

Whaia te Mana Motuhake, Wai 2417

14 February 2024

Key Points

Outline – Establishment of NZ Māori Council

1. The New Zealand Māori Council is the organizational embodiment of statutory recognition of Māori self-government.
2. The **Māori Community Development Act 1962** provided a structure for **self-government**, a voice for ‘**All Māoris**’ (S.18 (1)), the appointment of **Wardens** by District Māori Councils to carry out duties in their District (Section 7), **Māori community development** through the structure of Districts, Executives and Māori Committees, and a function to **collaborate with government** for social and economic advancement, including employment, education, housing, law enforcement and managing social matters such as alcohol. There was provision for the appointment of Community Welfare Officers. There were no appointments from 1993.
3. The 1962 Act was the culmination of Māori leadership in seeking crown recognition of self-government through the prior Māori Councils Act of 1900 and the Māori social and Economic Advancement Act of 1945. The 1945 Act the Crown gave statutory recognition to Māori institutions as a network of tribal committees and tribal executives set up by Māori during the second World War to assist with the war effort – but only at the local level.
4. The Māori Welfare Act 1962 as originally enacted provided for a governance and management structure made up of Community officers, Māori Wardens, Māori Committees, Māori executive Committees, District Māori Councils, with the NZ Māori Council as the representative body at that apex. Under the 1962 Act, Māori Wardens are nominated by their Māori Council District, and then appointed by the Minister of Māori Affairs (S. 7(1)).
5. The 1962 Act was seen pragmatically by Māori leaders as effective for maintaining their culture and controlling their own affairs – in particular, to care for the Māori migrating to urban areas and to establish distinctively Māori communities in the rapidly growing cities.
6. NZ Māori Council played a leading role in a number of landmark court cases and Waitangi tribunal inquiries:
 - a. Its advocacy for Māori in the area of the disposal of Crown assets led to the establishment of the Crown Forestry Rental trust and Te Māngai Pāho (the funding entity for Māori radio and television).
 - b. In March 1987, the government legislated for the sale of state assets to SOE’s. The NZ MĀORI COUNCIL and its chairman, Sir Graham Latimer, applied for judicial review of the Minister’s decision was heard in the High Court which issued an interim declaration delaying the transfer of the assets and it made an order removing the case to the Court of Appeal . The Court of Appeal delivered its decision in favour of the NZ Māori Council in June 1987. Following negotiations between the Crown and the NZ Māori Council legislation was passed in 1988:
 - i. to give the Waitangi tribunal binding powers to recommend the return to Māori of Crown land transferred to SOEs
 - ii. Statutory recognition of the principles of the Treaty was enacted under the State- owned Enterprises Act and Part 5A of the Public Finance Act.

Resourcing of NZ Māori Council

7. New Zealand Māori Council has been deprived of funding needed to implement the Māori Community Development Act 1962.

Māori pursuit of mana motuhake or Māori self- government and autonomy is a long one, but it has often foundered on the rocks of poverty due to lack of adequate support and funding by the Crown.

The Tribunal said ' the feathers of this bird were plucked before it could take flight'.

NZ Māori Council, Treaty Settlements and Growing Diversity of Māori Organizations

8. Since the formalisation of a system for self-government there has been the advent of Treaty settlements and Post Settlement Governance entities. Iwi leaders representatives have moved into leadership in respect of iwi interests and advocacy on behalf of Iwi Māori. This indicates the growing complexity and diversity of the Māori world combined with the growing authority of iwi-based corporations during the 1980's and 90's
9. The Federation of Māori Authorities (FOMA) was established 1987 as a national organization representing national body representing the commercial interests of over 150 individual Māori authorities and other Māori organisations. It focuses on Māori industry and Māori economic development – in a context of the approx. \$40 billion Māori economy
10. The National Urban Māori Authority (NUMA) was founded in 2003 and represents seven affiliated urban Māori authorities in five urban centres across New Zealand.

Māori Wardens

11. The establishment of a national Māori Warden's Association and the many Māori Wardens' associations throughout the country reflected a response to urbanisation and the need for support for the re-establishment of Māori in cities – in respect of housing, jobs, schooling, health services and orientation to new communities.
12. Urbanisation corresponded with a growing desire by the Wardens for operational autonomy. NZ Māori Council has supported the call for operational autonomy while retaining accountability of the Wardens to the NZ Māori Council under the 1962 Act. This is to ensure accountability of wardens to their communities.
13. In 2007 TPK set up the Māori Wardens Project and established the Māori Wardens Project Advisory Group. TPK have not aligned with the NZ Māori Council in the need to retain the governing authority of the Council and have in effect undermined the relationship of the Wardens with the Council

14. Reviews of NZ Māori Council :

- a. In 1998 the fourth National government, through the Minister of Māori Affairs Tau Henare, launched a review of the Māori Community Development Act with a view to covering issues relating to a national representative body. The review proceeded despite the objection of the NZ Māori Council. Information hui revealed some decline in the operations of the Māori committees while also affirming the need for a national representative body.
- b. Changes approved by the review included a secretariat for the NZ Māori Council with policy, finance and research staff, the NZ Māori Council would develop its own constitution, the Māori Committees, Executives, and DMCs would be abolished. Instead, each marae and 'marae equivalent' community could send a delegate to 16 regional forums (the 16 Māori Council districts).
- c. The Labour government took office from 1999-2008 and the change of government meant the legislation was not enacted.
- d. In 2009, the National government under John Key and Minister of Māori Development Pita Sharples resolved that the Māori Affairs Committee conduct an inquiry into the Māori Community Development Act 1962. This review arose because of the establishment of the Māori Wardens Project (MWP) in 2007 by TPK. In 2007, the Crown/TPK also established the Māori Wardens Advisory Group.
- e. TPK agenda was to sever Māori Wardens from the council system

