

Māori Land Administration: Client Service Performance of the Māori Land Court Unit and the Māori Trustee



Report of the

Controller and Auditor-General

Tumuaki o te Mana Arotake

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of the Māori Land Court Unit
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March 2004

*This is the report of a performance audit
carried out under the authority of sections 14 and 16 of the
Public Audit Act 2001.*

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Foreword

In our 1999 report: *Towards Service Excellence: The Responsiveness of Government Agencies to Their Clients*, we commented on the level of client service provided by five government agencies. This report extends that work by looking at the client service provided to owners of Māori Land by the Māori Land Court Unit (an administrative unit within the Ministry of Justice *Tāhū o te Ture*) and the Māori Trustee *Te Kaitiaki Māori* (through the Māori Trust Office, which is part of the Ministry of Māori Development *Te Puni Kōkiri*).

Owners of Māori Land are part of a complex land system that involves restrictions that do not apply to owners of General Land. The complexity of the Māori Land system is a product of history – arising from the efforts of past governments to reconcile customary Māori communal ownership of land with an individual title system based on British land laws. Today, about 1.5 million hectares – or about 6% of New Zealand’s total land area – are Māori Land.

The difficulties faced by Māori Land owners in administering their land interests have been recognised by the Government as an impediment to the development of Māori Land. In this audit, we investigated whether the Māori Land Court Unit and the Māori Trustee were being effective in assisting their clients to overcome these difficulties. In general they were being effective, although I make some recommendations for improvement.

We also discuss in this report the apparent lack of communication and co-ordination of initiatives to assist Māori Land owners by government agencies that have an involvement in Māori Land issues. I consider that opportunities exist to increase the amount of interaction between these agencies so that the best outcome for their clients is achieved. I look forward to seeing an improvement in this area.

I thank the staff of the Māori Land Court Unit and the Māori Trustee for their co-operation in the conduct of this audit.



K B Brady
Controller and Auditor-General

18 March 2004



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Glossary of Terms

- Alienation** The transfer of Māori Land out of Māori ownership. The Māori Land Court's web site¹ gives the following definition: "Alienation is when landowners grant certain rights of their land to another person. For example: selling land gives the new owner the ownership rights; leasing land gives the lessee a limited right to occupy land in return for payment of rent (and other conditions); ..."
- Fiduciary** The Māori Trustee's decisions in relation to his clients' investment funds. We do not comment on this aspect of the Trustee's role in the report.
- General Land** Land (other than Māori Freehold Land and General Land owned by Māori) that has been alienated from the Crown. General Land is registered under the Land Transfer Act 1952 in the Land Titles Registry administered by Land Information New Zealand.
- Judiciary** The Māori Land Court Judges.
- kaitiaki** Guardian, trustee.
- karakia** A prayer.
- kaumatua** Māori elder.
- Māori Customary Land** Land that is held by Māori in accordance with *tikanga Māori*.
- Māori Freehold Land** Land, the beneficial ownership of which the Māori Land Court has determined by freehold order (that is, the Court has created a title for the land and determined the beneficial owners to that land), and land that, for any reason, held the status of Māori Freehold Land when Te Ture Whenua Māori Act 1993 came into force. Freehold titles are often divided by a Partition Order. The land retains the status of Māori Land and will continue to be Māori Land unless and until the Māori Land Court makes an order changing the status of the land. Most Māori Land is of this type.

¹ <http://www.justice.govt.nz/maorilandcourt/glossary.htm#ax>



Māori Land	This term is used throughout the report to refer to Māori Freehold Land and Māori Customary Land, as distinct from General Land owned by Māori.
Māori Land sector	We use this collective term to describe government agencies with an involvement in Māori Land issues. These agencies include the Ministry of Māori Development <i>Te Puni Kōkiri</i> and Land Information New Zealand.
Māori Land system	The Māori Land system is a product of history – arising from the efforts of past governments to reconcile customary Māori communal ownership of land with an individual title system based on British land laws. In the context of this report, we use the term to include all matters relating to the ownership and administration of Māori Land.
Partition	The separation of a parcel of Māori Freehold Land into two or more parcels, with new titles being created for each parcel. This is done by the Māori Land Court through a Partition Order.
<i>raupatu</i>	Confiscation of land by the Crown in accordance with the New Zealand Settlements Act 1863.
<i>taonga tuku iho</i>	A treasure to be handed down.
<i>tikanga Māori</i>	Māori customary values and practices.
<i>wāhi tapu</i>	Land set apart as being a place of special significance according to <i>tikanga Māori</i> .
<i>whakapapa</i>	Genealogy.





