often run claimants into the ground financially to facilitate the burden of a settlement. Hirini Mead (Crown Forestry Rental Trust, 2003, p. 53) recalled that realisation hit them when they were told the Crown could not afford to pay them fully for the losses they had suffered. Peter Adds (Crown Forestry Rental Trust, 2003, p.55) said when first told of the Crown offer, they were in complete shock.

Every detail of the deed of settlement as it is being drafted is continuously being reviewed and challenged by the Crown and iwi. Any agreements achieved are subject to revision if the Minister for Treaty of Waitangi Negotiations orders it, if it lacks support from fellow ministers, or if the problem requires Cabinet approval (Office of Treaty Settlements, 2015).

This is also the stage where claimants are pitched against each other if there are overlapping claims. The Crown expects claimant groups to discuss disputed land and come up with a resolution that can work for all parties (Crown included). In regards to Ngāti Manuhiri, they were contacted two days before their treaty settlement was settled by the office of treaty settlements and advised that an iwi was claiming an interest in their rohe. It was believed that iwi was using this action as leverage for their claim. When Ngāti Manuhiri challenged the other iwi to produce evidence of their claim, none was forthcoming. The Crown still insisted that the matter needed to be resolved and eventually the land in dispute did not form part of Ngāti Manuhiri final Deed of Settlement and remained unresolved (M. Hohneck, personal communication, August 12, 2016).

5.16 Ratification and implementation

Having been forced down a Crown-driven process where every last concession has been wrung from them, the treaty negotiator arrives at the final stage of the negotiation process "Ratification and implementation." This is the stage where the mandated treaty negotiators supported by the Crown go back to the people seeking their support for the deed of settlement, which is the culmination of the negotiated treaty settlement. Contained within the deed of settlement is the Post Settlement Governance Entity (PSGE) that will manage the negotiated redress. The PSGE is the legal entity that is established to administer the settlement redress on behalf of the tribe. Cowie (2012) says the PSGE is always an issue because it forces traditional governing Māori politics to conform to a Western concept which is reflected throughout the legal document. Hirini Mead (Crown Forestry Rental Trust, 2003, p.11) of Te Rūnanga o Ngāti Awa when criticising the Crown's negotiation policy as negotiations by decree, highlighted their attempts to create

a Māori Trust Board as their governance structure and being told that it was not open for negotiations.

The Crown demands that the PSGE is representative of the claimant group and is transparent in decision-making, dispute resolution, and accountability processes to the iwi. For the ratification process, the Crown has also prepared several questions that the claimant group is encouraged to use and must be answered by the mandated negotiators in any communication material they use (Office of Treaty of Settlements, 2015). Mutu (2019b) reports that many of the settlements were completed under duress or the claimants were bullied by public servants. The Crown's insistence that representatives from Te Puni Kōkiri must attend any hui when the Crown offer is discussed during the ratification process (Office of Treaty Settlements, 2015), is a case in point and reflective of the distrust of the Crown of Māori.

The Crown state that the PSGE is for the benefit of all beneficiaries, who if they accept the offer will in turn when required ratify the process. For this to occur there is an expectation that a register of tribal members over the age of 18 years and eligible to vote is also kept. This then follows the ballot process. It is the PSGE on behalf of the beneficiaries who handle the tribe's settlement under their deed of settlement (McCaw, 2020).

To have finally arrived at this stage is an inauspicious occasion for some Māori, to finally conclude a settlement that for some has taken years to resolve with very little return. For others, it is also a time of reflection recognizing the work of those kaumātua and kuia before them who initiated the claims and fought the Crown for years to have the claim recognized. For others, it is a realisation of the personal sacrifices where houses and land were sold to keep the claim alive.

The treaty signing process is normally held on the Marae with beneficiaries in attendance. This is the occasion when the Minister accompanied by his or her entourage of public servants descends on the Marae for the day to deliver the Crown's apology and an outline of the settlement redress.

Any publicity marking this special occasion is normally covered on Māori television. The audience (normally Māori) watching the Māori news get to see a group of elderly Māori on the Marae listening attentively to a carefully scripted apology being read by the Minister for Treaty of Waitangi Negotiations; then witnessing the signing of treaty documents by the Minister, kaumātua and kuia followed by the obligatory waiata (song) sung by Māori in recognition of the significance to iwi marking the occasion. Any contentious issues arising from the occasion are normally reported on Māori television or the main media.

However, this is not the final step as the claimants are now required to wait for the political process to take its course and enact relevant legislation for the settlement to take effect. It is only when the legislation has been passed that the negotiated treaty settlement redress transfers to the claimant group. But most importantly from a Crown perspective, the ability of the court and the Waitangi Tribunal to reopen historical claims is removed (Office of Treaty of Settlements, 2015).

For iwi, the delay in having the treaty settlement resolved by the Crown can take anything up to two years, which presents the claimants with a difficult issue, lack of funding. Any Crown funding has long ceased post the ratification and implementation phase. It is now up to the newly established PSGE to commence negotiations with key stakeholders as they work for the betterment of the tribe, largely unfunded. On occasions, the PSGE has had to go back to the Crown "cap in hand" and request an advance on funds that have accrued from the assets they have purchased, which would not pass to them on settlement, such as forest rentals. This situation further disadvantages the claimant groups because they are now spending cash reserves to survive instead of reinvesting the funds.

5.17 Chapter Summary

The terms Crown, public service and public servant are interchangeable. From a Māori viewpoint, they are the same thing and have carried out the same functions since 1840. That is to continue to exercise their power and dominance to the detriment of Māori. The issues highlighted by iwi negotiators in the treaty settlement process with the Crown are both current and historical and have been raised several times previously with nothing

changing. The Crown has the power to address these issues immediately, for reasons only known to themselves they choose not to. Until the Crown decides to seriously address past wrongs inflicted on Māori, the continuing downward spiral of Māori in the health, education, housing, employment and justice arena will continue. Things have to change.

The following chapter is a case study that explores the emergence of Te Whānau o Waipareira in the West Auckland community. The growth of Waipareira can be linked to the challenges they have faced from iwi and the Crown as they have sought equity and parity for all Māori. The chapter begins with the Waipareira Moteatea which has been composed over the years by trustees closely associated with Waipareira.

CHAPTER SIX

TE WHĀNAU O WAIPAREIRA TRUST

6.0 Chapter Introduction

6.1 Case Study: Te Whānau o Waipareira Trust

Mōteatea

Verse One

E rongo, ki te tangi

o te ngākau e kapa ana

mō te tira kua rere

ki te pae o ngā Rangi

Rangi runga, Papa raro

tipu ana e ngā uri

pū te wai o Pareira

inuhia kia ora e

English: A sentiment to those who have passed,

remembering those who have forged the way for Waipaereira,

because of them, there is a new generation emerging.

Verse Two

E te kura, e takoto

i tō waka tapu ana

koe te huia, kua ngaro

mai i te hunga, o te ora

rere runga, tiro raro

mahuetia i ō uri

ringihia ō roimata

mākū ai kia noa e

English: To those who have passed we acknowledge you, and we the living remember them.

(Nā Mereana Rangihuna, April 2009).

Verse Three

Kōtuku reretahi

ki te Toi o ngā rangi

rite ki a Rarohenga

kia rite ki a mataora

pū ko te whānau ora

ara mai he tētēkura

kura nui, kura roa

whakamau kia ora e

English: Like the flight of the white heron who traverses the heavens,

like mataroa who went to the realms of rarohenga and brought back knowledge.

The knowledge from the realms above and below, is the knowledge that provides for wellbeing.

The vessel to forge the way forward and grow the current generation via our knowledge base, that will take us to the utmost heights of well-being.

(Nā Te Kurataiaho Kapea & Rawiri Waititi, 2012)

Verse Four

E te hau kōrure ana

ki runga o Te Huia

tini whetū ki te Rangi

whiti Nuku, whiti Rangi

ko taku koroingo

ko te iwi momoho

kōkiritia e

mana motuhake e

English: The moving winds upon the sacred huia (bird),

acknowledging the esoteric knowledge,

the realm of earth, the realm of the sky,

my desire is to have an adept tribe so we may achieve mana Motuhake.

(Nā Rawiri Waititi, 2016).

Verse Five

Poutamatia te ora

ki te wai o Rehua

tāuwhitia te iwi

āio pīpipi

kia pou, ko te aho

kia rewa te wawata

maiorotia te ora

kia mau, kirikawa

mā te huru ka rere te manu e

English: Elevate our well being to the sacred waters of rehua,

sprinkle the waters over the people to bring calm and peace

to stabilise the people so dreams and aspirations are realised.

Secure our wellbeing

Steadfast and firm

So we may soar like a bird.

(Nā Te Kurataiaho Kapea, 2021).

Mōteatea Māori and Pākehā universal translation kept in metaphor rather than descriptive provided by Trustees of Te Whānau o Waipareira Trust, Chairperson Mr Raymond Hall, 30 June, 2022).

6.2 Introduction

There are diverse cultures and groups with distinctive patterns and historical transformations. Regardless of their nature and culture, there are tendencies to categorize such groups and make unprecedented assumptions about their way of life, which are not pragmatic or realistic. The discussion regarding the perception, resources, and nature of supposed traditional societies in the modern world greatly affects the classification and understanding of urban Māori in New Zealand (Keiha & Moon, 2008).

This case study examines the evolution of Te Whānau o Waipareira Trust (Waipareira) whose existence has been predicated on circumstances and events, not of their making. Initially, this evolution arose through the approach of successive governments and their policies of colonization, assimilation and economic reforms, which contributed to the rural drift of Māori to the cities. This resulted in Māori being housed in urban areas, which

to most of them was a completely foreign environment leaving them bereft of the cultural connections and support they previously enjoyed from their home marae.

Then through the inactions of the Crown to not only recognize the rangatiratanga of Waipareira but in its failure to provide adequate funding for Waipareira's support programmes for Māori. These actions of the Crown not only caused frustration at what Waipareira perceived as less favourable treatment shown to urban Māori than that shown to iwi but led to the Wai 414 Treaty of Waitangi claim.

Waipareira's frustration with the Crown was exacerbated further when urban Māori (and other similarly affected groups) were not recognized in the allocation of fishing quota stemming from the Sealord deal. The frustration from Waipareira compounded with the creation and administration of the Te Pūtea Whakatupu Trust (Te Pūtea) fund and the impact of the iwi directors on the trust. This action on the part of the Crown and iwi proved the catalyst for Waipareira and other similar similarly affected groups, instigating legal action to ensure the rights of urban Māori were recognized.

Throughout the tumultuous evolution of Waipareia, the one constant factor has been the development of Hoani Waititi Marae, in West Auckland. For many urban Māori, particularly those aligned with Waipareira, the marae provided the respite and care that catered for their social and cultural needs. The strong relationship between Waipareira and the marae dates back to the people who were actively involved in the development of the marae from the beginning, and then later got involved with Waipareira (Te Whānau o Waipareira Annual Report, 2015-2016).

By critically examining the information gleaned from the significant legal action Waipareira has taken against the Crown, in the Waitangi Tribunal Claim Wai 414, the Sealord deal and Te Pūtea Whakatupea Trust, the kernel of a workable strategy that enables Waipareira, iwi and the Crown to work together to provide better outcomes for Māori has developed. Not developing such a strategy, leaves the majority of Māori stagnating as they wait for the next barrage of Crown solutions, which has continued to fail them.

6.3 Māori Population

In the 1850s, the population of Māori and non-Māori in Aotearoa were almost equal in numbers, and by the end of the century, the entire population was approximately 820,000 with Māori comprising 40,000 (Statistics New Zealand, 2018). The cause for the decline in the Māori population is attributed to the impact of wars, immigration, and epidemics. This striking increase in the population of the colonist became a tendency to unavoidably drive a need for settlement land. As much as Māori tried vigorously to retain their lands using military and politics, by the end of the century the majority of Māori land was in the hands of the white settlers. From the 66 million acres of land available in Aotearoa, Māori owned 3 million acres. With very little sustainable land available to earn an income, Māori became dependent on the settler economy and the unsympathetic policies given by the successive settler governments (Keiha & Moon, 2008).

In the 1996 census, the Māori population was 523,374, or 15.1% of the Aotearoa population. Compared to five years earlier in 1991, where the Māori population was 20.4% less and comprised 13% of the Aotearoa resident population. (Keiha & Moon, 2008). If we jump forward 22 years to 2018, the Māori population had climbed to about 775,836 and comprised 16.5% of the total overall population in Aotearoa (Environmental Health Intelligence New Zealand, 2018).

If we drill down into the 2018 Māori figures, the median age was 25.4 years: 383,019 were male and 392,820, female. Approximately 47.7% were in full-time employment with 8.1% unemployed. Māori employment occupations varied from labourers, machinery operators, sales workers, and community and personal service workers to clerical and administrative workers who made up 59.2% of the Māori workforce. With Māori working in Managerial roles, professionals and technicians and trade workers make up the balance (Statistics New Zealand, 2018).

6.4 The Rural-Urban Māori Drift

The story of urban Māori is rooted in a history of cultural adaptation and social change. Aotearoa was first colonized by the Polynesian forebears of modern Māori in AD 800. They came as a result of a canoe-borne expansion that found its root in the islands of

South-East Asia dating back 4,000- 6,000 years. Therefore, Māori has the same Austronesian ancestral line as many nations of Polynesia and Melanesia (Keiha & Moon, 2008).

According to Keiha and Moon (2008), the reason why there has been an unrelenting spread of civilization throughout the world is that people believe that their livelihood and future could be improved by moving from their present position to another place. So, the migration of the Polynesians leading to the arrival of Māori to New Zealand can be viewed in the context of urbanization because of the motivation and challenges behind it.

One of the striking features that are well known is the readiness of Māori to deracinate a community from one location and replant it somewhere else. Māori history and whakapapa are littered with stories of the movement of Māori throughout Aotearoa. The story of Te Rauparaha, chief of Ngāti Toa and his tribe's migration in 1820, from Kawhia on the west coast of the north island to the Kapiti Coast because of the conflicts with Waikato tribes is well documented in Waikato-Tainui history (Pomare, 2005).

Ngāti Kahungunu regale the story of their eponymous ancestor Kahungunu and his dispute with his brother Whāene at Mangatawa in the Bay of Plenty. Kahungunu made his way to Whakatane, on to Opotiki, Whangara, Turanga and Whareongaonga finally settling at Te Mahia with his wife from the region Rongomaiwahine (Haami, 2018).

As reported by Rangiheuea (2010) historically, Māori indigeneity was perpetuated primarily through whānau and hapū. She says along with the duration of Māori history three events have impacted cultural change significantly. The first was the arrival of Māori in Aotearoa and the effectiveness and importance of the hapū. The second was the arrival of the non-Māori settler population to Aotearoa which signalled for Māori the beginning of colonization where the Pākehā settlers began to impose their power and domination, which led to changes in Māori culture and identity. The Pākehā settlers were quick to impose themselves on Māori by acquiring large tracts of Māori land and leaving Māori virtually landless. They then set about stifling key areas of Māori culture including te reo, and tikanga and through the imposition of legal and social systems which were completely foreign to Māori. The third event signalled the emergence of urban Māori, who chose whether they would keep their links to their home kainga and retain their language. Sissons (2004) referred to urban Māori as "relocated indigenous identities".

The combination of colonization and Westernisation was responsible for Māori moving from rural to urban areas, particularly during the post-World War II period (Rangiheuea, 2010; Ryks et al., 2014).

Hill (2009) says there were several reasons why Māori left the countryside for the city. He says the aftermath of colonization had left Māori with very little sustainable land of their own to make a living from. The rural-based development projects championed by Ngata in the 1920s, where tribal land had been developed into farms and worked by tribal farmers could not sustain or cater for the large Māori population that existed at that time (Haami, 2018).

Keiha and Moon (2008) said that the migration of Māori to urban centres began after the second world war and was driven by economic necessity. Before the war, approximately 90% of Māori were urban-based, but by 1956, 24% were urban dwellers, and by 1970, that proportion had risen to 80%. In 1926, only 8% of the Māori population were residents in urban areas, compared to 58% of the non-Māori population. Māori and non-Māori were effectively segregated, and the rural Māori population was largely landless (Scholtz, 2006).

Meredith (2000) says as late as the 1930s, the overwhelming majority of Māori still lived in villages established by their ancestors and were connected to their iwi. Scholtz (2006) says the temptation of stronger economies in the cities and towns was the driver for Māori to move to the urban centres. Meredith (2000) says Māori in rural areas realised that they could no longer support themselves on the lands they had left. Ryks et al., (2014) stated there were concerted efforts by the New Zealand government to get Māori to move to the cities as a workforce to boost the post-war industry.

By the mid-1980s, things had changed and 80% of Māori lived in the cities and outside of their iwi traditional rohe (Environmental Health Intelligence New Zealand, 2018). Being away from their traditional home base, Māori were now seeking a range of services that not only catered for their cultural and social demands, but were also seeking support in other areas such as their mental health, wellbeing, and education. As a response to the urbanization of Māori and the challenges of cultural and social dislocation, “voluntary associations” appeared in the form of Māori culture clubs, sports clubs, religious and

tribal associations, Māori executive committees and councils, Māori wardens, and the Māori Women's Welfare League (Haami, 2018; Meredith, 2000).

Haami (2018) talks about the Auckland Māori Community Centre situated on the corner of Halsey and Fanshawe street which gained the reputation of being representative of urban Māori in Auckland. The centre was controlled by central and local government agencies including the 28th Māori Battalion Association. In the late 1940s, it was regarded as Auckland's only urban marae and point of contact for new Māori arriving into the city and a regular venue for community dances, socials, concerts, tangi and cultural gatherings.

6.5 Urbanization

Hope Tisdale (1942) describes urbanization as a process of population concentration, consistent with the definition of urbanization, cities may be defined as points of concentration. Keiha and Moon (2008) state urbanization involve communities making substantial adjustments – both in their internal structures and organisation and in the way they interact externally. Kuddus et al., (2020) define urbanization as the mass movement of the population from a rural to an urban setting and the consequent physical changes to urban settings.

Smelser (1970) says there were several challenges for people who had left the rural areas to move to the cities including, encountering structural and hierarchical divisions of labour as opposed to the more traditional settings, the demand for a redefinition of economic security, the emergence of social unrest, the adoption of new social and moral norms, and the inherent sense of breaking from the past. He said this pattern can easily be seen to have been copied in Aotearoa in the period following the Second World War.

Other factors contributing to the accelerated increase in urban migration was the way the Crown responded to policies on housing, employment, economic and Māori issues. An example is the Crown's failure to maintain hapū, whānau and iwi ties which are seen as a failure on their part to address their obligations towards Māori (Waitangi Tribunal, 1998).

Meredith (2000) maintains that urban Māori is not a homogenous group but is diverse in nature, similar to Māori in general and other people in Aotearoa. He says it should not be presumed that all Māori domiciled in urban areas subscribe to similar views about the appropriateness of hapū and iwi as the development vehicle. The same of course applies to Māori who live and operate within their tribal domains.

Kukutai (2013) claims before the arrival of Pākehā, Māori internal migration was extensive, reflecting issues such as competition for resources and changing alliances. She goes on to say the short-term mobility of Māori continued in the late nineteenth century and was linked to seasonal cultivations and working in the cash economy such as shearing and road gangs.

Hokowhitu (2013) states that Māori urbanization was stimulated by the state. In particular, the implementation of the 1944 Man Power Act was used to direct young Māori who were ineligible for the military, to move to the cities to work in essential industries. When moving they left behind their papakainga and marae. Similarly in the 1960s, the Māori Community Development Act changed the focus of the intermediary between the Māori community and the state, from tribal committees to Māori committees (Hokowhitu, 2013). In the 1960s, the department of Māori affairs formulated a relocation program that exhorted rural families to leave their subsistence economy by finding them employment and accommodation in urban centres (Hokowhitu, 2013).

Gandhi and Freestone (2008) also recognized the important factors that influence the movement of people away from rural areas, and this included lack of employment opportunities in rural communities, dispossession of traditional lands, perceived better living opportunities in cities, and the deterioration of traditional livelihoods. However, many of those who moved to urban areas also faced significant disadvantages such as the lack of employment, inadequate housing, and the discrimination and erosion of language, culture and identity.

6.5.1 The impact of urbanization on Māori

The tribal affiliations of those not only working for but also receiving support from urban Māori authorities like Waipareira span a cross-section of all tribes. According to Ryks et

al., (2014) those urban Māori groups can be separated into distinct groups. The first is mana whenua, the iwi or hapū that traditionally inhabited an urban area and who retain mana (traditional authority) over the whenua (land). Mana whenua is often incorporated as legally recognized Rūnanga (iwi councils), and in larger cities, there may be more than one mana whenua iwi. The second is mātāwaka, or non-mana whenua Māori migrants (and descendants) who have moved away from their traditional homes. Mātāwaka can be further disaggregated into those who continue to actively associate with their own iwi (Taurahere) and those who no longer do through decisions or circumstances.

It was on behalf of Māori affiliated with urban Māori authorities that the National Urban Māori Authority; Te Rūnanga o Ngā Māta Waka Incorporated; Whanganui a Tara Whānui Trust; Te Rūnanga o Kirikiriroa Charitable Trust; Manukau Urban Māori Authority Incorporated; and Te Whānau o Waipareira Trust, filed a statement of claim with the High Court in Wellington, chronologically listing the impact of Crown policies on Māori dating as far back as 1840, to the present day. A snapshot of the list included:

- The use of Māori to provide an unskilled, itinerant labour force;
- The breakdown of their traditional whānau hapū and iwi systems of support;
- Social and cultural dislocation;
- Problems associated with not knowing who they were;
- Poor health;
- Educational underperformance and non-achievement;
- Diminishment of identity and identification with whakapapa;
- Feelings of alienation and worthlessness;
- Being disproportionately worse off than not only their Pākehā counterparts (e.g. across the broad spectrum of socio-economic indicators) but also when compared to their relations who were able to live at home;
- Possessing an additional burden of being so disassociated from their whakapapa that has characteristically lived in an identity of no man's land; and

- Disproportionate welfare dependency (Tamihere, 2016).

According to Kingi (2005), it has been the Crown's policies and actions in the 1950s and 1960s that led to unprecedented urbanization and detribalization of Māori. He talks about the policy of "pepper potting" where Māori homes were built in the more affluent non - Māori residential areas. He says this was an attempt by the Crown to not only isolate Māori from their iwi and whānau but to ensure they would be physically, as well as culturally and economically assimilated into the Western culture.