- f. The NZ Māori Council was in process of rebuilding the Districts and wanted a Māori-led review to decide what should happen to the Māori self-government institutions in the Act.
 - g. In 2013 the Crown (National government) on the other hand, decided to proceed with a TPK-led consultation process to inform its decisions.
15. The NZ Māori Council took the claim to the Waitangi Tribunal. Key issues were:
- a. Māori self government means that any review should be Māori led
 - b. TPK were undermining the authority of the NZ Māori Council in administering the Māori Wardens as provided under the Māori Community Development Act. This was identified through the split between the TPK Māori Wardens Project (MWP) and the Māori Wardens Associations linked to NZ Māori Council Districts. The Crown sidestepped the NZ Māori Council and DMCs, and funded the wardens directly. This approach usurped their authority to control and supervise wardens. The manner of the Crown's control through funding and warranting diminished the authority of the NZ Māori Council and District Māori Councils (DMCs) to administer Māori Wardens in terms of the 1962 Act.
16. Findings of the Waitangi Tribunal (Wai 2417):
- a. Māori community oversight has been completely excluded from the project since early 2011. This includes all funding decisions, which are made in isolation from the New Zealand Māori Council (NZ Māori Council) and District Māori Councils (DMCs), the statutory bodies with responsibility for controlling and supervising the work of Māori Wardens.
 - b. The funding policies and decisions by the Te Puni Kōkiri run MWP have thus interfered with the ability of DMCs and (ultimately) the NZ Māori Council to perform their statutory duties in respect of controlling and supervising Māori Wardens. This is especially so since the rejuvenation of some DMCs and the NZ Māori Council in 2012.
 - c. The manner in which the Crown has made MWP funding decisions is not consistent with the rights affirmed in article 18 of the UNDRIP.
17. For the NZ Māori Council the Tribunal proposed :
- a. A national role in promoting, encouraging, and assisting Māori to apply and maintain their local self-government and tikanga and mātauranga Māori.
 - b. A collaborative role in assisting state agencies with the Treaty of Waitangi relationship between Māori, the Crown, and people of New Zealand
 - c. A local levels, emphasis on cross-linking District Māori Councils and Māori Committees with iwi and urban authorities.
 - d. Reform of the 1962 Act should be NZ Māori Council-led and negotiated with the Crown
 - e. A national hui led by the NZ Māori Council for the purpose of establishing a working group of experts, with knowledge of the Māori representational landscape relevant to the institutions, to undertake a review. The review could involve consultation with the NZ Māori Council, DMCs, Māori Wardens and their associations, the Iwi Chairs Forum, the national Urban Māori Authority, the Māori Womens' Welfare League, the Kīngitanga, and iwi from throughout New Zealand, and could result in a report containing recommendations for the future direction of the and the institutions and kaupapa for which it is responsible under the 1962 Act.
 - f. As part of the NZ Māori Council national consultation process to review the Act, the NZ Māori Wardens Association nominate experts to the working group to submit proposals reform of the strategic direction for the Māori Wardens.
18. The Māori Community Development Act continues to have capacity to provide a voice for all Māori as provided for in the Act, and in particular has a significant role to play as an organisational system for urban Māori, those who are disassociated from their whakapapa links and provide a voice for 'unsettled' iwi –such as Ngāti Raukawa and Te Taitokerau.

Overview

This summary is based on excerpts from Waitangi Tribunal Report on the Māori Community Development Act (Wai 2417)

The summary of *Whaia Te Mana Motukahe* gives insight into the New Zealand Māori Council as the embodiment of statutory recognition of Māori self-government. The formation of the Council comes from a history of the quest for recognition of tino rangatiratanga (self-government) by the Crown, a national voice that derives from representation of Māori communities, and collaboration with government on policy and implementation of provisions for Māori wellbeing.

These excerpts also provide an opportunity to track the role of the Crown in thwarting the realization of provisions for self-government in the 1962 Act. There is an incredible line of reviews of the NZ Māori Council undertaken by Dept. Māori Affairs, Te Puni Kokiri, which drew resources into the government department which should have been used to enable the NZ Māori Council to do its work. The outstanding feature of the crown role has been to deprive the Council and its constituent Districts and Committees of the resources to carry out the mandate of the statute. It has been beset by grossly inadequate funding. In the imagery of the Tribunal, the feathers of this bird were plucked before it could take flight.

Finally, we note that for much of its existence the NZ Māori Council has been said to be a ‘bird without feathers’. Funding is needed. The history of the Māori pursuit of mana motuhake or Māori self-government and autonomy is a long one, but it has often foundered on the rocks of poverty due to lack of adequate support and funding by the Crown.

Whaia Te Mana Motukahe documents the long struggle for mana motuhake, Māori self-determination and autonomy. In the Treaty of Waitangi, the Crown promised to recognise and protect te tino rangatiratanga, Māori authority over their own affairs, and Māori promised to recognise the Crown’s authority to govern in a manner that ensured tino rangatiratanga. Recognition for self-determination culminated in the Māori Community Development Act 1962.

Tribal leaders have sought ways and means to exercise and assert their tino rangatira tanga and obtain statutory recognition of it from the Crown. In the nineteenth century, Māori took British institutions such as committees and councils and turned them into Māori self-government institutions, combining Māori values and tikanga with Pākehā powers and procedures to create uniquely Māori institutions. The establishment of a Māori King in the 1850s, and of a Māori Parliament in the 1890s, were major events in the pursuit of mana motuhake on the national stage. Colonial Governments were often hostile and made few concessions for according legal recognition and statutory powers to these Māori self-government institutions.