Summary

Māori Land and Its Administration

Māori Land owners are part of a complex land system that owners of General Land are not. The complexity of the Māori Land system is a product of history – arising from the efforts of past governments to reconcile customary Māori communal ownership of land with an individual title system based on British land laws. Today, about 1.5 million hectares – or about 6% of New Zealand’s total land area – are Māori Land.

Māori Land generally has multiple owners. The ownership of Māori Land titles is divided into more than 2.3 million interests – comparable to the number of interests in the other 94% of New Zealand’s land area. As owners die and their descendants inherit their interests – which can only be achieved by applying to the Māori Land Court *Te Kooti Whenua Māori* – the number of owners of Māori Land increases and the fragmentation of Māori Land ownership continues. Multiple ownership makes administration of the land problematic, and has inherent costs that increase over time.

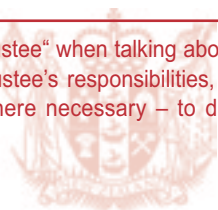
Judges from the Māori Land Court have jurisdiction to oversee dealings in, and the administration of, Māori Land. The Māori Land Court Unit of the Ministry of Justice *Tāhū o te Ture* (the Ministry) provides administrative support for the Judges as well as information and advisory services for Māori Land owners.

The Māori Trustee² *Te Kaitiaki Māori* (the Trustee) works within the Māori Land system to manage Māori Land on behalf of owners who engage the Trustee’s services.

The client service provided by the Māori Land Court Unit and the Trustee influences the ease with which Māori Land owners are able to administer and manage their land.

We investigated the effectiveness of the client service provided by the Māori Land Court Unit and the Trustee. We assessed selected operations of the two organisations, and considered how they interact with each other and with other organisations. Our audit did not extend to examining either the exercise of the Trustee’s fiduciary duties in respect of specific beneficiaries or the judicial functions of Judges of the Māori Land Court. This would not have been within our powers.

2 In this report, we use the term “the Trustee” when talking about either the Māori Trustee as a person or about the organisation which carries out the Trustee’s responsibilities, otherwise known as the Māori Trust Office (MTO). This is an accepted convention. Where necessary – to distinguish the MTO from the individual – we refer specifically to the MTO.



The service provided to owners of Māori Land by the Māori Land Court Unit and the Trustee should be of the highest quality. As stated in our 1999 report: *Towards Service Excellence: The Responsiveness of Government Agencies to Their Clients*³, excellent service is defined as being responsive to the needs of clients. We examined whether the services provided by the Māori Land Court Unit and the Trustee met our expectations as adapted from that report.

The Māori Land Court

The Māori Land Court is the only Court with specific jurisdiction over Māori Land, as conferred by Te Ture Whenua Māori Act 1993 (the Act). Owners of Māori Land must apply to the Māori Land Court if they want to administer their land. This is different to General Land where, for example, a person does not need to apply to a Court to succeed to land interests left to them.

In 1995, a report on the operations of the Māori Land Court Unit (then administered by the Department of Justice) was highly critical of the Unit's lack of a client service focus.⁴ In response, the then Department for Courts made significant changes to improve its service for clients. We considered the changes made since 1995, whether they worked, and where future improvements could be made.

Changes Made by the Ministry of Justice Since 1995

Four of the changes implemented by the Ministry as a consequence of the findings of the 1995 report were:

- introduction of strategic planning;
- appointment of Advisory Officers;
- introduction of the Māori Land Information System (MLIS); and
- adoption of case management.

Strategic planning within the Māori Land Court Unit has markedly improved, with the introduction of a strategic plan which is supported by information gathered from client surveys, and the development of an Operational Resource Model that measures the time taken to process specific types of application.

³ August 1999, ISBN 0-477-02867-5.

⁴ See paragraphs 3.12-3.13 on page 38 for details of the 1995 report.



The Māori Land Court Unit has appointed 13 Advisory Officers to improve access to services for Māori Land owners. The introduction of Advisory Officers has been a successful initiative to improve client service, although the Unit needs to review the Advisory Officers' role to ensure that they are best able to meet the needs of the Unit's clients.

The introduction of an electronic database called the Māori Land Information System (MLIS) has greatly improved Māori Land owners' access to records. Adoption of case management means that individual staff have responsibility for managing an application through all stages of the process. Case management brings continuity to the process, which is beneficial for client service.

Overall, the Māori Land Court Unit is providing a good level of service to its clients in the areas outlined above. Nevertheless, we discuss below some areas where the Unit's client service could be improved.

Where Could the Māori Land Court Unit Improve Client Service Performance?

We identified three areas where improvements could be made to the Māori Land Court Unit's client service performance:

- management and reporting of applications;
- training of case managers; and
- standardisation between registries.