Tamihere (2016) highlighted the problems of inequality that Māori faced including:

- The poor academic performance of Māori children. Where a Ministry of Education report found the performance of Māori children is below the performance of their Pākehā colleagues. In 2014, the average performance of Māori pupils in mathematics was 65%, while that of their Pākehā classmates was 80.5%. The percentage of Pākehā students in years 1-8 who are above standard for reading was 84.3%, while that of Māori students was 68.9%. Also, their average performance in writing was just 61.2% compared to the 76.8% average performance of Pākehā students.
- The percentage of crimes committed by Māori people is higher in New Zealand. Of the total population of prisoners in New Zealand, half of them are Māori. Statistically, in 2014, 50.8% of the prisoners in New Zealand are recorded to be Māori.
- Māori do not have a longer life span compared to non-Māori. Statistical information also shows that Māori is predicted to live seven (7) years less than non-Māori.
- The unemployment rate of Māori is more than that of Pākehā. In ratio, the unemployment rate of Māori to Pākehā is 3:1, and in 2015, that gave about 12.6% employment rate for Māori and 4.3% for Pākehā.
- Māori experienced a significant disadvantage as a result of urban migration. This disadvantage was compounded by post-war government assimilationist policies. These policies included dispersing Māori families among other urban migrants and further discouraging Māori from speaking their language in schools and workplaces. Such policies resulted in the atrophy of traditional Māori social structures such as whānau (extended family) and led to a profound degradation of

cultural, social, and physical living environments. Today, Māori living in cities (urban Māori) experience poorer health outcomes compared to other New Zealanders, disproportionately feel the effects of economic recession, receive a poor education, and are less able to access quality housing.

The statistics and examples provided, paint a sorry picture of the arrival of Māori from the rural areas to the city and the role that successive governments played. For some Māori however, the move to the city was not all negative and a lot of positives were also realised.

6.5.2 Urbanization in a positive light

As reported by Rangiheuea (2010) many Māori preferred city life compared to the slower-paced lifestyle of the rural homeland. They became conditioned to urban life and the demands of being Māori in a predominantly non-Māori setting. Haami (2018) states for many whānau the opportunity for education, employment and access to modern technology as well as meeting a cross-section of other Māori, Pākehā and Pacific peoples was both exciting and beneficial.

Meredith (2000) has commented that urban Māori authorities have been instrumental in bringing those dislocated and disenfranchised urban Māori into a Māori cultural environment, teaching them the basics of Māori cultural practices and inculcating in them Māori values. As an example, he spoke about the establishment of a Rōpū kaumātua by Waipareira to help young people trace their whakapapa back to their tribes.

Ryks et al., (2014) also talked about the positives that arose from the movement of Māori from the rural areas to the city where they became proactive in their communities and contributed to local government decision-making, obtaining material recompense for lost resources, taking advantage of investment opportunities for the collective good and setting up new organisations that provide social and everyday support.

Barcham (2003) speaks about the movement of Māori from a rural environment to the city where they began to mingle and interact with other Māori from different tribes all sharing the common experience of being Māori in the city. This interaction led to a

common sense of place and identity which laid the foundation for the later unity and coherence of their, and their children's struggle against the perceived oppression of the state. These new city dwellers began to agitate for change, the introduction of the Treaty of Waitangi Act 1975 and the subsequent establishment of the Waitangi Tribunal, created a forum to hear Māori grievances was a direct result of this protest movement.

6.6 The Origin of Te Whānau o Waipareira Trust

In 1982, over 60 people representing more than 23 different organisations attended a hui called by Connie Hanna of the Department of Māori Affairs at Hoani Waititi Marae. At the hui Connie advised the Crown and community participants present that she would be creating a Kōkiri unit (enterprise unit) in West Auckland. Local school teacher and Māori Women's Welfare League leader June Mariu were elected as the first chairperson of the Waipareira Community Management Group (Haami, 2018).

In 1984, the Waipareira trust was constituted under the Charitable Trusts Act and established several services promoting the welfare and development of West Auckland. The focus of Waipareira was bringing together those people who wanted to help local Māori. According to Haami (2018), it was this holistic form of coordination that became the strength of Waipareira and its pathway to uplifting Māori in West Auckland. He goes on to say that Waipareira became a highly organized network of local, regional, national and international pan-Māori groups that was able to tap into the contracting environment brought about by the restructuring of government social services. June Mariu (Haami, 2018) said at the time many fragmented groups in West Auckland worked on their own, linking into government programmes of training and employment. What Waipareira did was collate all these key players who wanted to make things happen for Māori in a more coordinated way.

By the early 1990s many Māori urbanites, including members of Waipareira were no longer prepared to accept that “tribal” approaches were sufficient to accommodate all Māori interests and development strategies. They were concerned that Māori who did not participate in tribal activities were being afforded lesser status as Māori, in effect regarded as second-class citizens. Given that Government public policy was increasingly favouring

an “iwi” approach, urban Māori turned their attention to the definition of “iwi” in the contemporary context (Keiha & Moon, 2008).

Kelsey (1993) says that it is noticeable that the country was experiencing major economic and social reform changes during the early years when Waipareira was growing. The country's entire political, economic, and social structure was being turned on its head, with no serious attempt to sell it to the public. Given their historically marginal place in a colonial economy, Māori people and communities suffered the most. Māori adults, and in many cases entire communities, were made redundant by wholesale closures of workplaces.

6.7 Waipareira programmes

The rural to urban drift by Māori meant the urban Māori authorities needed to establish programmes that would cater to the needs of the new city dwellers. In the case of Waipareira, the demand for programmes was not only broad but specific in certain circumstances to address Māori needs.

The launch of the Tu Tangata strategy by Kara Puketapu the Secretary of Māori Affairs in 1978, was designed to empower a wide range of Māori to stand up, be counted and take responsibility for their futures (Barcham, 2003). As part of this new philosophy was the establishment of the Kōkiri community administration programme which was “designed to assist the passage of a great deal of departmental decision-making from the bureaucratic centre into the community’s hands” (Waitangi Tribunal, 1998, p. 41). In 1982 the Kōkiri programme came to Auckland and Waipareira was one of the first organisations to establish a Kōkiri unit. As a result, the Waipareira Community Management Group which was representative of all Māori organisations, other interested parties in the community and government officials was established to administer the unit Waitangi Tribunal, 1998).

Through improved academic achievement and raising self-esteem, it was believed the flow-on effect would be positive attitudes, beliefs and values regarding health and well-being. From the perspective of Waipareira, the advantage they gained from the Crown's devolution of management programmes for employment, welfare and economic

development allowed them to grow with their community over the years (Waitangi Tribunal, 1998).

In 1992, Waipareira became involved in several services and programmes including, housing, community services, vocational training and the creation of employment opportunities, education, and health services. The following year in a statement of claim supporting the legal action Waipareira had taken against the Ministry of Social Development (Formerly Work and Income) Mr Haki Wihongi the chairperson of Waipareira at that time, highlighted the programmes and services Waipareira were delivering to Māori in West Auckland including:

- Being designated a Private Training Establishment meant any courses they were involved in were acknowledged and accredited by the New Zealand Qualification Authority.

- Being the first organisation contracted by Northern Regional Health Authority to implement significant primary preventive health care plans. The focus is to deliver to children in need so that the bridging of poor parenting and disadvantaged backgrounds can be targeted.

- The establishment of a Food-Cooperative was different from a Foodbank. Where people have put on budget plans and taught how to value the purchasing power of their money.

- The establishment of a commercial division whose current focus was to secure long-term sustainable employment (Waitangi Tribunal, 1998).

In the area of education, Waipareira was regarded as the largest provider of training and employment services in the West Auckland community. In several areas, Waipareira was initiating, supporting and administering a large number of programmes including Te Atārangi Māori language course, bone carving, agriculture, carpentry, catering and cooking to name just a few. Waipareira had also been approved to deliver the Government's Training Opportunities Programme and had negotiated with universities and polytechnics to have courses cross credited to qualifications at tertiary institutions. To ensure value and credibility most of the courses run out of Waipareira had been accredited by New Zealand Qualifications Authority (Waitangi Tribunal, 1998).

In 1992, operating out of leased factory premises in West Auckland, Waipareira established an Alternative Education Unit with room not only for educational projects but also for recreational and social activities. Evaluation reports the Tribunal received were complimentary of the unit, including comments from a registered psychologist Justine Tennant who said the unit was not only about alternative education but a real effort to provide quality education for alienated students (Waitangi Tribunal, 1998).

In respect to community and social services, programmes included home services, child care and youth services, foodbank, and budgetary and family support services. The success of these programmes and the delivery of the service are dependent on receiving sufficient funding from the Community Funding Agency of the Department of Social Welfare.

In the area of health services, Waipareira provided dentistry, high quality and affordability medical care (free for tamariki) and community health care to Māori in West Auckland. Concerning tamariki, services included counselling and education on alcohol, drugs and substance abuse. From a mental health perspective, Waipareira operated home mental health services that included care, education, information and advocacy support.

Waipareira also established a corporate arm that provided services focusing on venture capital financing, business development, business skills seminars, investment analysis, business services, business communications, desktop publishing, legal advice, local and central government policy development, and work with the local and central government. The trust becoming one of the largest contracted agencies to give entrepreneurial training to emerging businesses in West Auckland (Waitangi Tribunal, 1998).

To ensure buy-in, commitment and involvement from the West Auckland Māori community, Waipareira entered into effective partnerships with other agencies to deliver programmes that would benefit Māori. In 1992, with financial support from the Accident Compensation Corporation and Health Research Council of New Zealand, Waipareira together with Huakina Development established a cooperative project, known as the Alcohol & Public Health Research Unit. The programme focused on stopping alcohol-related crashes prominent among the Māori. Moewaka Barnes (2000) said the aim of the programme was:

- To develop and implement a Marae-focused programme aimed to raise awareness and support among Māori for culturally appropriate strategies to prevent alcohol-related traffic crashes.
- To develop and implement a coordinated mass media strategy including media advocacy and paid Māori mass media to raise awareness of and support for culturally appropriate strategies to prevent alcohol-related traffic crashes.
- To develop and implement strategies aimed to reduce drunkenness in drinking environments in which Māori drink.
- To develop and implement strategies aimed to increase the mutual supportiveness of compulsory breath testing (CBT) and the programme components.

Barnes (2000) highlighted the positives of the relationship which included, constructive and positive communication between all parties during the project. Both the researchers and providers had the feeling of high sense of involvement and shared investment in the project as Waipareira had established a great relationship with them. This relationship was obvious within the communities as opportunities were created for people to be involved in the programmes. These same people were also happy to participate in the subsequent evaluation process.

Barnes (2000) further said Waipareira provided the perfect base for the programmes, which allowed the usage of local networks and resources to enhance the delivery of the programme. The legitimacy and mana of Waipareira increased due to the success of the programmes which relied on Māori community workers and the ability of Waipareira to effectively deliver their messages.

6.8 Urban Māori Authorities

As reported by Keiha and Moon (2008) the most prominent Māori answer to urbanization is the urban Māori authority (UMA), which serves two opposing purposes: first, by challenging the status quo of tribal organisations, and second, by collectively upholding traditional Māori values. Cheyne et al., (2005) describe UMA as an officially recognized Māori organisation found in large urban centres. Purposely, they are formed to meet the

cultural, economic, social, and other needs of Māori who are displaced from a traditional tribal organisation unfamiliar with their tribal links.

Tamihere (2016) talks about urban Māori being grouped into three cohorts. The first know their whakapapa and iwi and generally do not often use the services of the National Urban Māori Authorities (NUMA) or trusts like Waipareira. He says these people are generally upwardly mobile, well educated, middle class and do not need assistance that iwi resources would provide.

The second cohort he describes as the rawakore (impoverished). These people are disconnected and do not know their whakapapa or iwi. He says these people lost contact with their family connections after being urbanized. They never returned to the marae for tangi, weddings or birthdays or to re-engage with their whānau. They seek their identity by participating in urban Māori because they see it as a safe place to try and learn who they are and where they are going (Tamihere, 2016).

The third cohort he described is urban Māori who despite knowing their iwi and mana whenua are treated with disdain when they return to their marae. They are seen as people who left home for the city and are now returning to try and take over. They are seen as whānau who never supported their iwi tanga but now want a piece of the action. Besides being able to access scholarships or education grants they do not receive additional funding or support from their iwi (Tamihere, 2016).

A search for other writers who may have expressed similar comments to that of Tamihere when grouping Māori into three cohorts proved unsuccessful. What was of interest was the different streams of research on urban Māori. The study by Borrell (2005) was about the changing identities of young Māori living in South Auckland (south siders) and their strong connection to South Auckland and Pacific peoples. While Kukutai (2013) looked into the structure of urban Māori and the preference of some to live in minor urban areas compared to those who moved to metropolitan cities.

In 1984, a Hui Taumata (Māori Economic Summit Conference) was held in Parliament, Wellington. One of the key points from the hui was the need for a Māori-focused economy (Ellison, 2010). Rangiheuea (2010) says that the Māori leaders that were present at the hui delivered a strong message to the Crown that they could manage their share of the state resources more efficiently than state agencies could. Maaka (1994) highlights

that the call from Māori for more autonomy at that time, gelled with the free-market philosophy espoused by the then Minister of Finance Roger Douglas.

As stated by Barcham (1998) the Labour government had doubts that Māori could effectively or efficiently distribute the resources and only agreed to free up the resources provided Māori were able to fulfil certain criteria which included, authenticating their borders and establishing sound financial systems. These criteria became the basis of the Rūnanga Iwi Act 1990 which led to the centralization of iwi structures to pass the strict standards of government accountability. Mulholland and Tawhai (2010) described the Rūnanga Iwi Act as a clear example of the Crown's narrow interpretation of a treaty-based partnership with Māori and its insistence on an archaic definition of Māori social structure that was far removed from the modern realities of Māori society. The Rūnanga Act was only enacted for a short period before National defeated Labour and it was repealed. Though the Act was removed, its legacy remained of strong centralised iwi structures (Barcham, 1998). Mulholland and Tawhai (2010) went on to say that the stamps of iwi primacy over urban Māori authorities had been cast.

Barcham (1998) also highlighted the Crown's decision over the enactment of the Treaty of Waitangi Amendment Act (1985), where Māori could now submit treaty claims dating back to 1840, which led to there-iwi-isation of Māori society. The amended legislation played an important role in defining modern iwi as the legitimate descendants of Māori dating back to 1840. He says the continuous reference by the courts and the Crown that the Māori of today is a replica of Māori in 1840 fails to recognize the evolution of Māori.

Maaka (1994) suggested a casualty of the Crown's free-market policies was the devolution of the Māori Affairs department to be replaced with a Ministry of Māori Policy and an iwi transition agency to facilitate the transfer of programmes. Māori reaction to the devolution was mixed with some remembering when the department opened and was seen as paternalistic and later under Kara Puketapu's leadership a proactive programme delivering bureaucracy. Whether or not the department was proactive, it was still a bureaucracy that was irrevocably bound to governmental authority. This fact, coupled with a desire to eliminate the cycle of reliance, led to the majority of Māori supporting the decision (Maaka, 1994).

In that same year, Waipareira established the first urban Māori authority in West Auckland. The community members who were the major first-generational group of the urban Māori conceived the establishment of this organisation. The reason for the formation of the group was the interest and growth of urban Māori. The tribal composition of the group was diverse in nature with a cross-section of iwi from throughout the motu represented, all with their concerns and needs (Keiha & Moon, 2008).

Rangiheuea (2010), spoke about the Manukau Urban Māori Authority (MUMA), which was established in 1987 in South Auckland and led by June Jackson. Similar to Waipareira, MUMA was created by urban Māori organisations that provided a wide range of cultural and social services. Other urban Māori authorities keen to take advantage of the change in Government policy that allowed community agencies to take over some of the functions and resources from the state included, Te Rūnanga o Nga Maata Waka in Christchurch headed by Norm Dewes and Te Rūnanga o Te Upoko o Te Ika in Wellington.

For Māori, the findings of the Royal Commission on Social Policy (1988) provided ample ammunition that government policies and programmes directed at Māori were not working. The commission canvassed a wide range of topics including Māori and the Treaty of Waitangi 1840. In 1988, the Royal Commission's report was released and described Māori standards of health and education as low and Māori was poorly represented among higher-income earners. The report went on to say Māori lived in poor housing in poorer suburbs and their numbers in prison were disproportionate to other ethnicities. Cheyne et al., (2005) also advised Māori were overrepresented in mental health areas.

From a Māori perspective, the state had failed them. They demanded the same government resources and opportunities stating that the quality of services and outcomes could only improve with Māori involvement. By introducing cultural knowledge and expertise better outcomes for Māori would be achieved and the services were provided in ways that were culturally safe and culturally appropriate (Cheyne et al., 2005).

Meredith (2000), identified one of the components of the urban Māori struggle as a move to have the right to have rights and also the task of making their identity the subject of rights. Alvarez et al., (1998), said that the urban claims and struggle for a right have not

been limited to pre-existing legal rights. Their claims are based on a fresh need and as such require changes to the law. It is also important to view the emergence of urban Māori as a political subject by their claims to rights and also advocating for identity. West (1993) describes new self-perception as the process where citizens no longer see themselves as objects of history, but rather as subjects of history, willing to put their lives and bodies to establish a new nation.

Meredith (2000) said when people perceive rights that have not yet been recognized in the courts or legislation, the struggle to recognize those rights can reshape the law or force its reinterpretation. The outcome of the Tribunal recommendations in the Waipareira case has resulted in a bill amending the Children, Young Persons and Their Families Act 1989 being introduced to Parliament. The amendment had the effect of helping to change how the Government regarded non-kin-based Māori organisations. It also enabled Waipareira and other similar Māori and non-Māori organisations to apply for more money to deliver social services on a larger scale (Meredith, 2000).

Just like other various social movements, urban Māori has demanded the right to challenge or unsettle the hegemonic boundaries of cultural and political representation and daily life practice, and also the right to be included. Meredith (2000) says Māori are now within the broader Māori politic basing themselves in well-defined communities with distinct social claims. He says urban Māori are now changing the boundaries of who and what it is to be Māori and are looking to break away from the status quo of what defines iwi, hapū and whakapapa. By contesting the cultural discussion around iwi and rangatiratanga and tikanga they are creating and opening up new ways of thinking for Māori.

In 2003, several urban Māori authorities from the South Island, Porirua, Auckland (Manukau and Waipareira) got together and established the National Urban Māori Authority (NUMA). The focus of NUMA was achieving better outcomes for whānau through providing associate members with continuous strategic policy and planning and service development advice. Initial members starting from the South Island included, Te Rūnanga o Murihiku, Te Ūpoko o Te Ika, Te Rūnanga o Ngā Maata Waka, Te Runanaga o Kirikiriroa, Manukau Urban Māori Authority and Waipareira.

Keiha and Moon (2008) speak about the success of urban Māori authorities who expanded their roles from what were seen as core activities to include property investment, education, health, and political lobbying at local and national levels. They go on to say that a further measure of success has been the fact that several urban Māori authorities applied to join NUMA as it is seen as a model for furthering Māori development. The senior membership of NUMA includes Te Whānau o Waipareira Trust, Manukau Urban Māori Authority, Te Kōhao Health, Te Roopū Āwhina ki Porirua, He Puna Marama Trust, Te Puna Hauora, Te Kaha o Te Rangatahi, Te Kupenga Hauora Ahurir, Whaiora Whanui and Te Hiku Hauora (NUMA, 2015).

According to Meredith (2006) the focus of UMA has been promoting the rights of urban Māori. Unlike NUMA, which was established in 2003 to represent the political interests of Māori who live in cities. The NUMA (2015) website listed the senior membership

6.9 The Hoani Waititi Marae

The emergence of urban mārae began from the 1950s onwards. For Māori, the urban marae provided a venue where they could meet with other Māori new to city life, discuss issues and attend cultural and social functions similar to those they held at their maraes. The urban marae was also utilized as a base for political activism, including the 1975 Māori land march and the anti-springbok protests (Rangiheuea, 2010).

The slow proliferation of urban marae in Aotearoa was thought to have begun with the building of the Rehua marae in 1960 in Christchurch. The marae was built to cater for the Māori trade trainees who had been living on-site at the Rehua Hostel, Springfield Road. Hokowhitu Ria and seven other Māori boys from the East Coast were some of the earliest recruits to the Rehua Hostel, he was also involved in laying the boxing and concrete for the marae (Haami, 2018). Haami (2018) also talks about the origins of the urban Ngāti Awa Mataatua marae built in 1978 in Mangere came from a group of Ngāti Awa Māori who created a rugby club in Ponsonby. They were seeking a place where they could meet and socialize amongst themselves.

Haami (2018) praised the work of people like kuia Ereti Letty Brown, originally from Te Araroa and of Ngati Porou and Te Whānau ā Apanui that saw the emergence of urban based marae like Hoani Waititi Marae at West Auckland. He talks of Letty being put on

a bus by her parents and sent to Auckland to better her education. On her arrival, Letty soon established strong connections with Māori social networks and the Auckland Māori Community Centre. In the 1960s, Letty moved out to West Auckland and was instrumental in establishing a weekly Māori session at a local play centre to enable young Māori women to bring their children to preschool. At that time, she realised that Māori women were too embarrassed or suspicious of Pākehā to bring their children to the Playcentre. Because of the popularity of the Playcentre, it became known as the Waipareira Playcentre. From there, matters began to escalate with the support of Māori women, arts programmes, a branch of the Māori Women's Welfare League, and Māori culture groups leading to the eventual establishment of the Hoani Waititi Marae. Another person involved in the establishment of the Hoani Waititi marae was Mrs Mavis Tuoro (Meredith, 2000).

When presenting evidence to the Waitangi Tribunal she talked about the arrival of Māori from the rural areas arriving in West Auckland who were out of touch with their culture, traditions and their whānau at home. She highlighted the need for them to have a place to which they could belong, and identify with, so they could continue their culture and traditions in the cities (Meredith, 2000). She spoke about a former Mayoress (Mrs Elsie Wiltshire) at the time who had been active in the West Auckland community and had suggested the creation of a Marae to educate Pākehā so they could understand Māori, but also for Māori who did not know about their marae or whanaungatanga connection (Waitangi Tribunal, 1998).

On the origin of the Hoani Waititi Marae, Ms Tuoro explained how it happened:

> "John Waititi was a prominent Māori Educationalist who with Peter Awatere and Barbara Devonshire of Māori affairs made a real drive for Adult Education in West Auckland. The Marae was named because of the qualities that we saw in John Waititi. He exemplified everything that we wanted Māoridom to be. The enthusiasm for developing Waititi marae was great. We needed an enormous amount of money to get it off the ground. We began to look at the land. We had a very supportive Mayor Jack Colvin, who got in behind our efforts with this. The place we wanted originally was on Edmonton Road, however, the zoning

> requirements would not permit us to buy the area at the time" (Waitangi Tribunal, 1998, p. 37).