Formation of the NZ Māori Council

Significant points in the history of achieving recognition of rangatiratanga included the Māori Councils Act of 1900 and the Māori Social and Economic Advancement Act of 1945, where the Crown agreed to recognise Māori institutions – but only at the local level. The Māori social and economic Advancement Act 1945 provided statutory authority to a network of tribal Committees and tribal executives set up by Māori during the second World War to assist with the war effort. During the 1950s, Māori leaders organised their own District councils and made representations to Government to give statutory recognition to these councils and to a Dominion Māori Council. In 1961, the Government reached a formal agreement with Māori leaders to establish a Dominion or New Zealand Māori Council through the Māori Social and Economic Advancement Amendment Act. After the Government decided that it was timely to overhaul and modernise the 1945 Act, these statutory powers were provided for in the Māori Welfare Act 1962.

Under the 1962 Act, the Māori Committees received exclusive powers to control and supervise the Māori Wardens or wātene Māori, community volunteers whose origins go back to the nineteenth century. Māori Wardens first gained statutory powers under the 1945 Act, under which they were empowered to control ‘unruly’ or ‘riotous’ behaviour by any Māori person, to request that the owner of any licensed establishment cease selling alcohol to any Māori individual whom the Māori Warden

judged was 'intoxicated' or 'likely to become so', and to enter any 'gathering of Māoris' and search for and seize any 'intoxicating liquor'. These statutory powers of Māori Wardens were transferred to the 1962 Act with only minor amendments.¹¹ In 1969, the exclusive power to control and supervise Māori Wardens, and to assign duties to wardens consistent with the 1962 Act, was given to the District Māori Councils.

Running through the passage of progress towards achieving the Māori Community Development Act in 1962 was the different political allegiances of Māori. The four Māori seats were held by Labour, and the NZ Māori Council were a vehicle for Māori interests for the National party. The Labour government lost the 1960 election and the new National government saw a national Māori body as a 'counterbalance' to Labour's four Māori MP's.

Under Minister Ralph Hanan and the Secretary for Māori Affairs J.K. Hunn the Māori Welfare Act 1962 was passed. There was criticism at the welfare orientation of the Act and that the self government was more limited in scope than had been envisaged by the Kiingitanga movement. In reality the government's agenda of the day for Māori was 'integration' as set out in the 1960 Hunn Report.

So the 1962 Act was seen pragmatically by Māori leaders as effective for maintaining their culture and controlling their own affairs – in particular, to care for the Māori migrating to urban areas and to establish distinctively Māori communities in the rapidly growing cities. The Crown wanted 'integration' and a sounding-board for its Māori policies and legislation at the national level. The change of name of the Māori Welfare Act in 1979 to the Māori Community Development Act symbolised a shift away from 'welfare-statism' towards 'community empowerment and self-reliance.'

Self-Government

The Māori Community Development Act is unique in providing for an organisational system for Māori self government, as set out in S. 18 (iv).

S. 18 (iv) to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings;

The significance of this structure is that it is organised from the ground up – Māori Committees are the foundation of the structure, and were linked to hapū and marae as the location of tino rangatiratanga.

The Māori Community Development Act provisions for Māori Wardens is in section 7, and the provisions for self-government are in Section 18:

Provisions of the 1962 legislation

The **areas of importance** provided in the Act include a structure for **self governance**, a voice for 'All Māoris' (S.18 (1)), the appointment of **Wardens** (Section 7), **Māori community development** through the structure of Districts, Executives and Māori Committees, and a function to **collaborate with government** for social and economic advancement, including employment, education, housing, law enforcement and managing social matters such as alcohol (S.18).

There was provision for the appointment of Community Welfare Officers to advise and assist Māori in their general welfare including areas of health, housing, education, vocational training and employment, and also to collaborate and assist and advise Māori associations. No community officers have been employed under these provisions since 1993.

S. 7: Appointment of Māori Wardens:

(1) For the purposes of this Act the Minister may from time to time appoint in respect of any Maori Council District 1 or more Maori Wardens to carry out duties in that district.

(2) No person shall be appointed or reappointed a Maori Warden in respect of any Maori Council District unless he is residing in that district and has been nominated for appointment or reappointment by the District Maori Council for that district.

The self-governing provisions for wardens were strengthened in a 1969 amendment:

District Māori Councils (DMCs) have 'exclusive power and authority to control and supervise' wardens. Under section 7 of the Act, DMCs also have the power to nominate any person to be appointed or reappointed as a Māori Warden in their district, and to make recommendations to the Minister on the suspension or cancellation of Māori Wardens' appointments. Following the receipt of nominations from a DMC, the power to appoint wardens lies with the Minister of Māori Affairs. On the recommendation of the District Māori Council the Minister of Māori Affairs also holds the power to cancel the appointment of any Māori Warden or receive their resignation.

S. 18. General functions of the New Zealand Maori Council—

(1) The general functions of the new Zealand Maori Council, in respect of all Maoris, shall be—

(a) to consider and discuss such matters as appear relevant to the social and economic advancement of the Maori race:

(b) to consider and, as far as possible, give effect to any measures that will conserve and promote harmonious and friendly relations between members of the Maori race and other members of the community:

(c) to promote, encourage, and assist Maoris—

- (i) to conserve, improve, advance and maintain their physical, economic, industrial, educational, social, moral, and spiritual well-being;
- (ii) to assume and maintain self-reliance, thrift, pride of race, and such conduct as will be conducive to their general health and economic well-being ;
- (iii) to accept, enjoy, and maintain the full rights, privileges, and responsibilities of new Zealand citizenship;
- (iv) to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and
- (v) to preserve, revive and maintain the teaching of Maori arts, crafts, language, genealogy, and history in order to perpetuate Maori culture :

(d) to collaborate with and assist state departments and other organisations and agencies in—

- (i) the placement of Maoris in industry and other forms of employment;
- (ii) the education, vocational guidance, and training of Maoris;
- (iii) the provision of housing and the improvement of the living conditions of Maoris;
- (iv) the promotion of health and sanitation amongst the Maori people;
- (v) the fostering of respect for the law and law-observance amongst the Maori people;
- (vi) the prevention of excessive drinking and other undesirable forms of conduct amongst the Maori people; and
- (vii) the assistance of Maoris in the solution of difficulties or personal problems .