Applications can be delayed for a range of reasons, some of which are outside the Unit's control. For example, the Unit might not be able to process an application because it is waiting for further evidence or information from the applicant, or the application is a complicated one (such as section 45 applications for amendment of the Māori Land Court's record) that require special consideration by a Judge.

There are two main reasons for the backlog of unprocessed applications:

- Māori Land Court registries give priority to new applications over old ones that may have stalled for various reasons; and
- the complexity of some applications.



To address these delays, the Unit should:

- focus on improving the time it takes to complete an application; and
- take the initiative to finish applications that have been on hand for more than a year.

The Māori Land Court Unit has recently set targets relating to the completion of applications from previous years, and will have the ability to improve its case management systems in the Unit based on the new Timeliness Report released in December 2003.

The Māori Land Court Unit also drew our attention to rule 38 of the Māori Land Court Rules 1994.⁵ This provides for the disposal under certain circumstances of outstanding applications, through recommendations made by Registrars of the Māori Land Court to the Court. We understand that the Registrars have not referred cases to the Court under rule 38 recently. The Māori Land Court Unit told us that it intended to encourage greater use by Registrars of the mechanism provided by rule 38. We support this initiative.

The Unit does not have a formal training programme, though it has devised relevant training modules for Māori Land Court Unit staff. This means that the training of case managers has simply been what is provided within the teams in which they work. While this has advantages, there are also disadvantages – such as the difficulty of ensuring consistency of training between teams. Training of case managers to a consistently high standard has the potential to greatly improve client service performance.

The current lack of standardisation for some practices and processes (such as the format of application forms and minutes of hearings) for Māori Land Court registries has a negative impact on client service. Variations particularly affect Māori Land Court clients who own land in more than one Māori Land Court registry district, as they are exposed to different requirements and levels of service at each registry. We recognise that the Māori Land Court Unit has attempted in the past to introduce standardisation in certain areas, and still views it as an area for improvement.

5 S.R. 1994/35.



The Māori Trustee

The Trustee administers Māori Land through the Māori Trust Office (MTO), which is part of the Ministry of Māori Development *Te Puni Kōkiri* (TPK). This includes asset management (both property and financial) and other services (such as payments). The Trustee administers about 7% of all Māori Land.

The Trustee operates in a competitive market – and most of the Trustee’s clients are not obliged to keep their land under his administration. In other words, most Māori Land owners, if they are dissatisfied with the service provided by the Trustee, can take administration of their land from him and place it with another administrator, or undertake that role themselves.

Overall, the Trustee is providing his clients with a good level of client service, despite the complexities of working within the Māori Land system. Nevertheless, we discuss below some areas where the Trustee’s client service could be improved.

Where Could the Trustee Improve Client Service Performance?

We identified four areas where improvements could be made to the Trustee’s client service performance:

- establishing more qualitative land management performance measures – particularly in relation to rent collection and review;
- providing Reports to Owners;
- maintaining client account records; and
- implementing a time-recording system.

Significant improvements have been made in respect of rent reviews and the reduction of rent arrears. However, the performance measures used by the Trustee do not take into account the client service aspects of property management, particularly in regard to timeliness and quality of service.

For some blocks of land, the Trustee produces Reports to Owners that contain details about the block of land, its background, valuation, financial issues, and ownership. The Trustee should establish a set of criteria to determine which owners should receive these reports and whether or not a formal meeting is required (as opposed to simply mailing out the information), based on the costs and potential benefits to the owners of receiving them.



The Trustee distributes an average of about \$5 million a year to clients, and therefore needs to maintain an accurate and complete record of Māori Land owners and beneficiaries. However, a backlog of Court orders and correspondence for processing makes it difficult for the Trustee to maintain the record. We consider that the Trustee should draw up a strategy to reduce this backlog. We recognise that this has funding implications, because processing Court orders is labour-intensive.

The Trustee does not operate any form of time-recording system that allocates staff time to individual clients as a matter of course. This means that the Trustee is unaware of the true cost of administering each block of land. The implementation of a time-recording system would ensure accurate recording of the costs and time taken to administer particular blocks of land.

Risks to the Trustee's Future Performance

We identified three areas of risk to the Trustee's future client service performance:

- the ongoing government review of the Trustee's role and functions;
- institutional knowledge; and
- staff training to meet the changing needs of the Trustee's portfolio.

The role and functions of the Trustee have been under review by the Government for more than 10 years, and a resolution appears some way off. Completing the review (something this Office considered necessary in 2001⁶) would reduce some of the uncertainties of the Trustee's operating environment, and allow full attention to be given to client service, including attending to the backlog mentioned above.

The Trustee's staff are able to provide a high standard of service to clients because of the length of service and knowledge of many of the staff. However, the Trustee is a small organisation and we saw little evidence of planning for future staff turnover. We consider that a process should be put in place so that valuable institutional knowledge built up by individual staff is not lost to the organisation when they leave.