The creation of the Marae received great support from many business people, and within, there were individual contributions as well. Haami (2018) talks about the culture club Te Rōpū Manutaki which was eventually based at Hoani Waititi Marae and the concerts they would run to fundraise for the building of the marae. The concepts of kinship and descent as the organisational principle for marae association were in some cases replaced by principles of secular, pan-tribal, and choice. Again Tuoro (Waitangi Tribunal, 1998) spoke about the philosophy of Hoani Waititi Marae of being multi-cultural and available for all tribes. She spoke about tribalism being left at the door when you came onto the marae. She said they were focused on creating an environment of family and belonging for those people who could no longer access their whānau connections back from where they originally came from.

In the words of Tamihere to the Waitangi Tribunal, he described the marae as follows:

> "Māori of my generation born in the cities find comfort, solace, support and coverage as a Māori under the umbrella of our Matua marae Waititi and Te Whānau o Waipareira … there are now third-generation babies that know no other marae than this pan-tribal Marae… Our Matua marae, which has been acknowledged nationally… is a symbol of pan-tribalism and multi-culturalism. It is a symbol of the progression of our people into the urban areas and a statement that we can continue to practice tikanga Māori in a new environment" (Waitangi Tribunal, 1998, p. 40).

Another driving force behind the construction of the marae was Dr Peter Sharples who believed that building the marae would unify and provide a focus for Māori in West Auckland. He spoke about the early days when they approached several people in the West Auckland community and asked them whether they supported the building of the marae. He said half were against and these were the people that were firmly entrenched with their iwi and the other half were in support. Like others before him, spoke about the need for a suitable building that could cater for tangi and other cultural activities. He described the Marae as a training ground, and a place for upskilling people who would return to the marae and give back to the community (Waitangi Tribunal, 1998).

Being the first urban Marae to be established in West Auckland, Hoani Waititi Marae was formed on the non-tribal secular principle of an elective committee and motivated the building of other marae such as the school-based Kotuku and Kakariki marae. From the perspective of June Mariu a founding trustee of Waipareira and former national president of the Māori Women's Welfare League, she regarded the establishment of the marae as a venue to assist those moving from their hometown home marae (Waitangi Tribunal, 1998).

6.10 Waipareira challenges the Department of Social Welfare.

In 1994, Waipareira filed a claim with the Waitangi Tribunal alleging that they had been prejudiced by the policies and operations of the Community Funding Agency (CFA) of the Department of Social Welfare (DSW). The basis of Waipareira's claim against the Crown was led by one of the original Waipareira trustees, Mr Haki Wihongi (deceased) as the Chairperson and Mr John Tamihere as the Chief Executive Officer.

In an affidavit to the Tribunal, Mr Wihongi raised the concerns of Waipareira and how disillusioned and frustrated they were from the treatment they received from the Crown. In particular, he outlined the impact decisions made by bureaucrats which appeared to deliberately thwart the positive and affirmative programmes which Waipareira had designed to lead Māori out of dependency on the state (Waitangi Tribunal, 1998).

John Tamihere, in his submissions to the Tribunal, spoke about the claim being one based on fairness, due process and equality of opportunity. He said that was about the right of pan-tribal whānau in the areas to be acknowledged as a treaty partner and affirming the right of urban Māori to self-determination and their rangatiratanga (Waitangi Tribunal, 1998).

6.11 Rangatiratanga

The Waitangi Tribunal when considering the four tenets of Waipareira complaints spent some time analysing and defining the term Tino Rangatiratanga. From the perspective of various writers and academics the word rangatiratanga, depending on the situation at the time meant something different from how it may have been perceived by others.

Orange (2004) undertook a careful analysis of all three articles of the treaty, noting the different interpretations and meanings given to various words. In respect to Article Two, the word rangatiratanga was one of the words she reviewed. In the Pākehā version of Article Two, Māori leaders and people, collectively and individually, were confirmed in and guaranteed exclusive and undisturbed possession of their lands and estates, forests, fisheries, and other properties. In the Māori version, Māori was confirmed and guaranteed "tino rangatiratanga," the unqualified exercise of their chieftainship, over their lands, villages, and all their treasures.

Professor Margaret Wilson (1997) says tino rangatiratanga in the context of the Treaty of Waitangi guaranteed the right of Māori to self-determination, that is, the right to make decisions over their land, their communities (villages) and those matters that relate to the preservation and advancement of their culture (treasures).

Mutu (2010) described rangatiratanga as high-order leadership and an essential quality in a rangatira is the ability to keep the people together. She said rangatiratanga is the exercise of such leadership to maintain and enhance the mana of the people. Tino rangatiratanga is the exercise of paramount and spiritually sanctioned power and authority. It includes aspects of the English notions of ownership, status, influence, dignity, respect and sovereignty, and has strong spiritual connotations.

The Waitangi Tribunal (1998) when describing rangatiratanga said it was more than just ownership or management rights. Leaders and members of the Māori community have a duty of care and protection to each other and their taonga. It is part of the essence of Māori identity, is a taonga in its own right and is the key principle of customary social and political organisation.

The following are the four tenets of Waipareira's complaints; immediately below the identified heading is the tribunals, analysis and findings.

6.11.1 Crown has failed West Auckland Māori community

Tribunals analysis and findings: Despite the Crown asserting that section 30 of Te Ture Whenua Māori Act 1993 (the Act) gave the Māori Land Court the ability to resolve

representation issues between iwi or hapū and stating the Waitangi Tribunal had no such jurisdiction. The tribunal disagreed with the Crown's interpretation that section 30 of the Act limited their jurisdiction. The tribunal agreed with Waipareira's submissions that treaty rights most regularly concern collective rights which are present in the community. The tribunal also agreed with Waipareira's claim that it had the mandate of a community of Māori (excluding tangata whenua) who had come together to retain their cultural identity and that it was also the largest service provider in West Auckland. The Tribunal however found that Waipareira did not represent the interests of all Māori in the West Auckland community (Waitangi Tribunal, 1998).

The tribunal agreed that Waipareira had a significant presence in West Auckland but expressed the view that Waipareira did not have to represent every Māori in West Auckland for the Crown to recognise their rangatiratanga. The tribunal went on to say that there were more than one Māori community or other Māori groups in West Auckland and in the case of traditional hapū who have treaty interests they do not have to prove that they also represent Māori in West Auckland (Waitangi Tribunal, 1998).

6.11.2 The Crown has failed to consult with Waipareira

Tribunals analysis and findings: The restructuring of the Department of Social Welfare, led to the creation of the Community Funding Agency. It was the CFA that made the decision, that for the Children, Young Persons and Their Families Act 1989 (the Act) only traditional kin-based groupings (iwi) were in a treaty partnership with the Crown. Waipareira's position was that Māori society was dynamic in nature and has always evolved or adapted to meet new challenges and it would be wrong and dangerous to settle only on certain organisations which may invoke the guarantee of article two of the treaty. They went on to say that their status had been downgraded from the treaty party to a charitable trust citing as an example CFA introducing several protocols for consultation with iwi, but not including Waipareira. The impact for Waipareira is they were barred from becoming an iwi social service and prevented from being classified as a cultural service according to the terms of the Act because they were not regarded as another ethnic group. In support of Waipareira, Dr Sharples said to the tribunal that we must recognise that 80% of Māori live in the city and for

tino rangatiratanga to be achieved required empowering all Māori not just those living in their hapū area (Waitangi Tribunal, 1998).

The tribunal then went through a careful step-by-step process as they analysed and determined, what is an iwi? From the Crown's perspective, they regarded iwi as traditional tribal bodies where members of a hapū are connected by descent. In regards to Waipareira who were representative of iwi from several tribal areas they did not claim to be an iwi, or have a rohe and could not claim mana whenua over a customary area. Waipareira argued that the meaning of the term iwi was – "the people". If that was the acceptable term then given an urban authority represents "the people," they could be regarded as an iwi authority.

The tribunal noted that both Waipareira and the Crown had referred to a 1988 report of the "Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare" – Puao-te-Ata-tu that had been chaired by the late John Rangihau and had come up with several recommendations and a comprehensive plan for the Minister of Social Welfare on how best to blend the perspectives of Māori into a bicultural department. From the tribunal's perspective, the issue was whether the DSW and the CFA had interpreted the recommendations of the committee appropriately.

Mr Peter Boag, one of the tribunal members was asked to assist with determining the proper meaning and application of the report. Following the advice received from Mr Boag, the tribunal determined that the Puao-te-Ata-tu report did not impose on the DSW (and the CFA) that its treaty partner can only be a kin group. Levine (2001) says contrary to the position that had been taken by the courts, the tribunal rejected the Crown's argument and said the Treaty of Waitangi applied to all Māori and that Waipareira is granted the status of treaty partner. The DSW regarded the decision by the Waitangi Tribunal as ground-breaking and provided them with a better understanding of how the Crown should apply the treaty principles with non-kin-based groups (Levine, 2001).

6.11.3 The Crown's failure to recognise Māori cultural preferences

Tribunals analysis and findings: Waipareira claimed that the approach was taken by CFA through their funding, management and administrative process and the setting of their priorities and strategies resulted in "activity" and not "results" being rewarded.

Through the delivery of the CFA funded welfare services, Waipareira were also creating employment and training opportunities to reduce Māori dependence on government handouts. As Dr Peter Sharples articulated, organisations like Waipareira were operating outside the Crown box where everything was prescriptively outlined and initiatives are anathema. The trust went on to say that the CFAs approach was contrary to the recommendations in Puao-te-Ata-tu which called for greater empowerment of Māori through a coordinated approach from government departments (Waitangi Tribunal, 1998).

6.11.4 The Crown has failed to share funding equitably.

Tribunals analysis and findings: Waipareira claimed that under article two and article three of the treaty, the Māori community in West Auckland was entitled to an equal share of funding from the Crown for the services they and other groups delivered. As evidence of their claim, they cited the census data and the caseloads of statutory agencies including the Youth Court, Children and Young Persons' Service and police which indicated that the proportion of funding in West Auckland for Māori should be higher. The tribunal considered several factors including the introduction of the Public Finance Act 1989, and the change it brought to the negotiated contractual arrangements between CFA and the various entities seeking funding. When discussing the issue of funding the tribunal said it was the role of the CFA to ensure that all Māori which included, iwi, urban Māori groups and individuals received an equitable share according to their objectively assessed needs (Waitangi Tribunal, 1998).

Fast Forward 20 years, there is an expectation that the relationship between the trust and the Crown would now be reflective of the 1998 Waitangi Tribunal decision. However, the reality is different with the trust alleging that any changes made following the Tribunal's decision were merely cosmetic in nature, and the problems that existed in 1998, exist today.

A case in point was the battle Waipareira had with the new Ministry of Social Development (previously the Ministry of Social Welfare) over the "Family Start" programme they had been running since 1998. The programme provides ongoing support for families in which vulnerable mothers demonstrate difficulty in providing a safe parenting environment for their babies and young children. It is an early intervention

programme that targets vulnerable mothers that demonstrate either by way of youth, deprivation or other major impairment difficulty providing a safe parenting environment for their baby or children. It provides constant weekly support over three years. (Tamihere, 2012).

These issues came to a head in 2012, when Waipareira challenged the Ministry of Social Development (the Ministry) in the Auckland High Court, contesting their decision to terminate the Family Start programme. The programme provides Waipareira with early intelligence and therefore early intervention opportunities. Often, families that receive this programme have multiple issues to deal with, and other whānau Waipareira services can be brought to bear in a way (Tamihere, 2012).

The Ministry alleged that Waipareira failed to meet specific targets that had been set and the delivery of their service was poor. From the perspective, of Waipareira they alleged that the Ministry's decision was not made fairly or reasonable and that the Ministry had failed to take into account an external report, "the Leeson report" which Waipareira had provided to the Ministry. Waipareira also alleged that the Ministry had solely acted on the advice of one of their staff whose assessment was incorrect, unreliable, biased and not in good faith (Te Whānau o Waipareira Trust v The Attorney-General, 2012).

Unfortunately, the Auckland High Court preferred the evidence that had been provided by the Ministry and their decision went against Waipareira. Tamihere (2012) says a significant outcome of the trial was that in the process of collating evidence, many other non-Māori organisations that had suffered similar treatment from the Crown approached Waipareira offering support.

As a former employee and former trustee on the Waipareira Board, I have experienced first-hand the relationship between Waipareira and Crown entities. Non-acceptance of requests for proposals and contracts, underfunding of programmes, the setting of unrealistic performance targets, the lack of any input by Māori in the development of effective programmes, and continuous auditing of finances and performance targets are genuine issues that arise in the day-to-day operations of Waipareira when dealing with the Crown.

The consequence of these Crown-imposed issues is the creation of an environment that is always set to fail and a culture of reliance and dependency on the Crown. Through the resolve, tenacity, and self-sacrifice of the founding members of Waipareira, robust foundations with an emphasis on whānau and the delivery of Māori services to Māori by Māori have been established. The result is a Māori organisation that "punches well above its weight", catering to the needs of the Māori community in West Auckland.

6.11.5 The divide between iwi and urban Māori authorities

Tribunals analysis and findings: The issue for urban Māori has always been about inequality of treatment and funding parity with iwi groups. Unfortunately, the Crown's preference to fund iwi groups has created a divide between both groups. From the outset, it has always been the position of John Tamihere and Waipareira that they had no desire to challenge the mana of the traditional hapū (iwi), but on the same note, they did not expect to be prejudiced by an ideology that deals exclusively with or prefers iwi. It was their view that traditional hapū and urban Māori stood on their mana and any funding received from the Crown should be sufficient for both to provide services to their Māori community (Tamihere, 2016).

When outlining the demographics of the people Waipareira dealt with on a regular daily basis, Tamihere (2016) was able to point to a report from New Zealand Statistics titled Taku Marae, which reports:

- That about 29% of Māori adults are not aware of the ancestral Marae. However, what is quite surprising is the rate of Māori who are unaware of their iwi (about 16%). In 2013, Māori who are aware of their iwi but not their Marae is about 12%. Consequently, these categories of Māori are most likely not to benefit nor receive any provisions from iwi.
- That many Māori adults, both the ones who are aware of their ancestral Marae or not, have likely not been to their ancestral Marae (about 38%). Even among the ones who know it, about 11% have never been there. Māori that haven't been to their ancestral Marae (2 out of 5 Māori) is likely not to be perfectly linked to their iwi and are unlikely to obtain or receive any support from it.
- That the Māori population, about 46% of adults do not think of their ancestral Marae as

their Turangawaewae.

Sissons (2004) states for those Māori seeking greater recognition for a Māori nation the relationship between tribal and other Māori identities has become a troubling issue. He says since 1995, the Māori congress which is a tribally based national tribal body has been trying to accommodate a desire from some Māori for greater tribal self-determination with the desire for a stronger Māori voice that goes beyond tribalism. There is however the ever-present iwi bias against urban Māori including failing to invite them along to important hui where the topic of discussion was the future of Māoridom, (Stokes, 2006).

The former chief executive officer of Manukau Urban Māori Authority June Jackson, took a firm position when challenging, the Crown and its exclusive policy stance but also by opposing iwi leaders who openly rejected the proposition that urban Māori should share in the receipt of state resources (Rangiheuea, 2010). On several occasions, she would remark that the iwi leaders, most of whom she knew personally had a bloody cheek to try and prevent urban authorities from being funded to run specific programmes for their people. She said she attended several meetings over the years where the iwi leaders were also in attendance and she never missed out on the opportunity to get up and tell them how organisations like MUMA and Waipareira were doing the mahi while the rest of them sat around talking and doing nothing about it (J. Jackson, personal communication April 10, 2009).

Rangiheuea (2010) says the response that urban authorities received from iwi highlighted two things; firstly, that iwi was threatened by their presence and did not want to share the management of any treaty assets; and secondly, that the Crown had adopted a clear position that its preference for dealing with Māori was in a binary relationship with iwi.

Meredith (2000), emphasised many Māori have been captured and polarised by antagonistic politicking that has centred around a conceptual orientation of an ‘either/or approach to the appropriate association. The following quotes from members of “opposing sides” to the debate highlight the entrenched view held:

Prominent Māori lawyer Donna Hall said the only difference between the tribal and urban groups is that while both are concerned to improve Māori performance in social responsibility, the position in the urban areas is more urgent. The late Apiriana Mahuika

of the Rūnanga o Ngāti Porou held the conviction that it is "the iwi base that is the most effective social, political, cultural, and commercial entity within all Māoridom" (Meredith, 2000, p. 19).

Meredith (2000) says there is a need for an open-ended and sophisticated debate between iwi and urban Māori, where the difference that exists between both are aired recognized and accepted. He says what is required is Māori leadership with a broader vision, that is prepared to step outside their comfort zone, that is not divisive in nature and is prepared to realise the potential of both groups working collaboratively in achieving common objectives and coexisting together.

Hall (1998) was right when she said that the urban issue is not about the individual in contrast to the tribe or urban in contrast to the tribe. She said the emphasis must be directed towards building better communities for all Māori that are either tribal or pan-tribal according to how Māori live today. Durie (1998) said the emergence and visibility of hapū and iwi have increased over the past decade. But at the same time, urban Māori groups have emerged on the scene, ready to compete with tribes and take the State to task for their share of resources and their role in Māori decision making.

Durie (1998) states that urban Māori and iwi need to work out how they can best coexist. If they are to move forward then they need to drop the "it is all about me mentality" and explore the best way they can work together. Durie (1998) goes on to say if urban Māori and iwi Māori are going to serve the needs of the present Māori population they will need to engage in the negotiation and formation of relationships of citizenship, that are strategic and multi-dimensional. It is not a matter of "easier said than done" but instead a matter of "it has to be done."

6.12 Sealord Fisheries Deal

The genesis of the Sealord Fishing deal originated from a legal challenge by Māori that the Crown when it passed the 1986 Fisheries Amendment Act, created a property right for itself in the form of a transferrable fish quota that breached Māori rights under the Treaty of Waitangi (Sissons, 2004). These changes breached a promise the Crown made to Māori when signing the Treaty of Waitangi in 1840, that they would have full,

exclusive, and undisturbed possession of their fisheries for as long as they wished to hold onto them.

The challenge by Māori was upheld by the High Court and led to a relatively small group of tribal representatives at the expense of urban, non-tribal Māori leaders and their constituencies, gaining a large stake in the New Zealand fishing industry[6]. Tamihere (2016) using a metaphor said it was the people who got their muskets first that did well out of the deal. The muskets on this occasion for the modern-day chiefs were the Queen's Counsel they lined up in court to represent their interests. Tamihere believed that because large numbers of urban Māori resided in the city, they should have been afforded the same rights and economic opportunities as iwi. He believed that Māori who did not fall in the tribal class would be given lessor status as Māori and would not benefit from the distribution of assets (Haami, 2018).

From the beginning of the Crown-led Sealord negotiations, only four tribal leaders Matiu Rata of Muriwhenua, Sir Tipene O'Regan of Ngāi Tahu, Graham Latimer for the New Zealand Māori Council and Denese Henare for Tainui-Waikato were supposedly representative of those Māori who had earlier challenged the Fisheries Amendment Act, were now involved in the initial discussions. These tribal negotiators sought the further endorsement of their appointments by holding and attending a hui of tribal representatives seeking a stronger mandate. Following the hui, they returned to negotiations with the Crown with a clear mandate and direction to obtain at least a 50% quota. The absence of urban Māori authorities and other Māori groups at the tribal hui and during negotiations with the Crown was evidence enough that not all Māori had been joined to the negotiation and consultation process (Sissons, 2004).

The initial negotiations between the tribal leaders and the government resulted in the Māori Fisheries Act 1989 (MFA) allocating a further 10% of the quota to tribal Māori. The MFA also created the Treaty of Waitangi Māori Fisheries Commission (the Fisheries Commission) whose new members included the four tribal leaders involved in earlier negotiations. The Fisheries Commission's responsibilities included: developing a plan so pre-settlement assets could be distributed equitably, managing the assets held in trust for

6. *Te Waka Ke Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* HC Auckland, CP 395/93 CP 122/95 & CP 27/95, 4 August 1998, Paterson J.

the tribes and finally encouraging participation and education of Māori in the fishing industry (Day, 2004).

In 1992, during the continuing negotiations between the parties, the largest seafood firm in Aotearoa, "Sealord Products Ltd" which had a significant fish quota of its own came up for sale. The government seized the opportunity to settle Māori fishing claims and agreed to assist Māori to buy a half share ($150 million) in Sealord Products Ltd (Sisson, 2004). By the Treaty of Waitangi, a deed of settlement that became the basis of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 was drafted. The deed provided a full settlement of all Māori commercial fisheries including the 20% of quota for new species (Lock & Leslie, 2007).

After the fisheries settlement was confirmed by the Treaty of Waitangi (Fisheries) Claims Settlement Act 1992, Māori gained 50% interest from the Sealord deal, which drew them into the Crown's Quota Management System and, at the same time, regulating commercial fishing. This action addressed one of the major criticisms that have been raised by Māori during negotiations concerning the fact that the Crown does not have the power to acquire a quota to redistribute to Māori because it has been given to individuals and companies. After being added to the quota as promised in the 1989 interim agreement, their 50 % share in Sealord gave Māori effective control of 23% of all quota (Birdling, 2004).

When Māori accepted the Crown's offer, they relinquished several rights. These included forfeiting all rights to further fisheries claims under the Treaty of Waitangi, and ending all (current and future) court action (Sissons, 2004). It also stopped the Waitangi Tribunal's legal power to hear the commercial fishing claims, and for the regulation of customary Māori fishing.

The Sealord deal between the Crown and iwi Māori proved to be the catalyst for Waipareira and other urban Māori authorities to instigate legal proceedings challenging the Crown's decision to only allocate fishing assets to iwi[7]. Mutu (2012) says the Sealord deal was pushed through with great confusion and brought the negation process into serious disrepute.

[7] *Te Waka Ke Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* HC Auckland, CP 395/93 CP 122/95 & CP 27/95, 4 August 1998, Paterson J.

The court action that eventuated focused on the different interpretations of "iwi" by urban Māori compared to that of tribal authorities. John Winitana spoke about being asked to talk about what is an iwi and how it is represented. He went on to say that it is a problem because traditionally iwi meant just "the people". It was regularly used as "te iwi Māori me te iwi Pākehā", by the Māori and the Pākehā people. "Iwi" could be used for the people of a hapū, the people of a district or the people of a country. It could be used for rich people, the poor people, the people of Auckland or whatever. When we talked of the tribe, we spoke of hapū (Meredith, 2000).