(2) The New Zealand Maori Council shall advise and consult with District Maori Councils, Maori executive Committees, and Maori Committees on such matters as may be referred to it by any of those bodies or as may seem necessary or desirable for the social and economic advancement of the Maori race .

(3) In the exercise of its functions the Council may make such representations to the Minister or other person or authority as seem to it advantageous to the Maori race .

The Act provided for the appointment of 'Community officers' under the control of the Chief Executive of TPK, and they are to advise and assist Māori in their general welfare including areas of health, housing, education, vocational training and employment, and also to collaborate and assist and

advise Māori Associations. We understand that no Community officers have been employed under these provisions since 1993 .

Organisational system

The Māori Welfare Act 1962 as it was originally enacted provided for a governance and management structure made up of Community officers, Māori Wardens, Māori Committees, Māori executive Committees, District Māori Councils, and the NZ MĀORI COUNCIL. It was an Act that envisaged integrated relationships between these several tiers of self-government, with the NZ MĀORI COUNCIL at the apex. Since it was enacted, it has been amended several times (as we discuss in chapters 3 and 4) . now known as the Māori Community Development Act 1962.

According to the community development provisions of the 1962 Act, it provides for the constitution of Māori Associations and defines their powers and functions. The Minister of Māori Affairs is responsible for the administration of the Act, and the powers conferred under the Act are conferred under the general direction and control of the Minister.

The current NZ Māori Council consists of members appointed by DMCs. Each DMC may appoint three members to the NZ Māori Council. Those members continue in office until 31 May in an election year . Elections for Māori Committees (at the grassroots level of the system) are required to be held on a triennial basis, which then results in the elected Māori Committees appointing some of their members to the Māori executive Committees (and so on up the chain to the NZ Māori Council) .

The NZ Māori Council is required to consult with other Māori Associations ‘on such matters as may be referred to it by any of those bodies or as may seem necessary or desirable for the social and economic advancement of Māori, and it may make such representations to the Minister of Māori Affairs or others as may seem to it to be advantageous to Māori.’

District Māori Councils have the same functions as the NZ Māori Council under section 18(1). They also have exclusive power and authority to control and supervise the activities of Māori Wardens carrying out duties within their District

Māori Wardens

The Minister may appoint Māori Wardens in respect of any Māori Council District (DMC). A Māori Warden must be nominated for appointment by the relevant DMC . They are appointed by the Minister of Māori Affairs under section 7(1) of the 1962 Act .

Māori Wardens’ powers are those conferred by the 1962 Act and its regulations . These include regulation 11 of the Māori Community Development Act Regulations 1963, which requires that in carrying out their functions, Māori Wardens must work in close association with the Māori Committees and any subcommittees having jurisdiction in their areas and they must assist the officers of their committees ‘to the best of their ability .’

Under the Act Māori Wardens also have functions for the control of alcohol consumption . For example, a Māori Warden may enter any licensed premises in any area where he or she is authorised to carry out his or her duties and warn the licensee or employee ‘to abstain from selling or supplying liquor to any Māori who in the opinion of the warden is in a state of intoxication, or is violent, quarrelsome, or disorderly, or is likely to become so .’

Today, Māori Wardens carry out a wide range of community and welfare functions . These include school truancy patrols, supporting young offenders at court appearances, providing advocacy for Māori whānau dealing with Government agencies such as Work and Income New Zealand, patrolling the streets at night, and providing security assistance at large public events such as Waitangi Day and the Rugby World Cup. Māori Wardens’ ability to respond to community needs was demonstrated in the aftermath of natural and human disasters such as the Christchurch earthquakes of 2010 and 2011 and the wrecking of the MV *Rena* off the Tauranga coast .

Māori Wardens have always been, and remain, unpaid volunteers who have carried out their valuable community work on minimal resources . In 2005, Winston Peters reached a confidence and supply agreement with the Labour Government, which included creating a dedicated fund to support the voluntary work of Māori Wardens in their communities. In the context of declining activity of the NZ Māori Council Districts, TPK and the Police established the Māori Wardens Project in 2007 to provide a temporary structure to administer funding and training for wardens. This undermined the authority of the NZ Māori Council and shifted the interests of the wardens towards TPK.

The Māori Affairs Select Committee's report was tabled in Parliament in December 2010 . It recommended, among other things, that urgent action was needed for the current governance arrangements for Māori Wardens but that any changes would need to be preceded by 'comprehensive consultation' . In February 2011, Cabinet agreed that further consultation should take place on the review of the Act, and instructed TPK to report back to Cabinet with draft consultation material and a consultation programme .Delays in 2011, and failed attempts to reach agreement with the NZ MĀORI COUNCIL during 2012 and 2013, meant that the planned consultation did not take place until the second half of 2013 .

Māori Wardens: Autonomy and Accountability

Under a 1969 amendment to section 16(5) of the 1962 Act, District Māori Councils (DMCs) have 'exclusive power and authority to control and supervise' wardens . Under section 7 of the Act, DMCs also have the power to nominate any person to be appointed or reappointed as a Māori Warden in their district, and to make recommendations to the Minister on the suspension or cancellation of Māori Wardens' appointments. Following the receipt of nominations from a DMC, the power to appoint wardens lies with the Minister of Māori Affairs (Wai 2417. P.353/ s. 9.1.)