To meet any changing land development demands, the Trustee should consider whether additional training (for example, in the area of business planning or finance) would increase the ability of staff to improve client service.

6 Report of the Controller and Auditor-General, *Māori Trustee – Governance and Accountability, Central Government: Results of the 2000-01 Audits*, parliamentary paper B.29 [01b], 2001, pages 89-103.

Communication and Co-ordination Between Agencies Involved With Māori Land

Opportunities exist to increase the amount of interaction between the Māori Land Court Unit and the Trustee so that clients receive a more seamless service. There is also a need to better communicate and co-ordinate the interactions among all agencies involved with Māori Land issues to ensure that the best outcome for their clients is achieved.

Exchange of Information Between the Māori Land Court Unit and the Trustee

Processing Court orders and recording client addresses are two areas where additional interaction between the Māori Land Court Unit and the Trustee would create further benefits for clients. Both areas can be partly addressed by improving information exchange between the two organisations. However, in our view, it is important that a centralised database of Māori Land owner addresses is established for the benefit of all the parties involved with Māori Land.

Interaction with Various Other Agencies in the Māori Land Sector

We examined a range of initiatives that involve the Māori Land Court Unit and the Trustee and other agencies in the Māori Land sector. Some of these initiatives, such as the Capacity Building programme and the Heartland Services programme, are positive examples of co-ordination between agencies in the Māori Land sector.

A number of government departments have introduced initiatives with the intention of assisting Māori Land owners, but which have been designed with the objective of meeting the needs of the particular government agency. This has resulted in a number of projects that overlap, but do not always complement each other. For example, there is an abundance of databases in different agencies in the sector regarding Māori Land.





We recommend that an inter-agency committee should be established:

- to co-ordinate and prioritise projects, and to assign responsibility to the agencies best placed to carry them out; and
- to act as a forum for the exchange of information between agencies with an involvement in Māori Land (such as TPK and Land Information New Zealand), and to consider proposals from Māori and/or other commercial interests for the use of Māori Land.



Part One

Introduction



Te Puni Kōkiri



OFFICE OF THE MAORI TRUSTEE

TE KOOTI WHENUA MAORI



MAORI LAND COURT



MINISTRY OF
JUSTICE

Tāhū o te Ture

Purpose of Our Audit

- 1.1 The purpose of our audit was to review how well the Ministry of Justice (the Ministry) – through the Māori Land Court Unit – and the Māori Trustee (the Trustee) – through the Māori Trust Office (MTO)⁷ – provide land administration services to Māori Land owners. In this regard, we concentrated on the quality of client service to Māori Land owners.
- 1.2 Our audit did not examine or question the exercise of:
- the Trustee’s fiduciary duties in respect of specific beneficiaries; or
 - the Māori Land Court’s judicial functions.

Our Client Service Expectations

- 1.3 In 1999 we published a report *Towards Service Excellence: The Responsiveness of Government Agencies to Their Clients* in response to concern that client service issues had received little attention at a government-wide level.
- 1.4 We used the findings of our 1999 report to draw up a list of client service expectations as a basis for our fieldwork for this audit. Particularly, we wanted to know whether the Māori Land Court Unit and the Trustee:
- have client service as a key goal, with a clear commitment to service in corporate strategy and accountability documents;
 - understand their clients and their clients’ needs;
 - provide access to their services;
 - appropriately resource delivery of the service; and
 - evaluate and report their client service performance.

⁷ The MTO is part of the Ministry of Māori Development *Te Puni Kōkiri* (TPK). Unless specified otherwise, when we refer to the Trustee, we include the MTO.





- 1.5 While this report is directed at the quality of client service provided by the Māori Land Court Unit and the Trustee, it is important to take a holistic view when looking at Māori Land issues and the agencies involved. Concentrating efforts on either the Māori Land Court Unit or the Trustee alone will not necessarily improve the effectiveness of the whole Māori Land sector, as there are many agencies involved with Māori Land issues. Therefore, an understanding is needed of how these different agencies interact with and affect each other.

What We Did

- 1.6 We wanted our audit to provide an independent assessment of the effectiveness of the Māori Land Court Unit and the Trustee's service delivery to Māori Land owners, and – if need be – to suggest how it could be improved. To do this, we needed to gain an understanding of the roles and functions of the Māori Land Court Unit and the Trustee and of the effectiveness of their operations at a general level, rather than looking at specific transactions and decisions.
- 1.7 We visited and spoke with staff at the Head Office and every operational branch of both the Māori Land Court Unit and the MTO. We attended some Māori Land Court hearings and spoke to Māori Land owners at those hearings. We also spoke to Māori Land Court Judges, and to two external advisers about the organisations and about land management matters. We also reviewed a range of documents provided by both organisations and consulted with the Ministry of Māori Development *Te Puni Kōkiri* (TPK) on issues relating to the Trustee and to the government review of the Trustee's role and functions.