When asked about his interpretation of iwi, Sir Robert Mahuta of Waikato-Tainui had a contrary view when he said he understood that iwi meant a collection of sub-tribes who trace their descent to a common ancestor. He went on to say that Kinship links were an integral part of the iwi organisation. In his view, without kinship links, no group can purport to call themselves an iwi. He highlighted that some urban Māori groups such as Ngāti Poneke have attempted to model themselves as iwi but they lack long-term established ties associated with whānau, hapū and iwi kinship links. These links are the glue that keeps a tribe together and is fundamental to the concept of iwi (Meredith, 2000).

The intention of Te Ohu Kaimoana (2018), to allocate quota only to iwi and not urban Māori led to a series of legal proceedings that took all parties to the Privy Council where Goff L. J,[8] referred the matter back to the High Court of Aotearoa, and posed two questions for Justice Paterson of the High Court to consider: whether iwi were necessarily the sole traditional units to which the Commission must distribute its assets and if the answer to that query was yes, in the context of such a scheme does "iwi" mean only traditional Māori tribes? (Turei, 1998). Justice Paterson answered yes to both questions, holding that the Commission was entitled to allocate pre-settlement assets to iwi and that "iwi" was to be defined for the Settlement Act, as a traditional Māori tribe[9]. He also determined that the allocation to iwi would not inhibit access by urban Māori to those resources (Turei, 1998).

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[8] *Treaty Tribes Coalition, Te Runanga o Ngāti Porou and Tainui Māori Trustboard v Urban Māori Authorities* [1997] 1 NZLR 513, 523.

[9] *Te Waka Ke Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* HC Auckland, CP 395/93 CP 122/95 & CP 27/95, 4 August 1998, Paterson J.

6.13 Te Pūtea Whakatupu Trust

In 2002, John Tamihere was a member of the Labour party and was instrumental in obtaining $20 million from the Treaty of Waitangi Fisheries Settlement (Sealord deal). This money was to be set aside in the Te Pūtea Whakatupu Trust (Te Pūtea), and able to be accessed by individual Māori irrespective of their iwi affiliations (Rangiheuea, 2010). Te Pūtea was established as a charitable trust and was governed by the Māori Fisheries Act 2004 (the Act).

Sections 81 and 83 of the Act outline the purposes and functions of Te Pūtea Whakatupu Trust. The Act also contains directions concerning the constitution of Te Pūtea Trustee, and the number of directors (three). Section 88 of the Act headed "Requirements for appointment of directors" is detailed as follows:

In appointing the directors of Te Pūtea Whakatupu Trustee Limited, Te Ohu Kai Moana Trustee Limited must consult with the National Urban Māori Authority to ensure that the directors know, and can represent, the interests of Māori who reside in urban areas of New Zealand (Māori Fisheries Act, 2004).

In 2016, the National Urban Māori Authority (NUMA) and Waipareira filed judicial review submissions in the Wellington High Court. In their submissions, Te Ohu Kai Moana Trustee Limited was named as the defendant and Rikirangi Gage and Richard Charles Tauehe Jefferies as interested parties (*National Urban Māori Authority & Or v Te Ohu Kai Moana Trustee Ltd & Ors*, [2016] NZHC 1600). The crux of NUMA and Waipareira's judicial review was that TOKMT had adopted recommendations that would further strengthen their control over Te Pūtea at the expense of urban Māori (Tamihere, 2016). Boot (2016) said NUMA and Waipareira were seeking court directions preventing Te Ohu Kai Moana from making changes to the trust's governance that would give iwi even more control, and requiring the directors on the trust to know of and be able to represent the interest of urban Māori.

Pursuant to the 2004 Māori Fisheries Act, the Te Pūtea Whakatupu Trust was established as part of the settlements of Māori fishing rights claims. They are to provide for the people of urban Māori who are not beneficiaries of the iwi-based settlements because they have no contact with their tribe. The Te Ohu Kaimoana failed in its duty; it was established to

manage the assets of the Māori fisheries and control the Te Pūtea Whakatupu. But only one of three directors of the trust, John Tamihere, was associated with urban Māori while the other two, Rikirangi Gage and Richard Jefferies, had strong connections with the iwi with no urban Māori connections whatsoever (Boot, 2016).

The Māori Fisheries Act stated that the directors need to have knowledge of and have the ability to represent the urban Māori interests; this means that the board of directors has more obligation to fulfil the criteria collectively, but as individual board members, they do not have this obligation, as argued by Te Ohu Kai Moana. Following his departure from Parliament, Tamihere (2016) says iwi interests seized on that opportunity by taking over the trust and nominating their iwi colleagues. He said urban Māori had submitted countless well-considered proposals seeking funding to support social and economic developments for urban Māori which had been repeatedly denied by iwi, who had the majority voting power, 2-1 on the three-person trust. He claims these surreptitious actions on the part of iwi allowed them to take control of the trust money. Lady Tureiti Moxon described the current Te Ohu Kaimoana governance structure as being fraught with inequality and unfairness. She said this was the reason they had taken this matter to the courts because the principled approach was to protect the position of urban Māori (SCOOP Politics Independent News, 2016). Rangiheuea (2010) regarded the provisions of the Putea trust as spurious because even though the role of urban Māori was acknowledged, they were not in sole charge of the funds.

In 2015, NUMA and Waipareira challenged Te Ohu Kai Moana's response to a review of Te Pūtea which had been undertaken by Wellington Barrister Tim Castle. In his review, Mr Castle recommended that Te Ohu Kaimoana be wound down with power returning to iwi groups, he also said that urban Māori has more say over the trust. Iwi did not support the recommendations and instead, they voted for an increase in the number of trustees to go from three to five (Metherell, 2015). This caused NUMA and Waipareira to challenge them for breach of natural justice, non-compliance with the statutory process, and inconsistency with the statutory process. Over two days in the Wellington High Court, Justice Simon France presided over the case and in his judgement, he said that the correct reading of the Act was that each director is obligatory to and must be able to represent urban Māori (Boot, 2016).

Justice France went on to say that given that the funds that had been allocated to Te Pūtea were a small percentage of the overall SeaLord settlement a requirement that all three directors have experience with the needs of urban Māori is not an unexpected standard. He refused to look back at what previously had transpired about the appointments made by the trust in the past or NUMA and Waipareira claim that Te Ohu Kai Moana had made it a policy to appoint only one urban director. By the time of the hearing, the iwi-affiliated directors, Messrs Gage and Jefferies, had already resigned but were identified as interested parties in the case (Boot, 2016).

Justice France (Boot, 2016) also said, it was apparent that the review was not properly analysed because there was "an illegitimate emphasis" on the funds of the trust being made available to all Māori. He accepted that the trustee's process towards the review was affected by the error, but he refused to annul the resolution as it seemed to be "actually a sensible one," also, keeping it in place would not hinder further consultation process from happening. The judge said it was appropriate that the trust pay the legal costs of both parties as the trustee had not been functioning (Boot, 2016).

The hard work of Waipareira and other Māori groups to challenge iwi when the rights of urban Māori are being abused has slowly but surely resulted in small gains. This is reflected in the current composition of the directors on the Te Pūtea trust who have strong urban Māori connections (Te Pūtea Whakatupa Trust, 2022).

6.14 How can things be improved?

Barcham (1998) has offered three suggestions as to how these differences between iwi and urban Māori could be resolved. The first is a solution from Ngahiwi Tomoana chairman of Te Rūnanga O Ngāti Kahungunu who says that iwi and urban Māori authorities (UMA) could work together, with the UMA acting as distribution agents for various iwi. The advantage of such a process is iwi then has immediate access to the UMA distribution networks.

The disadvantages however include, UMA becoming the pawns of the iwi, and the need for all iwi to agree to a common scheme in which UMA has some discretion over distribution to ensure all members are equally catered for. The other issue is that there are

Māori who do not know or are unclear about which iwi they belong to, especially those adopted to non-Māori families.

The second suggestion from Mason Durie, who argues that Māori representation at a national level must be firmly anchored in a national Māori constituency. He suggests establishing a national pan Māori body that would represent all Māori and be responsible for the equal allocation of assets. He believes when considering the diverse realities that Māori occupy in the modern world that not all Māori aspirations can be found within tribal agendas (Barcham, 1998).

The third suggestion involves UMA and iwi and the distribution of monies for allocation. Under this system UMA would receive a percentage of the assets directly, irrespective of what iwi representatives say about those Māori who cannot or will not align themselves with an iwi (Barcham, 1998).

Barcham's suggestions have merit and may achieve the objective of strengthening iwi and urban Māori relationships. However, the issues do not rest entirely with iwi and urban Māori, the Crown and indirectly the community have a large role to play if the objective is to improve service delivery to those Māori most in need. The final chapters in this thesis provide recommendations that may achieve this objective.

6.15 Chapter Summary

Waipareira was born out of the demand from rural Māori moving to the cities and seeking the support structures they once enjoyed from their home marae. The willingness of Waipareira to provide health and social services to all Māori was perceived by iwi as not only a challenge to their mana because they could not provide like services, but a threat to their Crown funding stream. Waipareira has been at the forefront of initiating several legal challenges against Crown and Court decisions that have disadvantaged urban Māori. The Sealord deal favouring iwi and the Court's definition of iwi as a tribal entity, excluding urban Māori, such examples. Waipareira has always demonstrated through its actions that the needs of the people are paramount. If iwi and the Crown are serious about addressing Māori issues, then it is time for all three parties to come together to develop a system that works.

The next chapter expands on the research findings and comes up with recommendations that will change the status quo and will lead to better outcomes for Māori.

CHAPTER SEVEN

FINDINGS

7.0 Chapter Introduction

There are two streams to the research component of this thesis. The first stream centres on the topic of this thesis to investigate the influence public servants have had on treaty settlements. Information for this thesis was sourced from several areas including academic literature and research, television, completed treaty settlements and from interviewing five iwi negotiators and two public servants. A key source of information was the research work of Professor Mutu (2019b) assisted by Dr Tiopira McDowell, who examined the impact that New Zealand's treaty claims settlement policy and the process had on Māori. As reported by Mutu (2019b), the main aim of the research undertaken was to confront the lack of claimant voices in the discussion and literature on the treaty policy and process. The recency of Professor Mutu and her research findings corroborated aspects of my research and were referred to during the compilation of this thesis.

The second part of the research centres on the case study of Te Whānau o Waipareira Trust and the challenges they have faced from iwi and the Crown as they tried to obtain sufficient funding for the programmes run out of West Auckland for Māori. Their argument being, that Māori from all tribes were welcome to avail themselves of the services Waipareira provided. In the 1980s, the early trust board members were instrumental in challenging the Crown as they sought funding equity. The chief executive John Tamihere and two senior trustees, Dame June Mariu a life member and Evelyn Taumaunu were with Waipareira during the early turbulent years and are still with Waipareira today. They were interviewed and provided an overview of the issues and suggestions as to how relationships between Waipareira, iwi, and Crown can be improved.

7.1 Treaty Settlement research participants

Ngāti Manuhiri and Ngāti Rehua were selected for treaty settlements in the less than $20 million division. I had been involved as a project manager for Ngāti Manuhiri during

their treaty negotiations and had been fortunate to work alongside the lead negotiator the late Laly Haddon and my friend Mook Hohneck. At that stage the treaty settlement process was new to me; it did not take long to get an appreciation of the issues iwi negotiators were experiencing with the Crown as they worked towards a final settlement.

Another role I have performed is as the technical advisor supporting Mook, who was the tangata whenua representative on the Hauraki Gulf Forum (the forum). It is on this forum where I met Nicola McDonald the lead negotiator for Ngāti Rehua who was also a tangata whenua representative. Nicola impressed me because she had a no-nonsense approach, was intelligent, and epitomized the skills and attributes of a wahine toa as she battled not only those within her iwi but also the Crown to obtain the best treaty settlement she could for her people.

At that juncture, I had not identified participants in the $20 to 50 million division but decided to go straight to Tukoroirangi Morgan and Willie Te Aho whom I knew personally. Regarding Tukoroirangi, I was aware that he along with the late Lady Reiha Mahuta, who was the wife of the late Sir Robert Mahuta, negotiated the Waikato-river settlement and managed to access a $210 million clean-up fund and co-governance over the river environment.

Willie Te Aho was approached because he impressed me with his intellect and his work ethic. Whenever I was around Māori circles Willie was spoken highly of because of the work he had done amongst Māori and on some of the claims he had worked on including Ngāti Porou Ki Hauraki and lead negotiator for Te Aitanga a Māhaki. I had also witnessed him working on behalf of the iwi leader's forum on several contentious issues such as Māori ownership of water in Aotearoa.

I then interviewed Tame Te Rangi (Tame) the negotiator for Ngāti Whātua Rūnanga. I had come across Tame in my dealings with other hapū and iwi over the issue of cross claimant boundaries. Tame was a pragmatic person who fought tenaciously for the Rūnanga but in my view never got himself bogged down with matters of no importance preferring to cut to the chase and put the issues on the table early to discuss.

It became obvious from the outset of my interview with each of the five negotiators that their level of experience in treaty negotiations was not only confined to just one settlement but they had all been involved in some capacity with more than one. Their roles included leading the treaty settlement negotiations and being part of the treaty settlement negotiation team or a member of the iwi trust that oversaw the negotiation process.

In the case of Willie Te Aho, he had been involved in over 18 treaty settlements in some shape and form. Tuku and Mook had also been involved in several treaty settlements and had also been engaged by the Crown to help facilitate initial negotiations with other iwi or assist in settling issues. Mook more recently is one of the three negotiators alongside the Honourable Nanaia Mahuta on the Ngāti Maniapoto claim due to being settled for the sum of $165 million.

Given, the participants' wealth and breadth of treaty negotiating experience with the Crown, I decided to dispense with the three monetary settlement divisions. It is worth noting that given the participants had traversed across all three of the monetary divisions they would be perfectly placed to advise whether there was a difference in how the Crown officials dealt with the small treaty settlements (under $20 million) when compared to the larger settlements over $20 million.

Having completed the interviews of the five research participants I then considered whether I would identify and approach further participants for further interviews. During this period, I reviewed the Crown Forestry Rental Trust (2003) interviews of iwi negotiators who had completed their treaty settlements, I also reviewed those treaty settlements that had featured on television (Henry, 2019, McKenzie, 2019, Mullins, 2019, O'Regan, 2019). The issues raised by all participants mirrored the comments of the 150 participants that had been the subject of the extensive research undertaken by Professor Mutu (2019) and her team. Given those circumstances, I decided to dispense with any further interviews.

7.2 Waipareira research participants

Regarding Waipareira, the chief executive John Tamihere had no issues with his identity being revealed. It is worth noting that Mr Tamihere has been publicly prominent as a previous Labour Member of Parliament and more recently as a candidate for the Māori Party in the 2020 elections. His other public profiles include, both television and radio media as a host and commentator; was an Auckland Mayoralty candidate and in his current chief executive officer roles at Whānau Ora and Waipareira.

The West Auckland Māori community is very close-knit, everybody seems to know everybody. The openness and transparency of the appointment process of trustees on the Waipareira Trust Board is a public event held every year at the Hoani Waititi marae in Oratia, West Auckland. Trustees whose time on the board has expired and are seeking re-election, or where a position on the board becomes vacant, results in the vacant position being advertised on the Waipareira website and local media forums. All applicants seeking election then appear before the West Auckland community at Hoani Waititi Marae. The applicants are given a short period where they must address the community and present their credentials for election. The West Auckland community then is invited to vote (by written ballot), once the written votes have been collated and counted the successful candidate is announced. To ensure impartiality the whole process is overseen by an independent scrutineer. During the two terms, I was on the trust board the independent scrutineers were both lawyers.

The two participants who agreed to be interviewed were Evelyn Taumaunu and Dame June Mariu, both of whom had no issues with their identity being known. Evelyn had been involved with Waipareira in the early days in various roles as a trustee, deputy chair, and chair of the Waipareira board. At the time she was interviewed for this thesis she was still a trustee on the Waipareira board. Evelyn and her husband Jack Taumaunu were well known in West Auckland having established and run the Māori wardens, who not only worked throughout the area but also worked for the Auckland city council on the Auckland metropolitan rail system. Dame June Mariu, the unofficial queen of West Auckland whose name is synonymous with both Waipareira and Hoani Waititi marae from the beginning. From my perspective, both women epitomized mana wahine, not only battling for the rights of Waipareira but Māori.

The questions put to all iwi participants were designed to not only elicit answers but to create an environment that was conducive to the free flow of information. In some instances, the comments of the iwi negotiators were printed in their entirety because the response was echoed by the other negotiators and did not need to be repeated. Where necessary there was also some slight editing of responses to preserve the identity of the hapū or iwi the negotiator was representing.

The two Crown negotiators chosen would have been "right in the firing line" if concerns were raised in the public service about the information they provided as part of this research. Accordingly, their identity remains confidential, and they are referred to as PS1 and PS2 throughout the document. Most of their commentary was printed in its entirety because the responses they provided addressed several issues that had been raised by the iwi negotiators. Any changes to the responses received were done to protect the identity and confidentiality of the participant.

7.3 Anonymity

The Māori participants were transparent and spoke frankly and honestly of their experiences with the Crown. The issue then arose of confidentiality of their identity, to ensure their protection. The iwi treaty negotiators were happy for me to reveal their details alongside the comments they had made regarding the treaty process and settlement. Mook Hohneck (personal communication, August 12, 2016) stated that he knew all of the treaty negotiators in Tamaki Makaurau, Te Tai Tokerau, Hauraki, Waikato, and Bay of Plenty and said it would not have been difficult if he had or anyone else if they chose to-to ascertain the details of the other negotiators.

Concerning the public servant participants, I was acutely aware of the repercussions that awaited them if the Crown deemed what they had revealed in their interview reflected badly on the public service. I was aware the Public Sector (State Sector Act, 1988) has a code of Integrity and Conduct that specifically outlines their expectations of people in their employment which include being fair, impartial, responsible, and trustworthy. The

penalty if found in breach of the code included disciplinary action and the likelihood of being dismissed.

There have been highly publicized incidents of public servants and those who have sought government funding getting "offside with the Crown" resulting in a backlash against them from the Crown. The history of the former Work and Income New Zealand (WINZ) Chief Executive Officer Christine Rankin (Mold, 2001) and her lawsuit against the Crown when they would not reappoint her, and more recently the Chief Executive Officer of Oranga Tamariki Grainne Moss (Neilson, 2021a) who following months of intense pressure from the media and Māori for her to resign over issues within her department are such examples.

Another example not involving a public service employee was comedian, former Order of Merit Recipient, and now Mental Health Advocate Mike King (2021) who had fallen out with the Ministry of Health. The fallout had resulted in the long-standing "Gumboot Friday" charity fundraising event for free mental health counselling being cancelled because health funding to assist with the running of the event had been denied.

7.4 Treaty Settlements - Negotiators

The opportunity to interview iwi negotiators as part of this research was a humbling experience, these people came from all walks of life, from a lawyer to a bushman to a television news reporter. They came with a collective purpose to tread into uncharted territory, with very little to no resources, and try to negotiate a fair settlement with the Crown on behalf of their people. Their honesty and frankness during the interviews masked the anger each felt (which I could personally feel) in their dealings with the Crown.

For some, the interviews provided an opportunity to vent their frustration at the injustice of the treaty settlement negotiation process. The matters they raised were no different from those that had been raised by previous negotiators (Crown Forestry Rental Trust, 2003) who had settled treaty settlements or from the 150 people that participated in the research undertaken by Professor Mutu (2019b) and her team. The disappointment is that

the Crown negotiators would have witnessed the hurt experienced with every negotiation they held, yet their treatment of Māori never wavered.

7.4.1 Do you believe treaty settlements to be fair and just?

Participant: Tukoroirangi Morgan (personal communication, March 15, 2016).
Absolutely not. When you deal with the Crown the process is never fair and just. There is a clash of two worlds and cultures. From a Crown perspective, they adopt Pākehā values and defer to the British colonial concept of the right to govern. There are always constraints when dealing with the Crown. From a Māori perspective, we are culturally and value-based. There is no such thing as a fair and just settlement. This is just the beginning. If you read the various Acts there are always ongoing requirements that have to be addressed. The Crown always mentions that these treaty settlements are fair and just to appease the politics of mainstream New Zealand and pacify the public paranoia. It has no meaning for Māori.

Participant: Willie Te Aho (personal communication, March 12, 2016).
The environment is set by the Crown, limits are set by the Crown, and limits are arbitrary and not based on compensation. In the Waikato Tainui Deed of Settlement, they assessed their compensation at $12b – they received $170m – they are not fair.

Participant: Mook Hohneck (personal communication, August 12, 2016)
I think our settlement was never fair and just. I do not think the process and design of treaty negotiations with the Crown bring about a fair process. Too often the Crown is telling us this is the Crown process you have to follow. You have to be in that process. It is like you have to jump on board and follow their process or go to the back of the line. I do not think the process is fair and just. I think it is a process that brings about an end. I disagree with the process.

Participant: Nicola McDonald (personal communication, August 30, 2016).
In terms of being an Island-based people, we have migrated to the mainland and assimilated into many hapū and iwi. The cost of the grievance doesn't reflect the treaty

settlement that has been offered by the Crown. The return we were offered is less than 1% of what we lost. How can that be called fair and just?

Participant: Tame Te Rangi (personal communication, September 28, 2016.)
No, I think for us what was on the table there were two things we had to agree on early, one was that there would be no quantum with the settlement, and two was that the provision in it would probably outweigh any level of quantum that would be attached to it, and what it did show was the emphasis and the significance that should go on relationships.

7.4.2 What concessions were made during Crown settlement negotiations?

Participant: Tukoroirangi Morgan (personal communication, March 15, 2016).
We outlined to the government the work that had gone on before settling which included 176 meetings with the people. We were able to elicit concessions from the Crown because the river was not only polluted and needed to be cleaned but was also a resource that was used by the general public. I believe we achieved this outcome because the Crown didn't have the political appetite to contest this settlement, they were well aware that the river was polluted and needed to be cleaned. It was a resource that was not only used by Māori but by the general public so the government was confident that there wouldn't be major repercussions from the public that money had been set aside to return it to its former pristine condition.