The Māori Wardens have a unique position in the New Zealand legal system prior to and post the 1962 Act. Urbanisation corresponded with a growing desire for operational autonomy, as reflected in the establishment of a national Māori Warden's Association and the many Māori Wardens' associations established throughout the country .

Overall the NZ MĀORI COUNCIL has supported the call for operational autonomy while retaining accountability of the Wardens to the NZ MĀORI COUNCIL under the 1962 Act. This is to ensure accountability of wardens to their communities.

TPK set up the Māori Wardens Project in 2007, and the same year established the Māori Wardens Project Advisory Group. TPK have not cooperated with the NZ Māori Council in the need to retain the governing authority of the Council and have in effect undermined the relationship of the Wardens with the Council. Funding exacerbated the split between Māori Wardens organized under the Māori Wardens Project, and the Māori Wardens Associations aligned with District Māori Councils. The claimants' view was that TPK made funding decisions in favour of groups through the Māori Wardens Project; the statutory bodies with responsibility for controlling and supervising wardens have been excluded entirely from the decisions as to which groups, activities, and locally based training will be funded.

Influence and Achievements of NZ Māori Council

There were many significant cases litigated during the 1980's and 90's which strengthened the constitutional status of the Treaty of Waitangi. During this period, the NZ MĀORI COUNCIL played a leading role in a number of landmark court cases and Waitangi tribunal inquiries. Its advocacy for Māori in the area of the disposal of Crown assets led to the establishment of the Crown Forestry Rental trust and Te Māngai Pāho (the funding entity for Māori radio and television) .

Of particular note is the far-reaching effect of the *Lands* case. In 1986, the State-owned Enterprises Act provided for Crown-owned lands (comprising 52 per cent of the land surface of New Zealand) to be transferred to the 14 newly created state-owned enterprises (SOEs) . Through the Tribunal Muriwhenua tribes claimed that the transfer of Crown-owned lands to the SOEs would make them unavailable for return to treaty claimants under future settlements with the Crown

The NZ Māori Council and its chairman, Sir Graham Latimer, then used those sections to apply for judicial review of the Minister's decision to transfer these assets to the SOEs. In March 1987, the matter was heard in the High Court which issued an interim declaration delaying the transfer of the assets and it made an order removing the case to the Court of Appeal. The Court of Appeal delivered its decision in favour of the NZ Māori Council in June 1987. Following negotiations between the Crown and the NZ Māori Council, legislation was enacted in 1988 to give the Waitangi tribunal binding powers to recommend the return to Māori of Crown land transferred to SOEs. Statutory recognition for the principles of the Treaty was enacted under the State-owned Enterprises Act and Part 5A of the Public Finance Act

Changing Landscape of Māori Organizations

Urbanisation dramatically changed the demographics of Māori society. From 1961, it was official Government policy to encourage rural Māori to move to the cities. Urbanisation contributed significantly to the fracturing of Māori communities, and Māori society more broadly. Māori were needed as workforce in cities. Land was taken through confiscations and through non-payment of rates. Rates were imposed on Māori land, for example in the Otaki district of Ngāti Raukawa, without Māori citizens being part of local council decision-making, and in the face of Māori land being without income sources. Papakāinga were broken up on account of western requirements for sanitation and customary communities could not be retained.

Māori adapted to cities and towns by forming communities away from their rohe, and not necessarily organised along hapū lines nor attached to marae already existing in cities. New Māori committees were formed in urban areas, constituted under the NZ Māori Council, which provided a vehicle for Māori organization and also expanding the capacity of the NZ Māori Council to represent Māori.

This was a time of the formation of new Māori Council Districts in Auckland and Wellington, and Māori Council committees in urban areas shows the adaptability of the Māori Community Development Act in responding to the changing landscape of Māori communities in urban areas.

Since the formalisation of a system for self-government there has been the advent of Treaty settlements and Post Settlement Governance entities. Iwi leaders representatives have moved into leadership in respect of iwi interests and advocacy on behalf of Iwi Māori. This indicates the growing complexity and diversity of the Māori world combined with the growing authority of iwi-based corporations during the 1980's and 90's. With this came a corresponding need to facilitate coordination between different collective interests and the Crown. The national Māori Congress formed for iwi representation was intended to fill this role, as a body not funded by government. The Congress struggled to maintain pan-tribal unity when iwi interests were to some extent in competition. Its last meeting was held in 1996.

Sir Edward Taihākurei Durie put the view to the Waitangi Tribunal that modern Māori society is complex and requires multiple forms of representation due to the many spheres of interest in which Māori communities operate. Sir Edward told the tribunal :

First, I do not see the New Zealand Māori Council and Iwi Leaders as in competition but as complementary. I recognise that rangatiratanga today is diverse and is spread over several organisations. However, the most significant change in the landscape in my view has been the impact of urbanisation into the third and fourth generations, creating new city communities and bringing focus to law and order in those communities. To my mind the new Zealand Māori Council is still the most significant organisation to develop pan-Māori policy in that area and to provide for the Wardens, as the New Zealand Māori Council covers both traditional and modern communities (Wai 2417. p. 181).

A further feature of the 1990's is the contribution of Māori land and assets to the representation landscape. The Federation of Māori Authorities (FOMA):

In 1999, the value of Māori communally owned assets was estimated to be worth \$5 billion. By 2010, the value of the Māori economy had grown to \$36.9 billion. The Federation of Māori Authorities, established in 1987 to advocate for Māori authorities, is now a significant

national body representing the commercial interests of over 150 individual Māori authorities and other Māori organisations.

Membership is open to all 'Māori Authorities' as constituted under Te Ture Whenua Māori Act 1993, and 'all other Māori organisations such as iwi, rūnanga, settlement entities and Māori businesses'.