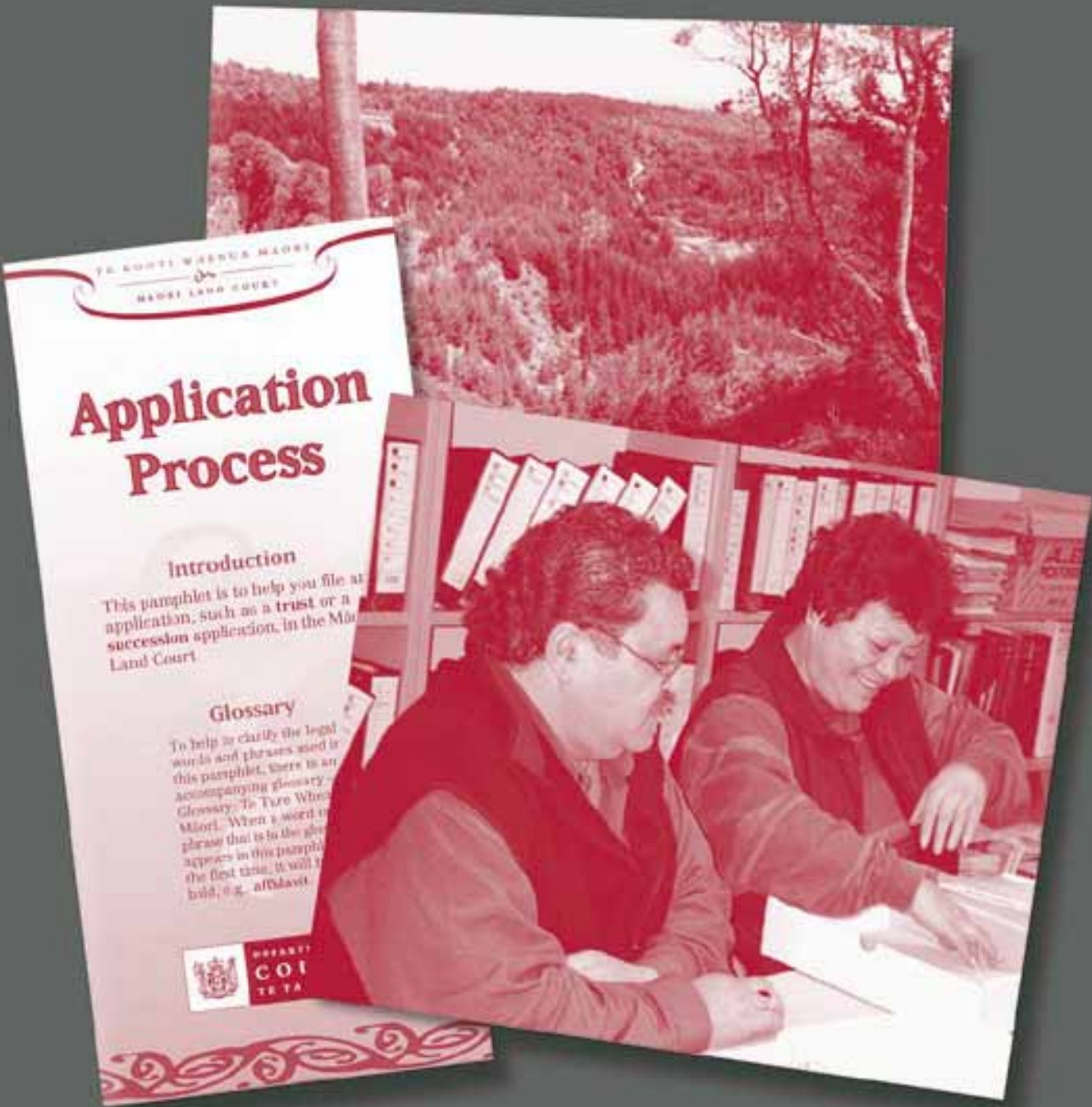
Structure of this Report

- 1.8 We have divided the rest of our report into four parts:
- Part Two considers what Māori Land is and how it is administered.
 - Part Three considers the Māori Land Court Unit's client service performance.
 - Part Four considers the Trustee's client service performance.
 - Part Five considers communication and co-ordination between the Māori Land Court Unit and the Trustee, and between them and other agencies within the Māori Land sector.



Part Two

Māori Land – What Is It and How Is It Administered?



MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

Introduction

- 2.1 Māori Land tends to have characteristics not associated with other forms of privately owned land, and is subject to a range of unique restrictions and protections. Owners of Māori Land must apply to the Māori Land Court if they want to administer their land. Also, anyone who wants to succeed to interests in Māori Land must apply to the Court.
- 2.2 In this part we answer the questions:
- What is Māori Land?
 - How is Māori Land administered?

What Is Māori Land?

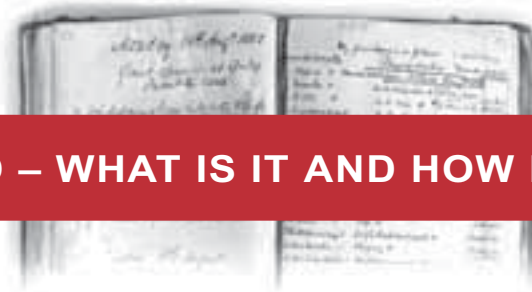
Setting the Scene

- 2.3 In pre-European times, Māori Land was communally owned, based on traditional Māori custom. After the signing of the Treaty of Waitangi in 1840, two methods were used by the Crown to obtain Māori Land: Crown acquisition and – after the passage of the New Zealand Settlements Act 1863 – *raupatu*.
- 2.4 By 1862 roughly two-thirds of the total land area, including most of the South Island, had been acquired by the Crown. Conflict relating to the sale of land to settlers⁸ led to enactment of the Native Lands Act 1862⁹. The Act created the Native Land Court (renamed the Māori Land Court in 1947) to identify ownership interests in Māori Land and to create individual titles (in place of customary communal ownership) that were recognisable by English law. The transition to individual title facilitated further sales of Māori Land, and also began the process of fragmentation of ownership interests and of blocks of land.

8 If Māori wished to sell their land, they had to sell it to the Crown, which then sold it to settlers.

9 The Native Land Court created by the 1862 Act rarely sat because of conflict between the Crown and Māori at the time. The 1862 Act was repealed and replaced by the Native Lands Act 1865.





- 2.5 After the passage of the New Zealand Settlements Act, the Crown confiscated substantial areas of Māori Land in Taranaki, Waikato, South Auckland, and Hawke’s Bay. Although some confiscated land was returned to Māori ownership, some still remains in Crown ownership.

Māori Land Reforms of the 1950s and 1960s

- 2.6 Māori Land legislation of the 1950s and 1960s recognised that the previous legislative framework had had a detrimental effect on Māori society. Legislative reforms, such as the Māori Affairs Act 1953 and the Māori Trustee Act 1953, attempted to improve the situation by giving the Māori Land Court a stronger focus on protecting Māori Land from alienation, while the Trustee was given added responsibility for administering Māori Land.
- 2.7 However, some of the legislative changes led to further alienation of Māori Land. For example, section 137 of the Māori Affairs Act allowed the Māori Land Court to vest any uneconomic interests¹⁰ in Māori Land in the Trustee for administration. Such “conversions” as they came to be known, were viewed by a number of Māori as an attempt by the Crown to unfairly obtain Māori Land. For this reason, some Māori Land owners remain suspicious of the Trustee’s motives, and are of the view that the Trustee acts as an “agent” of the Crown.
- 2.8 Similarly – in an attempt to address the problems of multiple ownership and uneconomic interests – the Māori Affairs Amendment Act 1967 allowed for:
- Māori Freehold Land with fewer than five owners to have its status changed to General Land (enabling it to be sold or mortgaged); and
 - “Improvement Officers” to determine how to improve the economic viability of the land and to take action to achieve this, such as cancelling existing partitions or requiring alienation of the land.

Te Ture Whenua Māori Act 1993

- 2.9 The passage of Te Ture Whenua Māori Act 1993 (the Act), also known as the Māori Land Act 1993, represented the end of lengthy discussions within the Māori community on how to balance the often competing objectives of retaining Māori Land in Māori ownership with development of the land. The Act remains the Māori Land Court’s guiding legislation.

¹⁰ Defined as interests valued below \$50 (£25).



MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

- 2.10 Section 2(2) of the Act states: ... *it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development and control of Māori land as taonga tuku iho by Māori owners, their whanau, their hapu, and their descendants.*

Categories of Māori Land

- 2.11 For the purposes of the Act, all land in New Zealand is given a particular status. Several categories of Māori Land are defined, including¹¹:
- Māori Customary Land – being land that is held by Māori in accordance with *tikanga Māori*. There is very little Māori Customary Land compared with the other two categories referred to below.
 - Māori Freehold Land – being land the beneficial ownership of which has been determined by the Māori Land Court by freehold order. Most Māori Land falls into this category.
 - Māori Reservations¹² – being land (most often Māori Freehold Land, or occasionally General Land) that has been officially set apart for:
 - the purposes of a village site, marae, meeting place, recreation ground, sports ground, bathing place, church site, building site, burial ground, landing place, fishing ground, spring, well, timber reserve, catchment area or other source of water supply, or place of cultural, historical, or scenic interest, or for any other specified purpose; or
 - *wāhi tapu*, being a place of special significance according to *tikanga Māori*.