Participant: Willie Te Aho (personal communication, March 12, 2016).
Every tribe has had to make concessions. Waikato-Tainui and Ngāi Tahu negotiated relativity clauses that enabled them to clip the ticket of other settlements when the 1billion dollar settlement figure was breached. The relativity provisions were not made available to any of the other tribes settling. The Crown has been inconsistent with how they resolved the Waikato river settlement, again the concessions achieved by the negotiators at that time were not available to others. Around gifting, the Crown realised that if the gifting came under the relativity provisions, then they would have to pay out more. Instead of using Te Arawa as an example, they were gifted their geothermal areas which turned out to be a $ 10 million windfall for them. If there had been no concessions made

on the part of iwi there would have been no settlement. Politicians have come out and said that iwi has the option of taking the settlement or not. What is the alternative, what are iwi supposed to do? By not taking up a settlement we are deprived of economic opportunities for our people. If Rob Mahuta had not taken up the settlement he was offered he would not have been able to invest in education for Waikato – Tainui most valuable resource, people. Duress is brought to bear, if you don't accept what they offer you, you go to the back of the line.

Participant: Mook Hohneck (personal communication, August 12, 2016).
I think there were always concessions. I think it is well known that only about 3% of what the iwi treaty claims for, they receive back whether that is a cultural or a monetary value. Everywhere we go we are making concessions. A practice that is not reciprocated by the Crown. Really disappointing that other Crown agencies like Land Information New Zealand and the Department of Conservation and other departments are holding everyone to ransom, whereas we are going into these negotiations expecting the Minister and his office to make the decision, we were being held up and being told we had to wait for other Crown departments to make these decisions. We expected that these decisions would surely be made by the Minister for Treaty of Waitangi Negotiations first and foremost not some management entity working on behalf of the Crown. If we did not agree to concessions, then the negotiation process would take much longer as the Crown would prioritise others. That is the way they operate.

Participant: Tame Te Rangi (personal communication, September 28, 2016).
The two biggest concessions were the agreement that the collective settlement was not going to have a component of quantum, the second concession was to take the two harbours we had an interest in off the negotiation table.

7.4.3 Impact of the Crown negotiator on the treaty settlements?

Participant: Mook Hohneck (personal communication, August 12, 2016).
Well at the end of the day the buck stops with the Minister, so he had to agree to everything. The impact that he had I felt that he let us down with a particular iwi that was asking for six properties as previously mentioned. I thought the Minister with his powers

could have easily said you had plenty of time to talk about those properties, no I am leaving them in and that would have been a fight the Minister would have had to fight on behalf of his office. I think that he let us down because right up till then we had a good relationship with the Crown, a good relationship with the Minister, and felt pretty confident about the trust between the Crown and iwi.

Participant: Nicola Mc Donald (personal communication, August 30, 2016).
The previous negotiation team had accepted a poor deal from the Crown, new negotiator obtained an agreement that was considerably greater than what was initially offered by the Crown. Issues had arisen from the relationship that had existed between the Crown negotiator and the former iwi negotiator. Concessions had been made that should not have been made. The initial settlement was unsatisfactory. If we had not stepped in and challenged the settlement it is quite probable the Crown would have let it go ahead.

7.4.4 Are the treaty settlements durable?

Participant: Willie Te Aho (personal communication, March 12, 2016).
They are not durable because the Crown has begun to change the term of the treaty settlements. The 2002 Climate Response Act restricts forestlands that can be used for higher and better value requiring those Māori who purchased forests as part of their settlements to acquire carbon credits to be able to use them for higher and better value. The Fisheries settlement dispute with the government trying to stop fishing in the Kermadec region, and trying to change the terms of the settlement. The Waikato-Tainui settlement done in the 1940s was supposed to be full and final, yet it was changed again in 1995. Treaty settlements will never be full and final settlements until the settlement is just. The settlement achieved today creates a ‘war chest’ for the next generation to fight for a just settlement.

7.4.5 What difficulties did you experience when working with the Crown?

Participant: Tukoroirangi Morgan (personal communication, March 15, 2016).

The difficulty we had when negotiating with the Crown was trying to get them to understand our cultural values and how we as Māori valued the river. The Crown had offered us the land under the water. We told the Crown that the water was regarded as a tupuna that could not or should not be separated. We insisted on the whole river being returned to iwi. Our cultural values throughout were paramount. It was never about the money for us it was about Mana o te Awa the health and well-being of the water, and Mana Whakahaere the co-governance of all these things. The difficulty our team had when dealing with Crown officials was their slowness to respond and impede the process. Our team would describe the process when working with Crown officials as, "standing on shifting sands," they would always be trying to change things.

7.4.6 Public Servant involved in treaty negotiations?

Participant: Tukoroirangi Morgan (personal communication, March 15, 2016).
Public officials are risk-averse and inflexible. They work within a predetermined framework and will not work outside the parameter that has been set.

Participant: Willie Te Aho (personal communication, March 12, 2016).
Public servants are critical. Public servants shape the advice that goes to the minister and then speak to the advice that is given to the minister or given to the cabinet so they are critical, there are not too many good ones, I will be blunt about that. There are some good public servants whom I have mentioned that are not necessarily advocating what is good for Māori but for a fair outcome, what is good for Māori is good for the country, which is what Bill English said to the iwi leader's forum on (5 August 2016) what is good for Māori is good for the country.

The true public service role is to give advice, good or bad. What happens is they are influenced by political advisors who then instruct public servants as to the advice they want to go to ministers. Public services need to practice what they breach, neutral advice means the status quo or a bit less it doesn't mean they are addressing Māori issues, what they are giving is Pākehā advice from their view of cabinet directions.

Participant: Mook Hohneck (personal communication, August 12, 2016).

The biggest difficulty working with the Crown is that the goalposts always changed. We were always working to their schedule even though there was a timeline all laid out of a prescriptive nature, it was always being changed by the Crown. I am very proud to say that I thought our negotiations and our teams always worked precisely to the timelines that were given. However, the Crown was always changing the goalposts and I felt that the staff working for the Crown or the office of treaty settlement staff were doing some of the operational issues or most of the decision-making that should have been made at a higher level.

An example that caused frustration was approaching the Department of Conservation and asking for the right to Crown land that should have been on the table for negotiation. It makes a joke of the whole treaty process when the Crown agencies and public servants are acting like the land that was taken from us is owned by them. I think that needs to be enforced on the Crown agencies, public servants, and other public entities that they do not own or have a say in treaty negotiations. It should be rangatira to rangatira, the Minister to the mandated negotiators level.

The public servants had too much sway. It seemed like we were under the illusion at the start of the treaty settlement process, that the process was between iwi and the minister and the office of treaty settlements. But it always seemed to come back that the public servant was making the decision. In the case of the Department of Conservations our discussions over a significant iconic sight to us as an iwi, it was always not about what the Minister wanted it was always about what the office of treaty settlements said we need to go back to the Minister of Conservation and going back to Department of Conservation and find out that answer, it was always a default position as opposed to those two ministers talking together and our Minister for Treaty of Waitangi Negotiations saying yes I can do that or no I cannot do that, you know level.

The Crown officials were never prepared to compromise anywhere. It was all about working with what they had at their table to make something fit into ours. In other words, we never necessarily got the Crown land or the Crown assets that we negotiated for, we got a poor cousin or a poor second if you like, and they offer us something else as opposed to that particular piece. They in their mind or their view had more reason to hang onto

instead of letting it go to the iwi. Which I find irresponsible and unethical of the treaty process.

7.4.7 Impact of Māori public servants on the settlement process?

Participant: Tukoroirangi Morgan (personal communication, March 15, 2016).
Yes, they would. They would understand our concepts and values. They can talk to our people and understand the issues. Whether they would make any difference to the outcome is unclear. At the end of the day, it is the minister that has to agree.

Participant: Mook Hohneck (personal communication, August 12, 2016).
I think it would have helped. It was always good to have a Māori worldview at the table. But at the end of the day, there was nothing else that struck me differently.

Participant: Nicola McDonald (personal communication, August 30, 2016).
Not really. They all work for the Crown. You know they all have got a final figure in mind. I think it is all about how you engage, and it is actually about the level of influence they can bring about in terms of their interaction with the treaty minister.

7.4.8 Was sufficient funding allocated towards the treaty settlement?

Participant: Mook Hohneck (personal communication, August 12, 2016).
I thought the funding of our claim was poor, if we had not been funded by Crown Forestry Rental Trust, we would have struggled to get that amount of funding or any funding from the office of treaty settlements. It was always like you were going like a hand on your heart begging for money, begging for resources to prosecute your claim, was never a process they wanted to put sufficient resources in to settle the claim. It was always us going begging.

Participant: Tame Te Rangi (personal communication, September 28, 2016).
We had no funds from the Crown Forestry Rental Trust. We had bits of funding from the office of treaty settlements, everything was very piecemeal. I will say in hindsight that

we didn't push hard enough at the time and the tribe was not willing to be obstructive and challenge the Crown.

I believe the Crown in its haste to set up the mechanism around the Crown Forestry Rental Trust is flawed and the flaw in it is because it's based on interests that are currently administered by Crown forestry interests in a tribal area. I think there needs to be a priority as to how the fund is distributed, and by that, I mean they are quick to say that a specific iwi has a claim to a particular area. Thereby restricting the interests of other claimants who can prove an interest in that particular area, but are unable to access funding or prevented from accessing funding because someone has claimed their interest and there is nothing left. This is the situation we found ourselves in and were unable to access funding from Crown Forestry Rental Trust.

Hirini Mead (Crown Forestry Rental Trust, 2003, p.29) negotiator for Ngāti Awa spoke about the financial hardship the tribe suffered due to the long delay by the Crown in negotiating the claim. He spoke about the small financial contribution the Crown provides and their belief that everyone is on a level playing field and that Māori was just as well-resourced as they were hence, their expectation that iwi would meet an equal share in the costs towards settling the claim.

7.4.9 What was the issue with cross claimants?

Participant: M Hohneck (personal communication, August 12, 2016).
When it came to another iwi asking for six of our properties, I felt the minister let us down. I thought the minister with his powers could have easily said you had plenty of time to talk about those properties, no I am leaving them in and that would have been a fight the minister would have had to fight on his behalf and behalf of his office. I think that let us down because right up till then we had a good relationship with the Crown, a good relationship with the Minister, and felt pretty confident about the trust between the Crown and iwi.

Participant: Tame Te Rangi (personal communication, September 28, 2016).

The way iwi treated each other when discussing cross claimant issues was on some occasions, nasty. I saw some stuff you would have expected from a Crown agent but to see that stuff from your people is unacceptable. I put that in a tribal context just so disrespectful is a term I would use, you set a time for a meeting and it is fairly high level to discuss relationships mana to mana level and to arrive at the venue they had nominated, their place, made to wait while they tidied up their things which I did not mind so much but while we were waiting, the time they took to conclude their business was a lot shorter than the time they took to invite us back in. What I saw with my own eyes was kai being put back and asking us to take a seat and not even a cup of water was offered.

I think the Crown negotiator's intentions were honourable, what he would have struggled with is running the Crown's gauntlet but at the expense of the people he was having a good relationship with. If I can use as an example attending a private social function with him and working out not so much who was there, but who was not there. It stuck out for me where his thinking was at. I think he was quite innovative in what he opted to try and create for our region and the mana whenua entities of our region but, he didn't have the luxury of time to take stock properly of whom he was dealing with. I think we could have achieved all of what was achieved if he didn't have to get sign off from the separate tribal entities and the way I saw negotiations you had to prepare and understand and put your argument as a collective but we spent a big part of the time together and these negotiations happened weekly on a Tuesday, all day and there were some meetings in between that. We spent 50% of that time entertaining or listening to the quibbles of each of the members and I put myself in there when your bloody mates don't turn up because they are hōha. The following week they turn up and re-litigate what was discussed at the previous meeting, just a waste of time.

We copped a lot of flak from the other iwi entities we whakapapa to, that had settled when we decided to go to direct negotiations, I think we copped a hell a lot of bias around that in that we were always having to justify, despite us saying look we collated the reports from the hearings they had held to settle their claims and we had collated the positions determined by those settlements now what we think is a proper way to negotiate is a reconciliation from your side.

Harris and Takarangi (Crown Forestry Rental Trust, 2003, p.44) who helped negotiate Rangitāne o Manawatu treaty claim said the Crown was responsible for the issues around cross-claims. They spoke about the Crown's propensity to negotiate with the wrong iwi in the first place and not with the proper iwi as the cause for a number of the treaty breaches. It was their view that when it came to resolving claims it was not to satisfy the iwi but more to satisfy the Crown.

7.4.10 How often did the Minister meet with the iwi group representatives?

Participant: Mook Hohneck (personal communication, August 12, 2016).
We met with the Minister initially and a few more times during negotiations because our lead negotiator had a good relationship with Minister Doug Graham. When Chris Finlayson took over the portfolio as Treaty of Waitangi Negotiations Minister, we had initial meetings, but the majority of our time was spent with the Crown-appointed iwi negotiator. If there was an issue during our negotiations, we would insist on seeing the Minister. This happened when we disagreed with the price of a forest we were purchasing.

Participant: Tame Te Rangi (personal communication, September 28, 2016).
We met with the minister about twice before the Agreement with Principle and a further two times prior before the deed of settlement. It would have been much better if we had had frequent meetings with the decision-maker.

7.4.11 How would you improve the treaty settlement process?

Participant: Tukoroirangi Morgan (personal communication, March 15, 2016).
All negotiations should be between the minister and the chief negotiators – rangatira to rangatira. This partnership has been enshrined in the treaty. We would just need to ensure the relevant people and advisors with the necessary expertise to clarify issues that arise are present to assist at the various stages. If this were to occur decisions and settlements would be finalised quicker.

Participant: Willie Te Aho (personal communication, March 12, 2016).
Creative thinking is required of negotiators, government has the Red Book which outlines how treaty negotiation processes should be dealt with, you have to have the ability to have a working knowledge across a lot of areas including, legislative drafting, Parliamentary Counsel Office, Land Information New Zealand, Property Surveyors, work around easements and valuations.

You must have the ability to do deals like approaching the government and list as one purchaser for the whole transaction instead of a single purchase for each property this enabled cost savings of at least 25% for a single transaction. We were able to receive 10 years advance in rent from a public property we bought. That money was used to purchase the land the building was on. We were able to negotiate through a minister with a public service department who agreed to pay iwi a set amount of money for succession and governance planning. This meant the iwi received an additional $5m. This figure did not come out of the treaty settlement.

The cross-claimant issues need to be on the front foot and all the issues resolved. The government if they chose, could do it – they have almost settled a fishery's deal with most of the iwi and hapū. They need to commit to the process.

There needs to be a whole government approach. Everything should not rest with the office of treaty settlements to try and resolve. Should be right across ministries. A lot is dependent on the Crown representative you are negotiating with. If they do not have a relationship with the minister, then they are of no use. I would not use a Crown negotiator on one of the treaty settlements because they were not across all the issues. However, I used that same negotiator on another settlement because they were well across the issues.

The most important ministers in treaty settlements are the Minister for Treaty of Waitangi Negotiations, the Minister of Finance, and the Prime Minister. The Tuhoe settlement initially fell short because the Prime Minister would not support Tuhoe's request to have the Uruwera returned to them. Through ongoing negotiations and creative thinking, they came up with a new identity to manage Te Urewera, the Te Urewera Act 2014. Te Urewera no longer belongs to the Crown or is considered a national park. Te Urewera became freehold land and is regarded as a legal entity that has all the rights, powers, duties

and liabilities of a legal person. The Department of Conservation no longer manages Te Urewera that responsibility resting rests on the Te Urewera Board

Participant: Mook Hohneck (personal communication, August 12, 2016).
The whole process could be quicker, with more efficient Crown officials, more resourcing of claimants, and public servants with skills. They need to remain in departments for the duration of the negotiation process, instability causes issues and we had to start over on more than one occasion. For something as important as treaty negotiations it should be between the Minister and the negotiator. There should be a one-stop-shop, by that I mean we should not have to go to the Ministry of Justice, Education of Conservation every time we want to negotiate over land that is part of their portfolio. It should all rest with the Minister for Treaty of Waitangi Negotiations who makes the decision.

Participant: Nicola McDonald (personal communication, August 30, 2016).
There needs to be an equitable allocation of resources and sufficient funding to ensure the claimants can successfully negotiate a fair treaty settlement. In reality, the Crown has all the resources including teams of people and specialists at its disposal. We had a team of one it has to be a level playing field.

Participant: Tame Te Rangi (personal communication, September 28, 2016).
I see it at two levels the Crown has made some adjustments to the way they conduct business at a Ministerial level. Treaty matters are a priority in the order of cabinet business and by that, I mean the National party or National Coalition party business. I think the same kind of emphasis has to operate in the office of treaty settlements. I can vouch for times when we had clear direction under the former leader of the office of treaty settlements Paul James, but once he stepped away from the agency they struggled and one of the reasons for the trouble is a lack of executive leadership.

I still can't comprehend. I think it was a case of the agency not understanding what its role was. I can understand the transition from one piece of legislation the Fore Shore & Seabed Act to the customary Marine Area legislation, but for the life of me some of those guys have been public servant's all their lives pushing their late 50s. The level of response expected from the claimant groups is not matched at that level of response. It seems to be a feature of government agencies.

7.4.12 Crown view of treaty negotiations?

The interview of the two experienced public servants provided valuable information about the influence they have played in treaty settlements. Their responses to the questions were copied in full because their answers addressed several issues or perceptions held about public servants raised by the negotiators as part of this research and negotiators involved in other research (Crown Forestry Rental Trust, 2003; Mutu, 2019b).

7.4.13 What briefing did you receive from the Minister?

Participant: PS1 (personal communication, March 01, 2016).
There are two levels of briefing. The first is what you would call the policy direction level which would come out of the red book. It was based mainly on the work in the 1990s, and early 2000s around getting the core platforms of policy in place. It came to going into specific negotiations, the Crown would adopt what is called a regional strategic approach so you would have a concept of how negotiation with that iwi fitted in with other negotiations. There would also be phasing in question on how that negotiation would fit in with the negotiation that the office of treaty settlements was doing nationally because there was always a resource question, there was never enough resource to negotiate with all iwi at the same time.

For Auckland that negotiation environment strategy was developed by Sir Douglas Graham, so in 2006, when Ngāti Whātua Ōrākei (NWO) had their agreement in principle in effect halted by the Waitangi Tribunal, because of the litigation other iwi took against them, negotiations went in abeyance for a couple of years. Then the new National Government in 2008, appointed Minister Finlayson as the Minister for Treaty of Waitangi Negotiations, the idea was to up the level of mana of the people sitting across from iwi negotiator so this was Sir Douglas Graham, Jim Bolger, Patsy Reddy, and the list goes on.

For some of the treaty settlements, we were making things up as we went along. At one stage we had several treaty settlements on the go. The Minister and I would talk regularly

and meet fortnightly. I would present the Minister with my thoughts, he would consider them and then come back with his decisions. Most of the time his decisions coincided with what I believed should be done. Most of the meetings were held in Wellington. I was reasonably independent.

Participant: PS2 (personal communication, September 6, 2016).
Auckland was a particularly complicated area because of what had gone on with Ngāti Whātua a few years earlier. The Minister had asked Sir Doug Graham to come in and develop a proposal for how the Crown should approach the negotiations for Tamaki. Sir Doug paired up with the Crown iwi negotiator Michael Dreaver and they held discussions with the hapū and iwi around Auckland. Sir Doug came up with the master strategy of how to square away the issue that for the maunga in particular the different layers of hapū and iwi interests of the maunga such that it was impossible or at least the tribunal had said that it was impossible to invest in any one maunga, in any one hapū. So that was one of the key things that had sunk the earlier Ngāti Whātua deal.

To go back to your question, it was the Minister himself who turned to his officials and said go out there and develop a strategy, who is there on the ground, what sort of redress options are possible and that will vary a lot around the country. There might be a lot of Department of Conservation land, there might be no Department of Conservation land, there might be volcanic cones such as in Auckland, so develop a strategy then there was a process of discussion between Sir Douglas Graham and the Crown iwi negotiator and that high-end strategy was taken to the cabinet, they put some numbers on it. The other aspect of the Auckland negotiations was that Hauraki had been proving very difficult to get to complete their mandate, there had been a lot of internal struggles right from the Waitangi Tribunal hearings in the late 1990s early 2000s, there had been a lot of internal struggles between the old Hauraki Māori Trust Board and Maratuahu and other iwi /hapū lead initiatives that did not want to be subsumed by the trust board. So that had led to mandate issues and all sorts of legal challenges in the latter part of the 1990s and the Minister (Finlayson) had also wanted to make some good progress on Hauraki, so Sir Douglas Graham's proposal went across both Hauraki and Tamaki.

7.4.14 Was the Minister for Treaty of Waitangi Negotiations joined in decision-making?

Participant: PS1 (personal communication, March 01, 2016).
Not every decision. I would work through the issues with the iwi negotiators and then when I had agreed with them, I would take it to the Minister. So ultimately yes, the minister was joined to every decision but on some occasions, this would not occur until well down the track. Sometimes I would sound the minister out about certain issues and get a feel as to his view. Most of the time the minister provided general guidance.

I would also tell the iwi negotiators that I was happy to take issues to the minister. I would also let them know that if I took issues to the minister, I would also advise him whether I supported their request or not. Or whether their request had any chance of success.

Participant: PS2 (personal communication, September 06, 2016).
There's a distinction between what you end up discussing in the negotiations room with iwi and it's the same both for the iwi and for the officials or the iwi leaders you could talk across the tables about what a deal might be, what might be involved within it but, you always have to go back. Iwi has to go back to their people the officials need to go back to the cabinet or at least first to the minister and then to the cabinet. So ultimately the officials never really decide in an official sense. Sorry, we do not have the responsibility to make decisions in an official sense those are decisions for the minister and then the cabinet. But it would be wrong to say that the officials don't have an important hand in moulding what is in a treaty settlement package.

People would probably be surprised at just how much the policy framework structures, what's possible or not. So, within treaty settlement packages you would have a whole lot of really straightforward elements – the no-brainer stuff, it is just a matter of doing the technical work, statutory acknowledgments there not contentious but you have to do the work. Where things start getting contentious and problematic is when you have to make a case for more money, anything hitting the bottom line and having a treasury effect. Their officials can play an important role in explaining to the ministers why more money

is needed to close a deal, for example, there is a fair bit of advocacy there, it could be within a package you tend to have a few things that push policy boundaries.

In Auckland, the Maunga authority the co-governance regime over the maunga was a new thing no iwi had ever done. The establishment of a 13-party co-governance mechanism, joint ownership of all those maunga, plus involving what was then the recently re-established Auckland council and so that was breaking policy or not breaking policy but taking a set of principles around cultural redress in a space nobody had gone before. Where the officials play a really important role in testing the boundaries of where you can shift policymaking, the argument as to why you should shift policy and why you should be creative, and why ministers should go to a new space.

However, quite often when you get this sort of stuff you say to the minister, we need to do something new here it is the only way we can structure this deal. The iwi have certain aspirations that we can't meet unless we do something new. This set of circumstances means that we need to go where the Crown has never gone before so you build the argument, you make it plausible, and you take it to the Minister and the Minister has the job of trying to persuade his ministerial colleagues that this is the case.