The Federation focuses its energies on Māori industry and Māori economic development. It is currently governed by an Executive Committee appointed from 11 rohe around the country. The federation describes its role as to advocate for the interests of its members, including by making representations and submissions to Ministers, Government officials, and select committees on matters of concern to its membership. It also organises huiārohe (regional meetings), convenes industry groups, organises industry trade missions, and holds an annual economic summit (Wai 2417 p. 178)

Te Whānau o Waipareira Trust took a claim to the Waitangi Tribunal arguing that the Trust should have a status equivalent to iwi in the delivery of funding for social service programmes. In 2003, urban Māori groups came together to form a National Urban Māori Authority (NUMA) to advocate on behalf of Māori as a whole and to lobby for a greater share of Treaty settlement resources.

The National Urban Māori Authority (NUMA) was founded in 2003 and represents seven affiliated urban Māori authorities in five urban centres across New Zealand. Urban authorities affiliated with NUMA include the Ōtangarei Trust (Whāngārei), Te Whānau o Waipareira Trust and the Manukau Urban Māori Authority (Auckland), Te Rūnanga o Kirikiriroa and Te Kōhāo Health Trust (Hamilton), Te Roopū Awhina Ki Porirua Trust (Porirua), and Te Rūnanga o Ngā Maata Waka (Christchurch).

NUMA affiliates are responsible for the delivery of approximately 300 whānau and community based services across education, health, housing, justice, and social services (Wai 2417. p. 179)

The Waitangi Tribunal did not uphold this claim but observed that the growing authority of iwi-based organisations during the 1980s and 1990s also increased the need for a body or bodies that could facilitate coordination between different iwi or represent collective iwi interests in their negotiations with the Crown.

Changing Governments – Changing Fortunes of NZ Māori Council Reviews

In 1998 the fourth National government, through the Minister of Māori Affairs Tau Henare, launched a review of the Māori Community Development Act with a view to covering issues relating to a national representative body.

This review was in the context of major Treaty Settlement Legislation: The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 legislation was the largest pan-tribal commercial settlement of treaty of Waitangi claims, and would lead to Māori control of over a third of New Zealand's commercial fisheries and the need for a national body, the Treaty of Waitangi Fisheries Commission – to work with Māori to decide how the settlement assets would be distributed among iwi (and urban Māori). The Waikato Tainui Raupatu settlement (1995), and the Ngāi Tahu Settlement (1998) were further major developments of the decade.

The review proceeded despite the objection of the NZ MĀORI COUNCIL. Information hui from the 1998 review revealed some decline in the operations of the Māori committees while also affirming the need for a national representative body. Another strong theme from the consultation hui of 1998 had been the view that Māori bodies with statutory authority needed to be funded sufficiently to carry out their powers.

Despite the NZ Māori Council's objections, on August 1999, Cabinet approved a series of major amendments to the Māori Community Development Act 1962. These included:

- repeal of the sections of the Act relating to Māori executive Committees ;
- the redefinition of Māori Committees as ‘marae and hūnuku communities’ (defined as ‘local Māori communities of common interest, other than marae communities, who may or may not be joined by whakapapa and/or live within their own iwi rohe, but otherwise function in a manner similar to marae communities’);
- the replacement of the DMCs with new regional bodies ; and
- the continuation of the NZ Māori Council, appointed by the regional bodies, and with the power to develop its own constitution .

Cabinet approved changes from the 1999 Review of the Act. Changes including a secretariat for the NZ Māori Council with policy, finance and research staff, the NZ Māori Council would develop its own constitution, the Māori Committees, Executives, and DMCs would be abolished. Instead, each marae and ‘marae equivalent’ community could send a delegate to 16 regional forums (the 16 Māori Council districts). Each regional forum would send three delegates to the NZ MĀORI COUNCIL. Marae or ‘marae equivalent’ communities (including iwi organisations and urban Māori groups) would assume appointment, control, and direction of Māori Wardens, who would be accountable to those communities. The NZ Māori Council secretariat would administer the warrants. (Wai 2417.p.238).

The Labour government took office from 1999-2008 and the change of government meant the legislation was not enacted.

In 2009, the National government under John Key and Minister of Māori Development Pita Sharples resolved that the Māori Affairs Committee conduct an inquiry into the Māori Community Development Act 1962. This review arose because of the establishment of the Māori Wardens Project (MWP) in 2007 by TPK. When the MWP was established, several District Māori Councils (DMCs) were not functioning and it seemed that a new structure was needed to manage funds and training for wardens . The Crown set up an advisory group to address the problem, but the group could not agree as to how Māori Wardens should be governed and managed in the future.

The Wai 2417 claimants attributed this failure to a Te Puni Kōkiri (TPK) agenda for a new governance entity, separate from the council system . Because the advisory group did not reach agreement, the Minister asked the Māori Affairs select Committee to hold an inquiry into the Act, which it duly did in 2009–10 . TPK was the committee’s departmental adviser and was influenced by a TPK agenda to sever Māori Wardens from the council system . After the Select Committee reported in 2010 the government recommended changes to the Act subject to consultation with Māori. The NZ MĀORI COUNCIL was in process of rebuilding the Districts and wanted a Māori-led review to decide what should happen to the Māori self-government institutions in the Act, led specifically by the NZ MĀORI COUNCIL itself . The Crown (National government) on the other hand, decided to proceed with a TPK-led consultation process to inform its decisions .

Wai 2417 - The Māori Community Development Act Claim

TPK’s resolution to proceed with the review led to the Māori Community Development Act Claim being brought to the Waitangi Tribunal. The main issues for the Tribunal were:

- Whether or not the Māori Advisory Group process was treaty-compliant (Wai 2417. s. 6 .3) .
- TPK’s role in the inquiry and whether the select committee process was Treaty compliant
- The Crown’s standard consult-and-decide process, and why it was applied to the review of the Māori Community Development Act .
- The Crown’s ‘pre-consultation’ with the NZ MĀORI COUNCIL in 2012–13, and the debate at that time between TPK and the Council as to who should lead the review .
- The Crown’s reasons for deciding in 2013 to proceed with a TPK-led review, and the claimants’ evidence and submissions about that decision
- The NZ MĀORI COUNCIL Chief Executive’s evidence that it is appropriate in this case for Māori to review and decide for themselves what changes should be made to their own institutions .