The Profile of Māori Land

- 2.12 Today about 1.5 million hectares – or about 6% of the total land area – are Māori Land. Most is concentrated in Waiariki (Bay of Plenty), Tairāwhiti (East Coast), and Aotea (Manawatu/Wanganui/Taranaki), with about 25% of all land in those areas designated as Māori Land. Figure 1 on the next two pages shows the location of Māori Land.

11 Section 129(1). Other statuses of land defined in this section are:

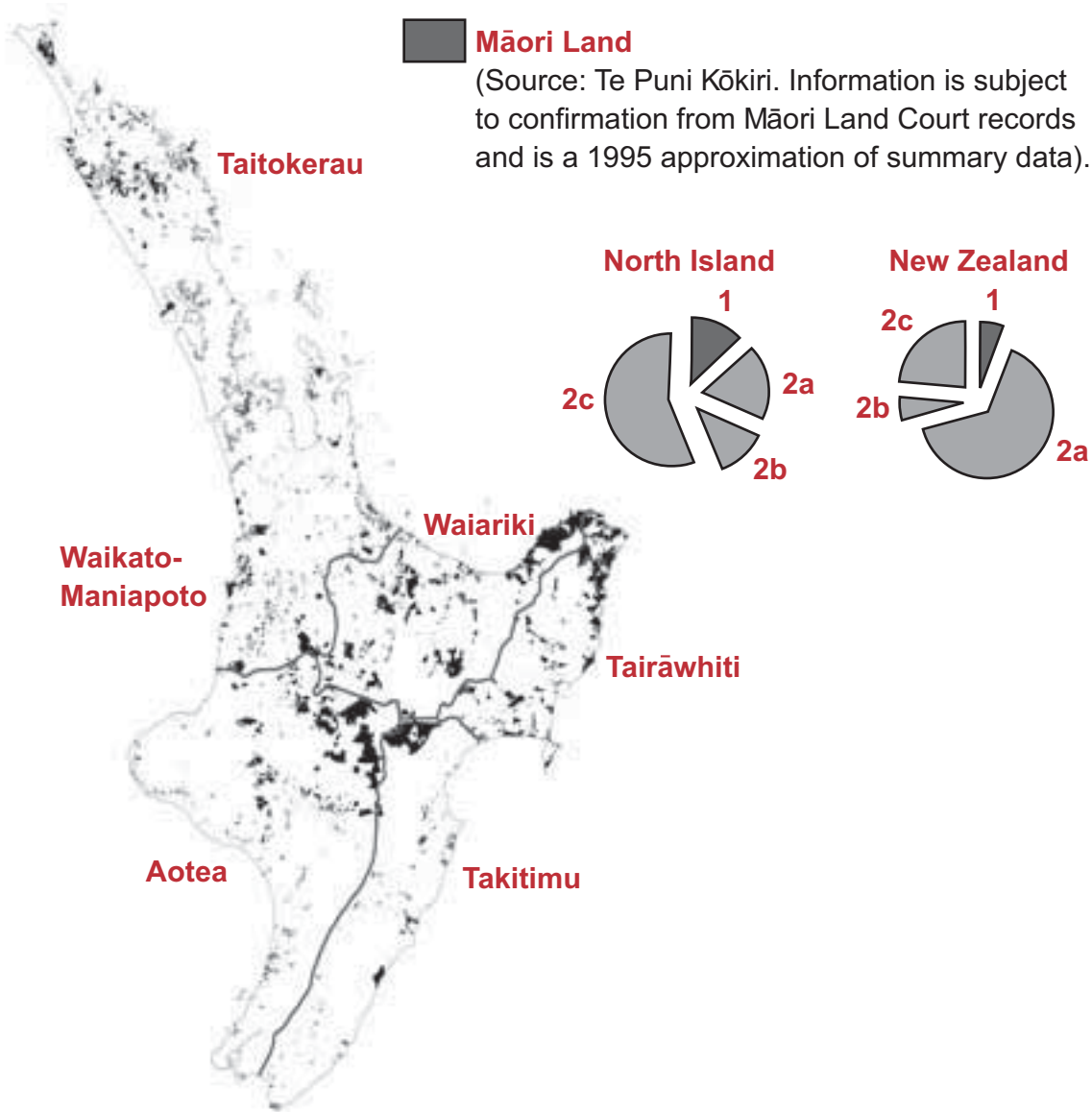
- General Land owned by Māori;
- General Land;
- Crown Land; and
- Crown Land reserved for Māori.