I have often said to other iwi leaders generally that the most difficult arguments for staff in the office of treaty settlements are not always with iwi they are actually with other government departments. The office of treaty settlements has the role of leading the provision of redress but if you have Ministry of Education or Department of Conservation land, it is a no brainer and you start moving on health land or corrections, justice, police any of the government agencies core agencies that have their land you are running into their organisational logics how they see their assets, they don't have the same relationships on the ground with iwi. They are not there necessarily at the negotiation table, you have to bring them to the table, and to be perfectly frank those are some of the shittiest fights of all, they are, tough fights, interdepartmental ones, so and there you end up being an advocate for the Crown to do something that the Department of Conservation wants to do, for instance, you then have to persuade your Minister to go to Minister of Department of Conservation and persuade the minister that this is something they should do and at the same time the Minister of Conservations officials are going to be saying no we shouldn't be doing that.

Interdepartmental arguments are complex things and I think iwi grossly underestimates what goes on internally. The minister has to persuade the cabinet and in terms of the cabinet there is a cabinet but there is the cabinet committee, the Treaty of Waitangi cabinet committee which was just called the Treaty of Waitangi. Most people do not realise this, but the Treaty of Waitangi is like a subcommittee of the cabinet – the Minister for Treaty of Waitangi Negotiations, Minister of Finance, and Chair is the Prime Minister so most people don't realise that Minister Finlayson is having to persuade the Prime Minister and the Minister of Finance, is about why a treaty settlement redress should happen. And I don't think many people appreciate that treaty settlements are so important politically that the Prime Minister is there chairing that committee. This committee keeps a reasonably low profile, and it is not well known, there are a couple of other members on the committee, can't remember off the top of my head, but they change.

7.4.15 What restrictions did the Minister's place on treaty settlements?

Participant: PS1 (personal communication, March 01, 2016).
Firstly, the Crown policy, or the general understanding, is that no claimant would receive the full compensation that is not paid a dollar for every dollar lost. We would compare, small iwi numbers, with similar issues and ensure their financial settlements were similar.

There had to be a sense of fairness in the negotiations, we could not treat someone different from someone else. Private land is sacrosanct and cannot be interfered with. Public interests need to be protected in conservation and recreational areas. The people we talked to had to have the support of their iwi. Every deal has to be taken back to the iwi for final approval. The Crown would then have to provide some financial support and all discussions to be kept confidential.

Participant: PS2 (personal communication, September 06, 2016).
Before any negotiation is embarked on, officials tend to provide advice to ministers and ministers interrogate the question of what are the key elements, what the key things we might expect here? And the most important question is quantum, settlement quantum what is the dollar value or cost going to be to the Crown? There are also other matters

they concentrate on including the specific circumstances of the area, how big is the iwi, and what is their internal capability like? How bad are overlapping claims? Do these people get on with each other? Is there going to be a big argument as you go through negotiations? What sort of redress land is available now there is a big difference in land available in the Urewera, as opposed to downtown Auckland?

Ministers would get advice but they would take into consideration all those factors and then normally be a broad direction, this is the money, that we're looking at so you would have an estimation around the level of quantum, this is the key areas of redress that are possible because the land is available and this is the political environment in which negotiation is going to go, these are the mandate issues. These forms of advice would be assembled and that would form the framework that would be in place from an official's point of view. The guidelines on how you would go out there and do the job so to speak.

7.4.16 What happens if an iwi will not agree to a Crown treaty proposal?

Participant: PS1 (personal communication, March 01, 2016).
What I would normally do is sit down and discuss with the iwi negotiators to try and resolve the issue or find out what the issue is. If there was no movement, I would discuss it with the minister further. If there were no progress or litigation proceedings instigated - the treaty negotiations would be suspended.

Participant: PS2 (personal communication, September 06, 2016).
It is all a matter of perception in negotiations you always need the ability to say we can't reach a deal you always need the ability to say that. There is a bit of the "cried wolf" thing you know if you throw your toys out too early or start issuing bottom lines and this applies to iwi and Crown if you start putting too many bottom lines on things and you do not walk away from those bottom lines, you end up with unusual behaviour. I wouldn't call it bullying, but there is a legitimate concern by iwi that the settlement quantum amount is just too low. And when I talk to people about this and say things like the current tax revenue core Crown revenue for this year is $78.5 billion the total cost of treaty settlement over 30 years, we don't know yet what it is going to be, but let us say it is around $2.5 billion, Māori are 15/16% of the population and pay 12/13% of the tax.

The cost of running our health service for a year is about four times the cost of running treaty settlements over 30 years, so this is cheap justice. The settlement quantum is cheap justice, so perhaps in the early 1990s when the challenge around the cabinet table was just getting those other cabinet ministers to do treaty settlements at all but if say they made a fiscal cap of $ 2 billion. Let us say the baseline we are dealing with has doubled I think that would have made a huge difference, you would have had the small iwi getting $20m rather than $10m you would suddenly shift things into an area where the financial viability of settlements is drastically improved right, could the Crown today say oh shit, we got that drastically wrong for the 50/60 settlements. One would say, that would be impossible, politically impossible, theoretically possible but politically impossible, it would in effect be saying these deals that we said were full and final we should have doubled them retrospectively, so suddenly they are not full and final, and you put a whole lot of political pressure on the community. The reaction to that would be very negative.

Essentially, we have lost I think the Crown has lost an opportunity to do it better, but it was all locked in the early 1990s. Having said that if you are an iwi managing your assets well, you should be able to double your asset base in 10 years. So, you might have got a $10m quantum but you can, do something with that if you got the right opportunities and good decision making such that maybe in 5 to 10 years you turn things around. Things like a right of first refusal are very valuable, yet they don't cost the Crown anything but to an iwi they are enormously valuable. The settlement quantum is critical but it's not the only thing, it's the stuff around the margins, the opportunities, and leverage points that are vital.

7.4.17 How would you improve treaty negotiation processes?

Participant: PS1 (personal communication, March 01, 2016).

Minister for Treaty of Waitangi Negotiations and office of treaty settlements should be less focused on personalities and more focused on getting positive outcomes. They should be less inclined to play favourites. There must be flexibility and a willingness to overturn previous decisions when presented with logical arguments and evidence.

Participant: PS2 (personal communication, September 06, 2016).

The reality is that the back of the treaty settlements is broken, and we are on a downward slope. The deals that are left, even the ones that have taken a long time to settle, the Hauraki settlement for instance, or they are groups for a couple of reasons have remained outside the circle, Maniapoto is a good example, also on the east coast Ngāi Tai, Torere and Te Whānau ā Apanui there are a couple of others around the country and Ngā Puhi. So, the reasons why groups have not settled, tend to come out of their local circumstances and their capacity and ability, as opposed to the Crown's unwillingness to do a deal. The lesson out of that is the Crown has to continue to up their game out of the remaining deals and that probably means being more creative carrying on pushing the window of policy and you don't throw the baby out with the bathwater and you just can't treble or quadruple quantum for instance but you can keep on pushing the boundaries and this has been achieved in the Tuhoe Uruwera deal, the Whanganui river that was a radical departure from where things have gone before. It is possible to be very creative.

7.4.18 Would Māori negotiators have made a difference?

Participant: PS1 (personal communication, March 01, 2016).

My gut feeling is no. They may have done things differently. I think it would be hard for them to be negotiating on behalf of the Crown because they may be seen as kūpapa.

Participant: PS2 (personal communication, September 06, 2016).

It's a really interesting question both yes and no. I think it is not a black or white or brown or white answer. Māori staff had the advantage of a bunch of skills around relationships and I think building trust and relationships is at the heart of negotiations. Māori staff bring often a better understanding of iwi politics and say the cultural drivers for groups like that, so Māori staff can bring to a team and can upskill the people they are working with. But at the same time, most of the negotiation managers were Pākehā, not all and a good example of not all is Lil Anderson a formidable force is Lil. But most negotiation managers I worked with were Pākehā and by the time you had become negotiations manager you had hopefully spent a bit of time working with Māori and understood the cultural drivers. To me it comes down to the quality of the relationship between the iwi

negotiators and the negotiators' manager that is probably the most important dynamic in the room.

7.4.19 Any issues with the office of treaty settlements or the Minister?

Participant: PS1 (personal communication, March 01, 2016).

The office of treaty settlements has a steady turnover of staff who are young and lack experience and are afraid to make decisions. The senior management of the office of treaty settlements is afraid to challenge or question any of the minister's decisions. Sometimes, there is a degree of manipulation of information to ministers by senior Office of treaty settlement officials. Iwi negotiators could be treated differently if iwi were bullish or upset office of treaty settlement officials. The office of treaty settlements staff would sometimes play favourites.

7.4.20 Is everything pre-determined by the Crown during negotiations?

Participant: PS2 (personal communication, September 06, 2016).

Again, the answer is not a black and white one. The treaty settlement policy settlement framework is now well enough established that 90% to 95%of of the redress is stuff that has happened before, but every negotiation gets the ability to move the margins of policy or have a couple of outliers, one or two outliers that either break policy or create a new policy. So the difficulty though is, no not the difficulty, it is not always just a matter of what the officials get up to and think it is often determined by what Crown land is available because you might have an area where there's lots of Crown land available and therefore nothing is particularly contentious but if you got an area where the only Crown land available is a Department of Corrections property or an Iwi and this would have been the case in Taranaki where there is so very Crown land so any land you can get your hand on is precious you may have to push the policy boundaries to achieve that. So in other words it is not the officials that are driving this or the iwi it is the circumstances that are in front of them and the other dynamic is cross-claims the political relationship between iwi and the Crown trying not to create another grievance by handing over a bit of land that the proper mana whenua get aggrieved by that. Those local circumstances are often the determining factor. Having said that and having done a lot of work on the

quantum side of things the modelling, on quantum has a high level of consistency to it. Where it is very difficult and where you get an imbalance is between the large iwi and a small iwi, the small iwi and this comes down to evidence, the small iwi is never as well represented on the New Zealand census and other data as the actual iwi population.

The other big problem is the quantum model which essentially is a linear model there is no cut off there is no minimum amount that an iwi hapū can get. And when you start getting settlement offers down to that $5m to $10m range the real question is whether they are financially viable. Are you going to get a community or an entity that is going to be able to do anything? Those small settlements are problematic.

Maybe the Crown should have had a policy that says the minimum settlement amount was always going to be $10m or $15m, and the Crown thought about that a lot, the problem is that the Crown did not want to create a perverse incentive for groups to fracture into multiple groups. Let us say you have an iwi settling around $30-40m but if it splits itself into five bits or ten it would get more but the problem is if it splits itself into five sections, they will have all been marginal and they all would have required administration costs so you would lose your scale. These things were carefully thought about, but I still think that within the treaty settlement framework the most difficult deals were the smallest ones, and they are difficult because the outcome for the community is not one of financial certainty and funnily enough the small deals often take more negotiation and more resource to get through than the big deals. Sometimes it is easier to negotiate a $100m settlement than it is a $6.5m treaty settlement.

7.4.21 Have your personal views influenced your negotiations with iwi?

Participant: PS2 (personal communication, September 06, 2016).
Many of my colleagues would see, their roles as an official, as trying to get the best deal possible for the iwi within the policy framework they were operating within. This driver is not due to choosing your favourite people or, I want to help out Māori, it is not that liberal limp wristed stuff. At the heart of treaty, negotiations is durability, you want these deals to last, the good deals will last, the deals that didn't push the envelope didn't push the boundaries of what was possible, challenge ministers you know the ones you didn't

fight for may not last or the ones did too quickly the quick and dirty ones you know that hadn't been thought through might not last.

7.4.22 Do you think you negotiated in good faith with Iwi?

Participant: PS2 (personal communication, September 06, 2016).
You have to be frank, there are some on the iwi side of the table who are not pleasant people they bring a lot of aggression or bring a lot of bull shit to the table. With the Ngāti Manuhiri negotiation, you were involved with Mook that was one of the fastest deals ever done, but it was done quickly because you were so good at the relationship front and trust, you did not nickel and dime, not on the margins, focused on the big things and you built a lot of goodwill with the minister and within the wider Tamaki environment it was early it was good to get some early deals over the line.

You guys by making yourselves good to negotiate with, you got a good deal. It was a win-win for everyone, and I think that one was a good deal. The iwi that tried to nickel and dime, push the margins or play out every little thing, what they are running into is a kind of value proposition is another year or two of negotiations worth of lost opportunity, opportunity cost. Let us say you put $20m in the bank at 3%, and your chance of increasing your quantum by just holding out with the Crown for a couple of years is very low. Your chances of radically improving things are very low. Sometimes the iwi has, and good on them but on the whole, I think you are better off moving onto a settled space, investing your money sensibly, and getting into a productive enterprise that will give you a better return than what you can get out of it.

7.5 Case Study - Te Whānau o Waipareira Trust

The origin of Te Whānau o Waipareira Trust is the result of the policies and strategies of successive governments. From the rural to urban drift of Māori between the 1930s and 1980s seeking employment opportunities, to the Labour government and the Roger Douglas-led reforms and restructuring of the 1980s, which led to high Māori unemployment. Followed by the Ruth Richardson budget of 1992, which Tamihere (2016) described as ripping out millions of dollars from the people at the bottom end of

society who were the most vulnerable, by cutting and slashing benefits. An approach he likened to social engineering by the Crown at the stroke of a pen. Te Whānau o Waipareira became the shining beacon in the West Auckland area attracting rural Māori seeking whanaungatanga and support.

The way Waipareira has been treated by the Crown when applying for funding to run programmes in West Auckland has always been demanding. Waipareira has always been a supporter of urban Māori rights and has always been prepared to challenge government bodies and traditional iwi groups (Haami, 2018).

The government's involvement with "The Fisheries Commission – Te Ohu Kaimoana" the entity responsible for managing the fisheries assets on behalf of Māori and the decisions taken to disperse the fisheries quota among iwi. Tamihere (Haami, 2018, p.174) recognized immediately that such a decision would affect urban Māori who would miss out on economic opportunities by being cut out completely from receiving quota. Waipareira initiated subsequent legal challenges that went as far as the Privy Council in London to the Court of Appeal, High Court, and Waitangi Tribunal in Aotearoa, arguing the interpretation of the word wi. The matter eventually ended up in the High Court before Justice Patterson[10] who determined that an iwi was defined as a traditional Māori tribe. In 1999, Justice Patterson's decision was subsequently overturned in the Court of Appeal.

Waipareira were also prominent in challenging the way they were treated by the community funding agency of the Ministry of Social Development. The crux of Tamihere's complaint was the preference of the Crown to contract kin-based tribes or recognized iwi authorities (Haami, 2018). Tamihere (2016) said at the time that several other urban Māori authorities were too afraid to put their head above the parapet at the risk of having it chopped off. The claim relied on a solid group of trustees fluent in te reo, and the ways of their iwi but was also committed to the cause because they recognized that the mana of their mokopuna, and their future would be shaped and determined by their lives in the city rather than the mountain and rivers of home. They feared assimilation with Pākehā if there was no one there to hold up the flag for them.

[10] *Te Waka Hi Ika O Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J)

Against this backdrop of challenges Waipareira have faced, the time is right to analyse their relationship with iwi and the Crown. It is anticipated that this information when coupled with relevant academic and informed information may point to a process that achieves the outcome sought of better servicing and accommodating the needs of urban Māori.

7.5.1 Why did Te Whānau o Waipareira Trust challenge the Crown?

Participant: John Tamihere (personal communication, November 10, 2016).
The government would play games. It was all about control by white bureaucrats over brown failing folk. Middle-class white folk knows far better than failing brown folk will ever know and that means when the policy is being driven by non-Māori for Māori you get well-intended folk making a lot of money out of brown failure. Because you cannot get anything other than that. Secondly, the state is wired up to advance the interests of the British Empire that no longer exists.

So, when we took the claim in 1994, it was clear to us that the system to deliver policy into the communities for Māori was grievously impaired and required a total devolution back into the community. Because communities now no longer need 1000 very clever bureaucrats in Westminster or Wellington designing programmes for them. We've got to be able to understand our problems on the street, come together with leadership on it with police, housing all along the whole gambit come to a worthy investment programme using our dollar value in our regions to work off our strengths to achieve very good measurable outcomes. You are never going to do that now out of a failed Westminster or Wellington system.

The values of the Crown are wrong, even if the programme was right, it would fail because its values are wrong because they cannot be operational. Systemically it cannot meet the rapid redeployment requirement of resources that communities know. It fishes in repositories that are three years old, it then makes up policy based on old information, it gets funding policy agreement out and communities change, and their demand changed,

but the bureaucrats haven't. Then they make your pitch for programmes that you know are not going to work.

Participant: Evelyn Taumaunu (personal communication, December 19, 2016).
The Crown did not think we were good enough to provide services to whānau. But we had the capacity and knew the whānau best in west Auckland. This is why we supported the claim because of the injustice and inequities that existed between the Waipareira whānau and government agencies. Through the inspirational leadership of our former chair of the trust – Jack Wihongi who knew how to manage people and recognized we needed the funding to support our programmes and he was determined to get it. He was supported by the trust board. The work involved in taking the Crown to court is enormous all the "I's" have to be dotted and "Ts" crossed. We had very little funding so relied on the work of John Tamihere who worked his butt off for the trust.

It was also about our workers who were being paid less than what they deserved. But you know their heart was in Waipareira and they gave of their time, which was sad because our workers were the ones who were able to work with Māori whānau compared to the non-Māori representatives that the government used. I did not care even back then whether our staff could manage Māori and therefore we suffered because of not having the funding to pay them the right amount they deserved. Many a night we left talking about those issues, financial issues that we couldn't afford to pay our workers because of what Social Welfare was offering at that time

Iwi now has far better leverage and gets a better deal. They get preferential treatment. With the people moving to the cities several government agencies are still being funded to deliver programmes to them.

Participant: Dame June Mariu (personal communication, December 20, 2016).
We were not getting enough money to run our programmes. Our families and babies were missing out. The government was giving money to groups in West Auckland that were not working with the same needy families that we were working with. Jack Wihongi who was the chairman of the board at the time was angry about the situation. He was also lucky to have John Tamihere who was also a lawyer and knew what we had to do to let the government know we were not happy and took the matter to court.

7.5.2 Did the Government treat Waipareira differently?

Participant: John Tamihere (personal communication, November 10, 2016).
They would play us off and say you got to go and get iwi mandate, got to go and get iwi consultation. We would say no you go and do it you're the Crown, we are not going to do it, it's not our job. Furthermore, there were no iwi groupings based out here in West Auckland. If there were, they would be looking after their whakapapa, only we cannot have that model because we got to look after all kids, all Māori babies count do no matter what their whakapapa is, don't matter if they don't know it, they count. They got a right to be connected with it. So, you got Ngāpuhi out of Kaikohe and Ngāti Porou babies out of Ruatoria, they're not going to do it for babies out of Henderson. So only one group can do that it is the people living in the present-day reality, they care for them, love them, have connectivity with them, understand their difficulties, not be judgmental of them but be supportive of their difficulties and support them to get out of it. But that's our tikanga of Whānau ora.

7.5.3 How did the Crown treat iwi groups?

Participant: John Tamihere (personal communication, November 10, 2016).
What I know is that iwi groups have far better leverage. As I have gone around the country if you are an iwi group in an iwi centric area ala Tūhoe, Ngāti Porou, Te Rarawa they get a sweetheart deal because there is no one else there. Iwi was getting preferential treatment, I understood that, but they didn't have the populations. They were a quick fix if you went to say Te Rarawa up North most of their people is down here in West Auckland, so you just did a population deal for funding based on their population, not a problem but here is the other thing social services, health housing we're still funded for them. So, one of the quickest ways a bureaucrat can get rid of rural services is to make out they have handed them over to iwi with the right resources when they have not, just like they do in the cities when they have not. Several iwi got suckered into the belief that there was a legitimate and justifiable handing over of resources.

Participant: Evelyn Taumaunu (personal communication, December 19, 2016).
Because iwi groups were spread all across all of Tamaki each organisation did their funding applications to the agency, whether it be for Social Welfare or whether it be to health in some ways they were I would have to say probably getting more than us. Some of the iwi groups had been on the track a lot longer than we had. We were the new kids on the block coming in with a bang in 1990 with the new leadership. The other organisations had been around a long time like Ngāti Whātua and their area stretched across Tāmaki and up to Kaipara. However, when you look at Te Whānau o Waipareira, we were new and probably a threat to other organisations.

7.5.4 The Crown response to the WAI 414 Waitangi Tribunal decision?

Participant: John Tamihere (personal communication, November 10, 2016).
Totally resistant, not a lot has changed, the process has become more egregious with the trust now having to contest more assertively. Instead of relying solely on decisions from the Waitangi Tribunal, the fight has transitioned to the High Courts of New Zealand. The decisions of the Waitangi Tribunal are only good guides if they are adopted which government departments continuously fail to follow.

It is a more sophisticated fight we just use more sophisticated technology now but in essence, the battle is still the same. Nothing will change unless we start to dismantle an inherently institutionalized and racist engineering system called Wellington bureaucracy.

Participant: Evelyn Taumaunu (personal communication, December 19, 2016).
There was very little improvement when you consider what Waipareira had before. The only reason why we have been able to get more funding is that John Tamihere has been able to put pressure on the government.

Participant: Dame June Mariu (personal communication, December 20, 2016).
Things did not change. John was still fighting with Crown and iwi. There were several criteria the government was expecting Waipariera to meet before they would provide more money. At our trust meetings, John would tell us about all the things the government

was trying to make us do. I cannot understand why the government could not see the good work Waipareira were doing.

7.5.5 Do iwi support urban Māori authorities?

Participant: John Tamihere (personal communication, November 10, 2016).
The issue from the beginning was the environment created by the bureaucrats where they thought they could introduce universal policy putting all Māori in one pot and playing us off against each other. The leadership of Waipareira came from iwi groupings it did not come out of urban Māori groups, these people had the bridge home and understood the homeland very well. They were fluent in te reo, fluent in the ways of their iwi, but knew that unless we won the case, we took against the Crown the mana of their mokopuna would be shaped by the cities rather than the mountains and rivers. We had to show the Crown that new communities can grow out of old communities and establish our rangatiratanga.

Participant: Evelyn Taumaunu (personal communication, December 19, 2016).
No, the hard case thing from this, is you had different people from Ngāti Whatua on our trust board. While sitting in the room you have that commitment, when they leave the room for some it is a different story.

Participant: Dame June Mariu (personal communication, December 20, 2016).
No, which was very disappointing. Waipareira had been working and helping their people when they could not. If we were not around then the children would have suffered and missed out on a lot of things. We could not let that happen.