The Tribunal assessed these matters against Treaty principles, as informed by the UNDRIP. The Tribunal refers to the Treaty principles to guide their deliberations as:

- kāwanatanga – the right to govern and the duty of good government ;
- tino rangatiratanga – the right to self-government – Māori autonomy ;
- partnership ;
- collaborative agreement ;
- active protection ;
- equity and equal treatment; and
- development .

In brief, at the time the Crown's view was that because it will be responsible for funding the Māori-led review process and for any legislative outcomes from that process – it is appropriate for it to put forward a proposal for discussion as to how such a Māori-led review might operate. The Crown's view included that the NZ Māori Council ought not to lead the review (on its own). During the hearings the Crown came to accept that the review and reform process should be Māori-led, and should result in a negotiated agreement (rather than a Crown decision), but it did not accept that its previous review and reform process was in breach of Treaty principles .

However, the Crown had introduced the MWP, which included the aim of developing a new national governance body to manage wardens . Thus, quoting the MWP charter, an Advisory Group was established to 'consider, provide advice and make recommendations on a *new structure* for the management and governance for Māori Wardens' (emphasis in original) . In the claimants' view, TPK eventually came to favour the NZMWA as the new body: 'In time the new Zealand Māori Wardens Association (NZMWA) emerged as the "new structure" proposed by TPK for management and governance, although not with the approval of the NZ Māori Council (Wai 2417. p. 235) .'

Thus, the claimants argue that the Crown very clearly intended to establish a new structure at the point of the formal commencement of the MWP in 2007 .

The Crown's decision in 2013 to progress the review and embark on consultation was considered by the NZ Māori Council to be a breach of Treaty principles and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Māori institutions, they said, must be reviewed by Māori . Any reforms must be agreed among Māori and then brought to the Crown for legislative action . Hence the Council proceeded with the Wai 2417 claim.

The issue of self-government underlies the tensions between the crown / government and the NZ Māori Council. Evidence of this is shown in the proposal by TPK Chief Executive Michelle Hippolite, for the Crown to lead a review of the 1962 Act. The Wardens are at the centre of Crown interests in a review:

the New Zealand Māori Council and Māori Association structure, and the Māori Wardens, are Māori institutions and not Crown institutions. The Crown does, however, currently have an interest in these institutions owing to a) their being provided for in public legislation that is administered by the Minister of Māori Affairs, with support from te Puni Kōkiri; b) the powers conferred by the Act being, by virtue of section 3 of the Act, under the general direction and control of the Minister; and c) public funds being appropriated by Parliament for the use of the New Zealand Māori Council and Māori Wardens .

In March 2014, Sir Edward Taikākurei Durie, Co-Chair of the NZ Māori Council at the time, filed a response, setting out the objection to the Crown taking a lead for the Review when the authority lies with the Council, and requires TPK to work through the Council. This is set out in Durie's statement:

to put it simply, the Crown must work through the New Zealand Māori Council for the administration of the wardens, it must do so now, and it must do so before considering the appropriate process for reform . The Crown cannot bring about reforms on the basis of anomalies which the Crown itself has created .

My second point is that the reform process proposed by the Chief Executive of Te Puni Kōkiri itself must comply with the law. Under the current law, the New Zealand Māori Council is the democratic body appointed to advise the Crown on issues affecting Māori, not the wardens. The wardens are an arm of the New Zealand Māori Council, each of its members are bound to the structures of the 1962 Act and through that they are subject ultimately to the New Zealand Māori Council's direction.. ...they may make submissions, but Ms Hippolite's proposal cannot give the wardens a status or role which they do not have in terms of the legislation and which is inconsistent with the legislation (Wai 2417. p. 15)

The nub of the Wai 2417 claim, as set out in *Whaia Te Mana Motuhake*, was who should lead the review of the 1962 Act and decide what reforms are needed. The NZ Māori Council insists that a review must be Māori-led.

The Wai 2417 claim turned on the Crown breaching treaty principles as informed by the UNDRIP rights, by its development of the Māori Wardens Project. The Crown sidestepped the NZ Māori Council and DMCs, and funded the wardens directly . This approach usurped their authority to control and supervise wardens .

The manner of the Crown's control diminished or excluded the authority of the NZ Māori Council and District Māori Councils (DMCs) to administer Māori Wardens in terms of the 1962 Act. In the Tribunal's view, the Māori Wardens Project Advisory Group had potential, by 2009 for updating functions of the wardens, and designing a governance entity, involving the Crown and NZ Māori Council but did not carry out the consultation required.

Tribunal Findings and Suggestions

The plumb-line for the Tribunal was the Māori Community Development Act 1962 as the only statute in New Zealand that explicitly recognises that Māori have this general right to self-government.

The findings in essence were:

- Māori community oversight has been completely excluded from the project since early 2011. This includes all funding decisions, which are made in isolation from the New Zealand Māori Council (NZ Māori Council) and District Māori Councils (DMCs), the statutory bodies with responsibility for controlling and supervising the work of Māori Wardens.
- After the dissolution of the Advisory Group (and the demise of the Governance Board), there was no partnership mechanism at the central level of the project, and thus no Māori community oversight of funding policies or funding decisions.
- At the regional level, DMCs had no role in evaluating, commenting on, helping to decide, or even finding out about individual funding applications.
- The funding policies and decisions of the Te Puni Kōkiri MWP have thus interfered with the ability of DMCs and (ultimately) the NZ Māori Council to perform their statutory duties in respect of controlling and supervising Māori Wardens. This is especially so since the rejuvenation of some DMCs and the NZ Māori Council in 2012.
- The tribunal did not accept claimants' allegations that the MWP has been run inefficiently or wastefully. The evidence from the independent review of 2012, points to a well run project.
- The manner in which the Crown has made MWP funding decisions is not consistent with the rights affirmed in article 18 of the UNDRIP.