7.5.6 How could urban Māori receive adequate Crown funding?

Participant: John Tamihere (personal communication, November 10, 2016).
Nothing will change until they start to dismantle the inherently institutionalised and racist system called the Wellington bureaucracy. Take the funding out to the regions and you have to allow regional funding plans. Whānau Ora is outperforming every state

department except statistics and police. Well ahead of any faith-based institutions that are unable to compare with the results of Whānau ora.

Participant: Evelyn Taumaunu (personal communication, December 19, 2016).
Strong leadership and being more transparent with each other, at Waipareira our books were always open I don't think the same applies to similar organisations or for that matter the Crown.

Participant: Dame June Mariu (personal communication, December 20, 2016).
Any change has to be community-led. You need strong Māori leaders like John Tamihere have been for Waipareira. In the early days of Waipareira, there were several strong leaders at the trust, sometimes there was literally blood being spilled on the floor when there were disagreements. We had no funding and things were tough.

7.6 Discussion

7.6.1 Inadequacy of treaty settlements

According to the first Minister for Treaty of Waitangi Negotiations, Douglas Graham the objective of the Crown treaty settlement process is to provide fair compensation for lands, fisheries, forests, and other tangible assets the Crown had unjustly confiscated. He went on to say that the Crown was not there to adjudicate on matters of social justice or equity (Lashley, 2000).

The Crown's perception of what is a fair settlement is reflected in the compensation paid to the two largest treaty settlements, Waikato-Tainui (1995) and Ngāi Tahu (1996). Both Iwi received $170 million each, despite incurring losses in the billions of dollars, which equates to only receiving two to three cents in every dollar, from the land that was taken from them. The relativity clauses attached to each settlement bring in further payments of $260 million to Waikato-Tainui and $248 million to Ngāi Tahu (Wall & Parahi, 2018).

The fact that both iwi have been able to transform their tribes into billion-dollar entities, with Tainui's assets valued at $1.06 billion in 2014 (Gibson, 2014) and Ngāi Tahu's $1 billion in 2012 (Otago Daily Times, 2012) is a testament to the commercial acumen of

the people they appointed and the tenacity of both iwi to persevere. Given that it has taken both iwi nearly 20 years to reach those financial levels, one is left thinking about what could have been achieved if they had been paid the true values of their losses.

The inadequacy of treaty settlements was further highlighted by one of the public servants interviewed as part of this research who said that before negotiations already 90 to 95% of the treaty settlement is predetermined by the Crown. Iwi is left in the situation where they are having to negotiate the remaining 5 to 10% of property available with the Crown (PS2, personal communication, 2016). From the perspective of the iwi negotiator, this is an unsatisfactory process that leads to an unacceptable outcome (personal communications, Morgan, 2016; Te Aho, 2016; Hohneck, 2016; McDonald, 2016; Te Rangi, 2016; & Mutu, 2019).

The issue compounded even further with the Crown officials challenging iwi at every step of the treaty process, where any concessions are vigorously fought and in some cases resulting in one party, Māori having to forgo something else in return. The penalty for not conceding on the part of Māori is the possible delay of the treaty settlement until the Crown's position is accepted (personal communications, Te Aho, 2016; Hohneck, 2016; McDonald, 2016; & Te Rangi, 2016).

In the Literature review segment of this thesis, Mutu (2019a) refers to the ratification of several international treaties, in particular, the signing by New Zealand in 2010 of the United Declaration on the Rights of Indigenous Peoples. The current position as it stands in New Zealand is that our treaty claims process continues to violate this international agreement by not fully compensating Māori for the land taken by the Crown.

7.6.2 Large natural groupings

The Crown's preference for expediency and cost over fairness and justness, the sign was called upon earlier by the first Minister for Treaty of Waitangi Negotiations Sir Douglas Graham following a heated argument he had in parliament with a labour colleague, Tariana Turia. It was the position of Turia that all treaty settlements should be negotiated on a hapū by hapū basis. Graham indicated that he had no intention of acquiescing to

Tariana Turia and her demands, given the likely number of settlements involved and the time it would take to resolve (Birdling, 2004). Tariana Turia was soon to leave the Labour party and together with Māori academic Dr Pita Sharples helped establish the Māori party.

The Crown's practice of only accepting treaty settlement grievances from "Large Natural Groupings," has been the cause of considerable frustration and angst and calls into question whether the Crown's actions are consistent with treaty policy (Birdling, 2004). The effect of this practice results in the rangatiratanga and mana of the small claimant being subsumed by the larger claimant, leading to litigation and dispute in almost every settlement (Joseph, 2012). Similar issues were encountered by the Waitangi Tribunal in the 1990s and early 2000s with the old Hauraki Māori Trust board and Maratūāhu and other iwi and hapū that did not want to be subsumed into the trust board (PS2, personal communication, September 06, 2016).

As referred to earlier in this thesis, two hapū of Waikato-Tainui, Ngāti Whawhakia and Ngāti Wairere sought a decision from the Māori Appellate Court to have military bases in their community vested back to them. The Court found that the settlement was with Tainui and that the bases should be returned as part of the Waikato-Tainui settlement (Fisher, 2015).

According to one of the public servants (PS2, personal communication, September 06, 2016) interviewed regarding this thesis, the issue of large natural groupings is problematic, and given the size of the quantum paid, in the Crown's view, would the settlement have been financially viable? He quoted possible compensation payments of $5 to $10 million to treaty claimants which may not have led to the economic growth anticipated by iwi negotiators.

7.6.3 Negotiations

As part of the research into treaty settlement negotiations, Mutu (2019b) sought to understand the origins, nature, and intentions of the treaty claims policy and process by seeking out information relating to its development. What her research discovered is that Māori took no part in the development, it was delivered to them as a *fait accompli.* Her

research findings were corroborated by the participants interviewed in the Crown Forestry Rental Trust (2003) report, and the participants involved in this research (personal communications, Morgan, 2016; Te Aho, 2016; Hohneck, 2016; McDonald, 2016; & Te Rangi, 2016) and participants interviewed on the Negotiators television series (McKenzie, 2019; Mullins, 2019; Henry, 2019). Again, in the case of Tainui, despite strong objections from some groups they reluctantly accepted the Crown-determined offer on a take it or-leave-it basis. There was no negotiation (Mutu, 2019b).

Mutu (2019b) then spoke about the findings of her research team from examining the ministerial writings about the policy, cabinet papers, and memoranda setting out the Crown's intent. She described the information as vague and lacking detail as to how the policy was to be implemented. What was clear from all the documents is that the Crown and not Māori would determine what each settlement would be, in other words, there would be no negotiations. The research also found that there was no information about the methodology the Crown used to determine each settlement. Efforts from claimants to find out the methodology the Crown applied would not be divulged. She then goes on to say that the Crown has ensured the policy has no statutory framework thereby avoiding any legal consequences. The absence of a recognised written constitution means the Crown is free to deny and remove Māori human and legal rights. She further stated that the United Nations and Waitangi Tribunal have told the Crown that the treaty policy is wrong and instead of continuing with the ongoing human rights and treaty violations, to come to some agreement with Māori.

Willie Te Aho (personal communication, March 12, 2016) spoke about the lack of consistency applied to treaty settlements by the Crown. What he was referring to was examples like the relativity clause which was included in the treaty settlements of Tainui and Ngāi Tāhu but not available to other claimants. The concessions achieved by Waikato-Tainui over the Waikato river were not available to others. As a further example, he highlighted the windfall the Rotorua treaty settlement achieved when their geothermal areas were listed as cultural redress and not subject to the same provisions as the relativity clause, thereby avoiding having to pay out more.

7.6.4 Full and final treaty settlements

According to Mutu (2019b), there are serious issues with the Crown's treaty claims settlement policy and process, including among other things, a lack of input by Māori input into the negotiation process and no consistent guidelines as to how the financial settlement redress is assessed. As a result of the Crown's actions, the overwhelming response from the negotiators interviewed was not to accept the treaty settlement as full and final (personal communications, Morgan, 2016; Hohneck, 2016; McDonald, 2016; & Te Rangi, 2016).

Willie Te Aho (personal communication, March 12, 2016) when interviewed as part of this research emphasised that there is no such thing as a full and final settlement. He said that the work he had done to get the treaty settled, was only the beginning of the process and was setting a foundation for the young Rangatahi coming through. His comments were echoed by other iwi negotiators (personal communications, Hohneck, 2016; McDonald, 2019). Te Aho (personal communication, March 12, 2016) also referred to the Waikato-Tainui settlement as an example of a final settlement being resurrected at a later date and renegotiated. He spoke about Prime Minister Peter Fraser in 1946, offering Waikato a settlement of £6000 for 50 years and thereafter £5000 in perpetuity which was accepted by the fifth Māori King, Koroki. Approximately 50 years later, Waikato signed a new settlement with Sir Douglas Graham for $170 million (W. Te Aho, personal communication, March 12, 2016).

Greg White from Ngāti Tama (Crown Forestry Rental Trust, 2003) drew comparisons with the $250 million the Crown spent yearly on foreign aid compared with the $50 million that was spent on treaty settlements. Similar sentiments were echoed by Moana Maniapoto (2019) the interviewer for "The Negotiators" film series about iwi negotiators that had completed their treaty settlements when she highlighted that the total redress of $2.5 billion that had been paid to Māori, equated to just 12 weeks of Superannuation that had been paid by the Crown (Maniapoto, 2019).

7.6.5 Historical Account

Office of Treaty Settlements (2015) describes the historical account as an agreed statement between the claimant and the Crown, that outlines the factual basis of the claim and the events that lead to the breakdown of the treaty-based relationship between them. In reality, the historical account presents an opportunity for the Crown to try and sanitise the wanton destruction they inflicted on Māori.

In the case of Waikato-Tainui, they spoke about the resistance they encountered from the Crown in the form of the Crown Law office when they insisted an accurate depiction of their historical account be recorded. The Crown Law office to minimise the damage that portrayed the Crown in a bad light had attempted to change specific wording from the decision of the Crown-appointed Sim Commission which had been tasked to look at land confiscations arising from the 1863 Suppression of Rebellion Act. Regarding Waikato-Tainui, the commission had found the Crown's actions were excessive (Fisher, 2015).

Mook Hohneck of Ngāti Manuhiri (personal communication, August 12, 2016) spoke about the raw frustration and emotion felt by iwi negotiators as the Crown tried to re-write Ngāti Manuhiri's history as most telling. He described the painstaking work of having to trawl through each paragraph of the historical account and having to get Crown acceptance and sign off every step of the way. At no stage were the Crown negotiators prepared to compromise and it was a situation of Ngāti Manuhiri having to water down the impact of the Crowns' actions if their goal was to settle their treaty settlement.

7.6.6 Legislation

At the stroke of a pen, the Crown introduced legislation like the Native Lands Act 1862 and 1873, which took communal ownership of land away from Māori. Māori was forced into the position of having to select up to ten members from within the tribe to be listed as owners of the land, effectively leaving the remaining dispossessed. The newly designated owners obtained individual title to the land and were now able to manage and deal with the land as they saw fit without reference to the other owners. The impact of this Crown decision led to the establishment of the Native Land Court and made it easier for Pākehā to purchase Māori land (Ministry for Culture & Heritage, 2021b).

For Waikato-Tainui, aside from the implications of the Native Lands Act 1862 and 1873, they, like iwi in Taranaki, Bay of Plenty, and Hawkes Bay were also affected by the introduction of the New Zealand Settlement Act 1863 and Suppression of Rebellion Act 1863, which led to the confiscation of over 1,202,172 acres of the Waikato land (Office of Treaty Settlements, 2015). The impact of the legislation was not only felt in the loss of land but the resulting summary execution or imprisonment for those Māori found to be assisting the rebels in attacking Crown forces (Ministry for Culture and Heritage, 2021a). Ngāi Tahu (1998) was also severely impacted by the introduction of the Westland and Nelson Native reserves Act 1887, where land they had leased to Pākehā was changed to perpetual leasehold land in favour of Pākehā.

The overall effects of these Crown legislative changes are reflected in the exponential loss of Māori land. In 1865, it was estimated that 19 million acres of Māori land were in the customary title. By 1909, it was estimated that at least 1
8 million acres of Māori land were now in individual ownership (Keane, 2010).

From a treaty settlement perspective, the negotiation process was hindered further with claimants having to work not only through the legislation that deprived them of their land but now policy that restricted the land available for them to negotiate over. The Crown having excluded all private, Department of Conservation and specifically designated land set aside for other purposes such as education, from the negotiation table (personal communication, Hohneck, 2016; McDonald, 2016). For Māori seeking fair compensation, they were now faced with having to negotiate over a settlement that did not reflect the enormous loss or harm they suffered at the hands of the Crown.

7.6.7 Crown (mis)behaviour

The treaty settlement process is an example of the Crown exerting the power imbalance they have held and continued to exercise over Māori. This is no better exemplified than around the negotiating table with the Crown and their unlimited resources and finance facing off against Māori who have had limited resources and next to no funding. The Crown can hire or enlist the services of numerous professionals to assist their negotiations

including, lawyers, analysts, financial experts, and historians. In contrast, Māori has had to rely on the skill and expertise of their negotiators, most of whom come from varied backgrounds not necessarily honed, in the art of negotiations or working within a Crown environment.

In the case of Ngāi Tahu, Sir Tipene O'Regan (2019) was a former seaman turned speechwriter, Charlie Crofts a taxi driver and Henare Rakīhia Tau a freezing worker. Ngāti Raukawa negotiators were Chris McKenzie (2019) a school teacher and Nigel Te Hiko a social worker. In the case of Ngāti Manuhiri, Mook Hohneck (personal communication, August 12, 2016) was a bushman.

Treaty settlement negotiations are a stressful process, with iwi expectations of a settlement amount matching what was taken from them quickly dispelled on receipt of the compensation offered by the Crown for the land they took. As Greg White (Crown Forestry Rental Trust, 2003) the negotiator for Ngāti Tama relayed, the offer that they received from the Crown shattered their expectations. He said Doug Graham gave them a dose of old reality when he came up with the initial offer. Hirini (Crown Forestry Rental Trust, 2003) negotiator for Ngāti Awa said they came to realise that the settlement outcome was not about fairness and justice but was essentially a political process in which Māori are expected to compromise.

The stress suffered by iwi negotiators was exacerbated even further by the behaviour of the Crown, who over the years have collated, recorded, and gained considerable experience, knowledge, and learnings from each treaty negotiation (Crown Forestry Rental Trust, 2003). Hohneck (personal communication, August 12, 2016) expressed frustration that at no time did the Crown make this information available to assist Ngāti Manuhiri in their settlement negotiations.

Esther Grey (Crown Forestry Rental Trust, 2003) from Te Uri o Hau highlighted that during their negotiations the leader of the Crown team changed three times. Their frustration was made worse when advised that what had been agreed to with the Crown negotiators previously was now to be reviewed by the Crown law office, who if they so desired could insist changes be made before the document was accepted.

Hohneck (personal communication, August 12, 2016) also expressed similar frustration over the turnover of staff and having to start things over again as the new staff came up to brief. He also highlighted the example of spending days arguing and finally coming to an agreement with the office of treaty staff over an important redress issue, only to be told that the matter had to be put on hold until the Department of Conservation had approved the proposed changes.

Other incidents of the Crown's misbehaviour, included the attitude of the Crown officials, towards Ngāti Raukawa kaumātua and kuia during settlement negotiations which were described as rude and demeaning by their Crown negotiator Chris McKenzie (2019). The late Sir Robert Mahuta (1995) of Waikato-Tainui spoke about the delaying tactics of the Crown during negotiations which had an impact on the outcome of their treaty settlement. Sir Tipene O'Regan (2019) of Ngāi Tahu, spoke about the Crown delay which nearly caused major financial strife and was only alleviated through the intervention of overseas investment.

7.6.8 Cross claimants

The policy of the Crown when there are cross-claims, over the same land is to encourage claimant groups to discuss and come to an agreement on how much interest will be managed (Office of Treaty Settlements, 2015). According to the Office of Treaty Settlements (2015), in the event both parties cannot agree, the Crown may make the decision guided by two principles. The first principle is that the Crowns wish to reach a fair settlement with the claimant group and secondly, ensure it has sufficient capacity to maintain as far possible fair settlements with other claimant groups (Office of Treaty Settlements, 2015).

The Crown created the environment where iwi was pitted against iwi and was left to work out amongst themselves who had mana whenua rights to land. According to Mullins (2019) when highlighting the environment created by the Crown over cross claimants, she spoke about an environment of divisiveness, frustration, and anxiety. From the perspective of her iwi, because an agreement could not be reached, there was a parting of ways, with each iwi negotiating their settlement (Mullins, 2019).

McKenzie (2019) from Raukawa spoke about being initially transparent about their cross-claimant issues and sending an original map of their region to other claimants, which had the effect of opening the door for them to lay claim to the rohe o Raukawa. He outlined how Raukawa had also leveraged off other negotiations in an attempt to elicit more for themselves.

Hohneck (personal communication, August 12, 2016) from Ngāti Manuhiri spoke about the late incursion from a distant iwi who chose at the very last moment to indicate to the Crown they had interests in Ngāti Manuhiri rohe and were prepared to stop the settlement of their claims were not addressed. This position effectively holds Ngāti Manuhiri over a barrel, either delaying the process of acquiescing to the demands of the distant iwi or receiving even less than what they were entitled to receive.

Earlier in this thesis, we had highlighted some of the issues the Waitangi Tribunal had identified in the Tāmaki Makaurau treaty settlement in particular trying to achieve as many settlements as possible (Waitangi Tribunal, 2007a). Neilson (2021b) highlights Ngāti Whātua and their challenge against the Crown in the Auckland High Court. The crux of their complaint was the Crown allowing tribes not domiciled in Auckland to claim mana whenua rights in their rohe. From the perspective of Ngāti Whātua, this was a clear case of the Crown failing to recognise the ahikā and the mana whenua customary rights (Harawira, 2021).

7.6.9 Te Whānau o Waipareira

For too long Māori authorities have had to overcome negative stereotypes, especially from sections of the news media who have accused them of being unable to operate at the same levels of performance as non-Māori (Keiha & Moon, 2008). However, according to Keiha and Moon (2008), based on anecdotal feedback from those who have received services from Māori authorities, it is the no-Māori organisations, who have failed to deliver to the same levels as Māori. In a report prepared by the Whānau Ora Commissioning Agency (Lakhotia et al., 2019, p. 11) they describe the effectiveness of "The Incredible Years Parenting" (IYP) programme which was funded by the Ministry

of Education and run by Waipareira for more than six years. A social return on investment analysis of the programme revealed the value created by it. Some of the outcomes included being a better parent, improved relationships, and improved mental well-being. For every $1 that had been invested in the programme, $3.75 of value had been created.

There has to come a time when the rhetoric espoused by our politicians ceases and they begin to invest in solutions and programmes that bring effective changes and make a difference in the lives of Māori in need. Barcham (1998) came up with three solutions that could lead to an improvement between iwi and urban Māori. He spoke about the idea mooted by Ngahiwi Tomoana of Ngāti Kahungunu, who spoke about urban Māori playing a subservient role to iwi. An approach that assumes iwi organisations are already operating effectively in a position to deliver such services in major urban areas such as Auckland and Wellington. The other issue is whether the urban Māori authorities who have had to battle the Crown for funding and resources and are still able to survive and provide services to the Māori community would relinquish their role. The writer would argue that the response from urban Māori to this idea would be a definite no.

Barcham (1998) then spoke about Durie's suggestion that a national body is established that would represent all Māori and be responsible for the allocation of assets. The idea has merit, but issues that would arise include who appoints the national Māori body, the composition of the national body, and the specific criteria they would work toward. His third suggestion was for urban Māori to receive a percentage of the assets directly, irrespective of what iwi representatives say about those Māori who cannot or will not align themselves with an iwi. Again, the suggestion has merit, the issue could still, arise where iwi is receiving more funding than urban Māori even though urban Māori may argue they are dealing with more Māori from across iwi, and therefore most of the work.

John Tamihere (personal communication, November 10, 2016) has said for things to change the current bureaucracy, which he describes as racist, needs to change and the funding needs to be distributed to the regions to allow regional funding plans. He highlighted the effectiveness of Whānau Ora, which is described as an innovative approach that puts whānau at the centre of decision-making and explores innovative approaches to improving whānau well-being.

Taumaunu (personal communication, December 19, 2016) and Mariu (personal communication, December 20, 2016) stress the importance of strong leadership, transparency, and a community-led process as being the most effective strategy to adopt.

7.7 Chapter Summary

Completed treaty settlements are the gateway to the growth and development of iwi. The Crown has imposed strict guidelines that spell out their expectations from Māori before they will settle their claims, unfortunately, the Crown has never followed the same strict guidelines.

The findings from this research highlight and identify several areas where the Crown has fallen short of what one would consider acceptable behaviour when entering into negotiations with Māori. These include a treaty settlement that predetermined, iwi fighting against each other, compensation that does reflect the loss Māori suffered, abuse of power, and a historical account that does not mirror the true history of iwi.

From the beginning, Te Whānau o Waipareira Trust has endured numerous challenges from iwi and the Crown over funding. Each encounter has equipped Waipareira with the skills, knowledge, and experience to know that what it does for Māori in the West Auckland community works. The challenge is to convince iwi and the Crown.

CHAPTER EIGHT

CONCLUSIONS & RECOMMENDATIONS

Imagine Aotearoa free of colonization, racism, and prejudice where true equality prevails. Where Māori receive full compensation for the land stolen from them. Imagine what Māori lives would be like with money in their hands. No poverty, poor health, unemployment, or ongoing mental health issues. Where Māori know what it is like to be fed, clothed, and own a decent car and house. Where Māori excel in education and are the doctors, physicists, lawyers, professors, and leaders of Aotearoa. Where the low level of criminal offending by Māori in Aotearoa is lauded worldwide as the success story it is. Where Māori continue to thrive and strive instead of barely surviving.

You may think I am dreaming but I know others share the same dream. I look forward to the time when the Crown, media, and community see this as the solution, not a problem they feel a need to suppress, quash, break and tear down. Where our te reo, tikanga, kawa are cherished as the taonga they are. Where our tamariki, mokopuna, rangatahi, kaumātua and kuia are valued and respected. Imagine.

8.0 Conclusion

The topic of this thesis was two-fold, firstly, to investigate the influence that public servants have had on treaty settlements. The broad definition of a public servant encapsulates not only the receptionist working in the office of the Ministry of Education, or the chief executive officer of Te Puni Kōkiri but includes our elected parliamentary representatives who make up the Crown. From the research undertaken, the public servant in their various guises has impacted treaty settlements (Mutu, 2019b). As alluded to earlier the Chief or Lead Crown Negotiator is the public servant iwi negotiators work with during treaty settlement negotiations.

The “Findings” reveal the extent of the influence public servants have on treaty settlements. The major issue and frustration for all iwi negotiators to emerge from the research was the negotiation framework that outlines: predetermined process and lacking flexibility, the funding allocation iwi receive, large natural groupings classification, the impact of cross-claimants and the limits placed on the compensation paid to iwi. The

research confirmed that power imbalance and bullying still exist which was demonstrated when clashes of personalities arose between parties or when the iwi group refused to accept the financial quantum or changes the Crown was proposing. When these situations did arise the Crown's response was to delay finalising the settlement or refuse to carry on the negotiation process until they got their way. Of concern was the unacceptable behaviour of the Crown officials in the course of treaty negotiations where staff were often replaced or kaumātua and kuia were insulted.An important finding of this research is the biased behaviour of the Crown which has a marked impact on treaty settlements.

One of the positives to arise is the the outcome of treaty settlements when negotiations were held between the minister and the iwi negotiator (rangatira to rangatira). When this occurred noticeable gains in the financial quantum for the iwi were achieved. If this practice was to continue it would remove the influence of public servants by reducing the power imbalance and bias, eliminating the public servants changing roles during the negotiation stages and addressing poor behaviour issues.

For treaties, and settlements to be fair and just the current Crown structure and processes must change, for this to occur the attitude of the Crown, and community must change. This will not happen immediately and if history is any indicator, it will take some time before things begin to unfold and change, but it will.

The second stream of this thesis was to examine the position of Waipareira, an urban Māori authority based in West Auckland, and identify the funding issues that they and other urban Māori groups have encountered from iwi and the Crown for the programmes they deliver to Māori. Resistance from iwi and Crown has resulted in Waipareira and other urban Māori authorities instigating several legal challenges in the courts to ensure the rights of urban Māori are protected. Instead of fighting each other, the priority for urban Māori, Crown, and iwi should be to ensure funding is delivered to the entity that is the most cost-efficient and effective in delivering services to Māori.

Limitations

Under the following three headings, self-motivation, technical issues, and information sources are the limitations that impacted me at various stages of completing this thesis.

They are not proferred as an excuse for the time taken to complete this thesis but merely as an explanation for the delay.

8.0.1 Self-motivation

In 2015, I submitted my application to commence study for this Doctor of Philosophy degree. I chose Awanuiarangi because a close mentor of mine the late Apirana Mahuika an esteemed kaumātua of Ngāti Porou was in the throes of completing his doctorate and he had spoken highly of the faculty. His words in support of studying at Awanuiarangi resonated with me in particular the ability to shape and mould research and study around my interests, from an organisation that was Māori led and Māori driven.

The plan was that if accepted into the Doctoral studies programme, I would knuckle down and try and have the document completed as early as possible. After receiving notification of my acceptance, I submitted a timeline indicating a completion date within three years. Having come off treaty negotiations with the Crown and experiencing firsthand the power imbalance that exists between Crown and Māori, I was motivated to commit to writing about my experiences.

It has been now seven years, and my ambitious plan was just that ambitious, in reality, several factors contributed to the delay including, moving out of Auckland to Napier, selling and purchasing houses, establishing new work offices, family commitments, overseas travel, family illnesses, tangi, lack of confidence in my ability to complete the document. However, the most challenging factor was "apathy" on my part. For considerable periods, I kept looking for any excuse to not be sitting behind my computer drafting and pulling this document together. Thankfully due to the persistence, tenacity, and prompting of my supervisor Professor Virginia Warriner, I eventually began to run out of excuses and about two years ago started focusing on knocking off chapter after chapter.

8.0.2 Technical Issues

Information technology including accessing and searching the internet, websites and google are anathema to me. I was brought up in an era where if you wanted to find out about something you went down to the local library to search for the information. The ability to be able to search online or from the library of Awanuiarangi still mystifies me, likewise trying to access library information from other sources has been difficult. If I needed information I would contact the kind library staff at Awanuiarangi, who would help try and locate the material for me. Likewise my two-finger typing ability, at best below average, and lack of ability to format revealed my limited knowledge of the working of a computer. Awanuirangi campus should run regular computer skill courses.

8.0.3 Information Sources

The first treaty settlement with the Crown was the Waitomo Caves in 1989, followed by the Sealord deal in 1992, Tainui in 1995, Ngāi Tahu in 1998 and then a succession of other treaty claims (Hill, 2012). As part of my search for information, I reviewed several completed treaty settlements including, Ngāti Manuhiri, Tainui, Ngāi Tahu, and Raukawa to name but a few, and each provided snippets of useful information. I was, however, cautious given my own experiences working with Ngāti Manuhiri about paying cognisance to the Crown's sanitised historical accounts of each iwi.

The academic writings of authors like Mutu (2019b), Mc Dowell (2016), Ward (1999), Hayward (2019), Mikaere (1997), Te Aho (2017) and others also provided useful information. Excerpts of information from the news media (print, radio, television) were also good sources of information.

Throughout my research, I was surprised that the source material was not as extensive as I anticipated. There needs to be a repository that is easily accessible by all interested parties and provides a comprehensive overview of treaty settlements. The repository should hold templates and reports of how to apply for funding, sources of funding, budgets, issues iwi negotiators encountered pre, during and post-negotiations, relevant experts to use and how any additional resources, whenua and funding were obtained.

8.1 Recommendations

8.1.1 ***Discussion***

The following recommendation seeks to build on the "Findings" of this research with the appointment of an independent arbiter. This person will be tasked to overhaul the current negotiation framework.

8.1.1.1 ***Phase One – Appointment of an Independent Arbiter***

Recommendation One:

The Crown is to appoint an independent arbiter who will be tasked with:

- reviewing the negotiation framework of the treaty settlement process and treaty settlement outcomes to ensure fairness to all parties,
- ensuring the involvement of Māori in the development of the negotiation framework, and
- ensuring the provisions of Article 28 of the United Nations on the Rights of Indigenous People are followed with respect to treaty settlement compensation.

  Timeline for completion of review - five years.

Rationale

- To ensure objectivity the independent arbiter is to be appointed by the Permanent Court of Arbitration (1899) in the Hague, Netherlands.

Impact of recommendation one:

- The role of Crown officials (Crown negotiator, office of treaty settlements) in treaty settlement to change and will be one of providing administrative and technical advice and support to all parties.

- Rangatira to ranagatira - all direct negotiations of treaty settlements will be undertaken between the Minister for Treaty of Waitangi Negotiations and iwi treaty negotiators.
- The iwi will consult with the Crown before determining "Large Natural Grouping" claimants.
- The balance of power is to be equally shared with Māori during the negotiation process.
- The negotiation framework is jointly established with Māori.
- Sufficient funding is made available to ensure all treaty settlements are funded appropriately.
- Cross-claimant grievances are mediated to the satisfaction of all parties.
- A list of suitable experts is made available to iwi negotiators to assist in treaty negotiations.
- Legislative/policy change that allows private and conservation land available for treaty negotiations.
- Full compensation is to be paid for the land that was taken from Māori.

8.1.1.2 ***Phase Two - Future aspirations***

8.1.1.3 ***Discussion***

From my research findings, a key issue is the power imbalance that exists between the Crown and Māori. This power imbalance has existed since Māori and the Crown signed the Treaty of Waitangi in 1840. As a result, the carnage inflicted on Māori by the Crown has been well documented. Recommendation two seeks to have the Treaty of Waitangi entrenched as new superior law constitution in Aoteaoroa.

Recommendation Two:

The Crown to entrench the Treaty of Waitangi to become part of Aotearoa's new superior law constitution.

Timeline for completion: 17 years (2040).

Rationale

To recognise and give due recognition to the Treaty of Waitangi as the founding document of Aotearoa.

Impact of recommendation two:

- Prior to entrenchment – extensive consultation with the community and engagement with key stakeholders – media, politicians and Māori.
- Commitment from the Crown to adopt a partnership approach with Māori.
- Elimination of the power imbalance between Māori and the Crown.

8.1.2 Waipareira/urban Māori service providers

8.1.3 ***Discussion***

The Crown document He Puapua states that based on evidence they would expect Māori well-being to improve as Māori take control over their own lives. Māori-led services and initiatives have been too underfunded and under-resourced for true success under tino rangatiratanga to be properly measured (Hayden, 2022). John Tamihere (2016), has said the same thing, give Māori the resources so they can implement what best works for them.

8.1.3.1 Recommendations – Waipareira/urban Māori

Recommendation Three: The Crown to fully fund all Whānau ora programmes in Aotearoa.

Timeline for completion: 12 months.

Rationale

Funding is distributed only to organisations that can prove a history of achieving positive results and outcomes for Māori.

The impact of recommendation three:

- Crown, iwi and urban Māori organisations not delivering positive outcomes to lose their funding.
- Focus on Māori-led solutions, programmes based, designed and developed from a Māori framework.
- Regional plans comprised by Māori in the area determine the need and priority allocation of funding.
- Funding distributed to Māori organisations that have a history of delivering effective services and programmes.

8.2 Final comment

There will come a time when the Crown with the support of the community will address the inequities and trauma they have inflicted on Māori since the signing of the Treaty of Waitangi in 1840. A treaty settlement that compensates Māori fully for what was taken from them is fair and just. For that goal to be achieved intervention from an organisation with "no skin in the game" is a necessity. The entrenchment of the Treaty of Waitangi as part of Aotearoa new superior law constitution finally gives it the due recognition and mana it deserves.

Waipareira like other urban Māori in Aotearoa has been built on a philosophy of helping those Māori who need help. The Crown and iwi make similar claims that what they are doing is also for the benefit of Māori. Current Crown programmes are still not delivering the services they should, as evidenced by the plight of Māori who continues to feature poorly across all social deprivation indicators. There needs to be one centrally funded model, Māori designed, developed and led.

GLOSSARY

Moorfield, J. C. (2022) Te Aka Māori Dictionary
https://Māoridictionary.co.nz

Māori Translation

Māori Word: *English Translation*

- Ako: *To learn, study.*
- Aotearoa: *Māori name for New Zealand.*
- Āriki: *Paramount chief.*
- Hapū: *Kinship, group, clan, tribe.*
- Hara: *Transgress, violation of tapu.*
- Hui: *Gathering, meeting.*
- Indigenous: *Native people of the land.*
- Iwi: *Tribe, extended kinship group.*
- Karakia: *Pray, recite ritual chant.*
- Kaumātua: *Elderly man.*
- Kawa: *Marae protocol, customs of the marae.*
- Kuia: *Elderly woman.*
- Kaupapa: *Subject.*
- Kaupapa Māori:*Māori theory.*
- Kāwanatanga*: Government, dominion.*
- Kingitanga: *Reign of a king, kingdom, dominion*
- Kōrero: *Speech, speak.*
- Kotahitanga: *Unity, together.*
- Kupapa: *collaborator, ally.*
- Mahinga kai: *Food gathering place.*
- Māori: *Indigenous people of Aotearoa.*
- Mamae: *Pain, ache, sore, hurt.*
- Mana: *Authority, power, influence, status.*
- Mana Motuhake*: autonomy, self government, self determination.*

- Matauranga: *Knowledge, wisdom, education.*
- Mātua: Parents.
- Mokopuna: *Grandchild, descendant.*
- Muru: *Confiscate, plunder.*
- Paikea: *Humpback Whale*
- Pākehā: *New Zealander of European descent.*
- Patupaiarehe: *Fairy folk.*
- Pounamu: *Greenstone, jade.*
- Rangatahi: The younger *generation, youth.*
- Rakiura: *Stewart Island.*
- Rangatira: *High rank, chiefly, noble.*
- Rangatiratanga: *Right to exercise authority, chiefly authority.*
- Raupatu: *Conquered, confiscated.*
- Rawakore: *Poor, destitute.*
- Rohe: *Boundary, district.*
- Taonga Tuku Iho: *Heirloom, cultural property.*
- Tamariki: *Children.*
- Tamaki: *Omen, portent.*
- Te Reo: *Māori language.*
- Te Tai Rawhiti: *The eastern districts of North Island.*
- Te Tiriti o Waitangi: *The Treaty of Waitangi*
- Tikanga: *Correct procedure, custom, lore.*
- Turangawaewae: *Standing, where one has the right to stand.*
- Tuwharetoa: *Tribal grouping of Lake Taupo.*
- Urupa: *Cemetery.*
- Waiata: *Song.*
- Wāhi Tapu: *Sacred place, site of the burial ground.*
- Waka: *Canoe, conveyance.*
- Whakapapa: *Genealogy lineage.*
- Whakatohea: *Tribal group in the Opotiki area.*
- Whanaungatanga: *Relationship, kinship, family connection.*
- Whānau: *Family group*

ACRONYM DEFINITIONS

- CBT: Compulsory Breath Test.
- CFA: Community Funding Agency.
- CFRT: Crown Forestry Rental Trust
- DSW: Department of Social Welfare.
- HMS: His/Her Majesty's Service.
- MOKO: Manuhiri Omaha Kaitiakitanga Ora.
- PSGE: Post Settlement Governance Entity.
- MFA: Māori Fisheries Act.
- MUMA: Manukau urban Māori Authority.
- UMA: Urban Māori Authority
- NUMA: National urban Māori Authority.
- SCF: South Canterbury Finance.
- TOKMT: Te Ohu Kai Moana Trust.
- WINZ: Work and Income New Zealand.

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PERSONAL COMMUNICATIONS

E. Taumaunu (personal communication, December 19, 2016).

J. Jackson (personal communication April 10, 2009).

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T. Morgan (personal communication, March 15, 2016).

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W. Te Aho (personal communication, March 12, 2016).

APPENDICES

Appendix One – Ethics approval Letter

EC2015/01/0035
ECR2015/01/0035

TE WHARE WĀNANGA O
AWANUIĀRANGI

04th November 2015

Clinton Rickards
22A Karetu Road
Greenlane
AUCKLAND 1051

Tena koe Clinton,

Re: Ethics Research Application EC2015.01.0035

At a meeting on 27th October 2015, the Ethics Research Committee of Te Whare Wānanga o Awanuiārangi considered your application.

We are please to advise that your submission has been approved. The Ethics Research Committee wishes you well in your research.

Nāku noa nā,

Dr Te Tuhi Robust
Chair – Ethics Research Committee

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Appendix Two - Copy of any letters of support

TE WHĀNAU O WAIPAREIRA
KOKIRITIA I ROTO I TE KOTAHITANGA
Progressively Act in Unity

Te Whānau o Waipareira Trust
C/- Raymond Hall- Chairperson
PO Box 21081 Henderson
Auckland 0650
Email: Raymond.hall@waiwhānau.com

20 May 2022

Te Whare Wānanga o Awanuiarangi
C/- Mr. Clint Rickard
Private Bag 1006
Whakatane 3158
Email: tukotahi@hotmail.com

Tēnā koutou katoa,

My name is Mr Raymond Hall; I am the Chairperson for Te Whānau o Waipareira Trust Board. I have been an elected member of the Trust Board since 2011 and duly elected chairperson for the past ten years.

In 2015, Mr Rickards approached the Waipareira Board and sought support for PHD research studies he was intending to complete. The topic of his study included examining Treaty Settlement negotiations and the funding challenges Waipareira have experienced from Iwi and the Crown, whilst delivering health and support services to all Māori in the West Auckland community.

Given Mr Rickards robust relationship with the Trust, formerly as a strategic advisor and later as an elected Trust Board member, the Te Whānau o Waipareira Trust Board had no hesitation in unanimously endorsing Mr Rickards PHD application as presented. As per standard Board meeting procedures, a resolution was passed at our Trust board meeting supporting Mr Rickards proposed study. Documentation pertaining to this resolution can be made available upon request.

As stipulated in Mr Rickards application for Support and Board Endorsement, upon completion of the research studies, Te Whānau o Waipareira Trust eagerly anticipates a presentation of the research findings.

For any questions or comments, please contact the Board Secretary or myself directly. We will be happy to assist in any way we can.

Ngā mihi nui,

Raymond Hall

Appendix Three – Information Sheet

Te Whare Wānanga o Awanuiārangi

To investigate the influence of Public Servants on Treaty Settlements

INFORMATION SHEET

Researchers Information

Researcher

Clinton John Tukotahi Rickards - PhD Student
Employed: Barrister - Criminal, Employment Law &Treaty Negotiations - Napier
Contact Phone number – 0212777838 or email: tukotahi@hotmail.com

Academic Supervisor

Associate Professor Virginia Warriner (Dr.)
School of Indigenous Graduate Studies
Te Whare Wananga o Awanuiarangi
Whakatane
DD: (07) 306 3293 Email: virginia.warriner@wananga.ac.nz

Type and purpose of project

Research towards a Doctor in Philosophy

Participant Recruitment

The participants have been selected through the following:

- Personal knowledge of completed treaty settlements and the participants involved.
- Discussion with other treaty negotiators
- Information gleaned from Office of Treaty Settlements

- Discussions with Senior Crown Negotiator

The Selection criteria

Completed Treaty Settlements have been placed in three (3) categories:

- Settlements under $20m
- Settlements between $20 - $50m
- Settlements over $50m

It is intended to interview at least two participants per treaty settlement to gain a different perspective. However given the nature of treaty settlements, it may be only one person is interviewed or more than two if the circumstances dictate. I will be guided by the participants.

In regards to my case study of Te Whānau o Waipareira Trust there are two people still involved with the Trust who will be the first people I speak with.

Refreshments for morning and afternoon tea will be provided. Where necessary travel expenses will be covered.

If any participants feel uncomfortable with the interview. The interview will stop immediately and if the participant decides they do not wish to continue, that is their prerogative and they will be offered support. Initial indications from people approached is that there is genuine commitment to tell their side of the story.

Project Procedures

- **Use of data**

Questions will specifically focus on the topic "To investigate the influence of Public Servant's on Treaty Settlements."

- **What will happen to the data when it is obtained?**

All data will be reviewed and analysed to determine whether information answers the questions posed as part of the research project. A case study approach will be adopted for the data received from Te Whānau o Waipareira and thematic approach for the data received from Iwi negotiators and Public Servants.

- **Storage and disposal of data**

Electronically stored information will be password protected.
Hard information will be kept in safe secured cabinet in office. Only people with access to the information will be the Academic Supervisor (Dr Virginia Warriner) and the Researcher (Clint Rickards).

- **Method for accessing a summary of the project findings**

Information will be controlled by researcher (Clint Rickards) if information is requested it will need to be made in the first instance to the researcher. The Researcher intends to provide each of the participants with a summary of the interview undertaken to ensure accuracy.

- **Method for preserving confidentiality and anonymity (if offered)**

If required a pseudonym to protect identity of participant will be utilised.

Participants involvement

Personal interviews of each participant will be conducted. The Researcher (Clint Rickards) will contact each of the participants personally and give an indication of how the interview will proceed, likely questions asked and also the information that will be sought. An atmosphere where participants feel comfortable in volunteering information is sought – hence there may be questions outside the structured and semi structured range.

Time involved

In the hands of the participant – envisage 30 min to 180 minutes/ opportunity to return and re-interview again if necessary.

Participants Rights

Copy of Statement of Rights given to each participant attached.

The "Statement of Rights" must include:
You have the right to:

- Decline to participate;
- Decline to answer any particular question;
- Withdraw from the study (specify timeframe);
- Ask any questions about the study at any time during participation;
- Provide information on the understanding that your name will not be used unless you give permission to the researcher;
- To be given access to a summary of the project finding when it is concluded

Project Contacts

If there are any matters your wish to discuss in respect to this research you can call - Clint Rickards 021 2777838 or email address: tukotahi@hotmail.com

Or

Dr Virginia Warriner
DD: (07) 306 3293 Email: virginia.warriner@wananga.ac.nz

Ethics Research Committee Approval Statement

- This project has been reviewed and approved by Te Whare Wānanga o Awanuiārangi Ethics Research Committee, ERCA0035. If you have any concerns about the conduct of this research, please contact the Chairperson of the Ethics Research Committee.

Contact Details for Ethics Research Committee Chairperson:

Associate Professor Te Tuhi Robust
Chairperson
Ethics Research Committee
Te Whare Wānanga o Awanuiārangi
tetuhi.robust@wananga.ac.nz

Postal address:
Private Bag 1006
Whakatane

Courier address:
Cnr of Domain Rd and Francis St
Whakatane

Appendix Four – Consent Form

Te Whare Wānanga o Awanuiārangi

To investigate the influence of Public Servant's on Treaty Settlements

CONSENT FORM

THIS CONSENT FORM WILL BE HELD FOR A PERIOD OF FIVE (5) YEARS

I have read the Information Sheet and have had the details of study explained to me.
My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I agree to participate in this study under conditions set out in the Information Sheet, but may withdraw my consent at any given time.

Signature: _____ **Date:** _____

Full name – printed: _____

Private Bag 1006
Francis St
Whakatane 3158
Aotearoa

Wano / Telephone :(07) 307-1467
Wano Whakapuaka / Fax :(07) 307-1475
Awanui / Email – esc@wananga.ac.nz
PaeTukutuku/Website : www.wananga.ac.nz

Appendix Five – Interview Questions

Interview Questionnaire

It should be noted that the questions below are designed to initiate conversation and discussion with the participant. It is likely that a number of other questions will arise during discussion.

1. Participant:

Iwi Negotiator (Treaty Settlement finalized)

Overarching Question

Was your treaty settlement process fair and just?

Research Questions:

1) Do you believe your treaty settlement to be fair and just?
2) What concessions did you make in negotiations with the Crown to achieve a treaty settlement?
3) What would have been the outcome of the treaty settlement if you had not agreed to make concessions?
4) What impact if any did the Crown negotiator have on the composition of the final treaty settlement?

2. Participant:

Crown Negotiator

Research Questions:

1) What specific briefing did you receive from the Minister of Treaty Settlements prior to negotiating treaty settlements?

2) What is the Crown policy when negotiating treaty settlements with Iwi?
3) Was the Minister joined to every decision you made during the negotiations?
4) What action is taken if an Iwi will not agree to a Crown proposal over treaty settlements?

Case Study

4. Participant: Te Whānau o Waipareira Trust (the Trust)

Overarching Question:

Following the Waitangi Tribunal's decision in regards to the Trust's Wai 414 claim, how has the relationship between Crown entities and the Trust improved?

Research questions:

1) What has been the response from Crown agencies since the Waitangi Tribunal decision on WAI 414?
2) What examples are you able to provide which highlights barriers and challenges from Crown agencies to the Trust?
3) Why do you believe this issue has occurred?

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