Overall the tribunal upheld the claim of failure by the Crown to uphold tino rangatiratanga and partnership with NZ MĀORI COUNCIL.

The claimants and the Crown sought the Tribunal's guidance on how a Māori led review should be conducted. The Tribunal affirmed the need for a Māori organisation to monitor and enhance these advances in Māori self-government at the national and regional level, so that lessons and experiences can be shared and common issues identified for review and reform .

This is where the role of the NZ Māori Council intersects with other Māori institutions, such as the Māori Women's Welfare League, the Iwi Chairs Forum, and the national Urban Māori Authority, and

a conversation is needed between all these institutions to ascertain whether the national structure that Māori leaders fought so hard to achieve in the 1960s needs to be modified . The Iwi Chairs Forum operates as a competing national voice to the NZ Māori Council on some issues. The Māori Women's Welfare League offers a unique voice at the national level as well . That said, opportunities exist for there to be clear lines of demarcation to avoid confrontation .

The Tribunal proposed:

- The benefit of combining at a national level for issues that effect all Māori.
- A national role in promoting, encouraging, and assisting Māori to apply and maintain the maximum efficiency and responsibility in their local self-government and undertakings, the NZ Māori Council in terms of tikanga and mātauranga Māori .
- NZ Māori Council taking a collaborative role in assisting state agencies with the Treaty of Waitangi relationship between Māori generally, the Crown, and the people of New Zealand
- Retaining aspects of section 18 of the 1962 Act that support the role of a national institution and which complement iwi and urban Māori autonomy. Aspects which are not able to be implemented, or outdated, could be removed.
- A local levels, more emphasis on cross-linking District Māori Councils and Māori Committees with iwi and urban authorities.

Process for Review of NZ MĀORI COUNCIL

- Any reform of the 1962 Act should be NZ Māori Council -led and negotiated with the Crown .
- A national hui led by the NZ Māori Council for the purpose of establishing a working group of experts, with knowledge of the Māori representational landscape relevant to the institutions, to undertake a review . The review could involve consultation with the NZ Māori Council, DMCs, Māori Wardens and their associations, the Iwi Chairs Forum, the national Urban Māori Authority, the Māori Womens' Welfare League, the Kīngitanga, and iwi from throughout New Zealand, and could result in a report containing recommendations for the future direction of the NZ Māori Council and the institutions and kaupapa for which it is responsible under the 1962 Act .
- This process would inform preparation of a draft bill to amend the Māori Community Development Act.
- The Crown's role to a review would be to resource the review process and support the process for amending the Act in line with the draft legislation produced by the NZ Māori Council. The Māori Wardens under the 1962 Act, are an integral part of the statutory scheme for Māori community self-government . The system of administering the wardens needs amendment .

The Māori Wardens

- The Crown, including TPK and Police, wishing to treat with the Māori Wardens, must do so through the NZ Māori Council and upon such terms and conditions as may be agreed with the NZ Māori Council;
- The Crown and the NZ Māori Council explore training for DMCs, Community officers, and wardens on the maintenance of local law and order .
- The policy decisions regarding matters such as the Māori Wardens Project, the training of wardens, and the prioritisation of their work, should be set by the institution exercising rangatiratanga or acting as a conduit for it, and that should be the NZ MĀORI COUNCIL or the DMCs or other bodies approved by the Māori communities that they serve, as identified by the consultation process

Recommendations to the Crown

- Until the NZ Māori Council goes through the process of identifying its strategic direction, an interim advisory group/ governance board should be established to oversee the operations of the MWP . This group will guide Māori community oversight of funding, of centrally delivered training, and of all other aspects of the MWP .
- The Crown urgently negotiate a collaborative agreement with the NZ Māori Council and the NZMWA to put in place a temporary warranting regime .

New Zealand Māori Wardens Association

- The role that wardens and their Association should play in the upcoming review was canvassed in the inquiry .
- As part of the NZ Māori Council national consultation process to review the Act, the NZMWA nominate experts to the working group to submit proposals for reform, including the strategic direction for the Māori Wardens, ; and
- Those proposals should cover the nomination process, warranting, logistical support, training, and general funding issues .

Concluding comment

From the 1960s to the early 1990s, the NZ Māori Council played a leading role in a range of law reform issues and proceedings which would transform New Zealand society, law and politics.

The Māori Community Development Act continues to have capacity to provide a voice for all Māori as provided for in the Act, and in particular has a significant role to play as an organisational system for urban Māori and those who are disassociated from their whakapapa links. In addition, they provide a voice for ‘unsettled’ iwi –such as Ngāti Raukawa and Te Taitokerau.

The Tribunal notes lack of financial income as the most significant barrier to the NZ Māori Council system’s effective operation:

During this period, the NZ Māori Council repeatedly raised the issue of its funding with Governments . For instance, in 1976, NZ Māori Council President Graham Latimer highlighted the fact that the Council cannot function effectively unless its funding is on a stable, adequate basis, to enable forward planning and budgeting . . . (Wai 2417. p. 183)

By 1990, the NZ Māori Council annual grant was \$120,000, and by 1998, it had been increased to \$220,000 . today, the NZ Māori Council receives an annual grant of \$196,000 to cover its administration expenses . Thus the NZ Māori Council Government funding is now less – in both nominal and real terms – than in the late 1990s.