12 Section 338(1).



MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

Figure 1
Location of Māori Land



	North Island		New Zealand	
	Sq Km	%	Sq Km	%
1. Māori Land	14,500	12.7	15,000	6
2. Alienated Land				
2a. Crown Purchases to 1860	21,500	18.9	174,000	65
2b. Raupatu (Confiscations)	14,000	12.3	14,000	5
2c. Post-1865 Purchases/Alienations	64,000	56.1	64,000	24
Total Land	114,000	100.0	267,000	100

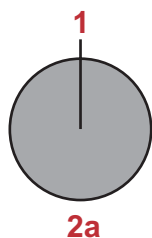
(Sources: Te Puni Kōkiri, Land Information NZ, and NZ Historical Atlas – plates 39 & 41. Approximation of summary data only).

MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

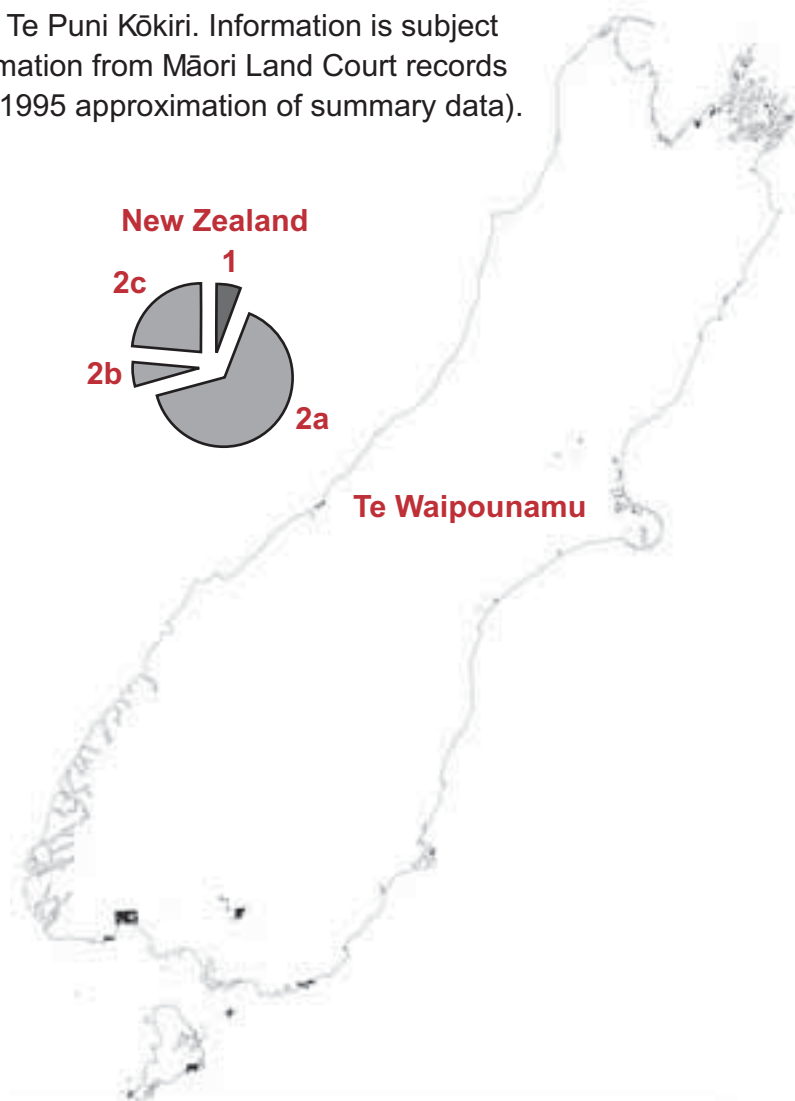
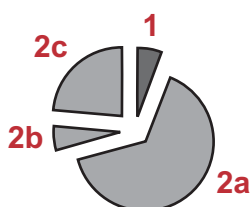
Māori Land

(Source: Te Puni Kōkiri. Information is subject to confirmation from Māori Land Court records and is a 1995 approximation of summary data).

South Island



New Zealand



	South Island		New Zealand	
	Sq Km	%	Sq Km	%
1. Māori Land	500	0.3	15,000	6
2. Alienated Land				
2a. Crown Purchases to 1860	152,500	99.7	174,000	65
2b. Raupatu (Confiscations)			14,000	5
2c. Post-1865 Purchases/Alienations			64,000	24
Total Land	153,000	100.0	267,000	100

(Sources: Te Puni Kōkiri, Land Information NZ, and NZ Historical Atlas – plates 39 & 41. Approximation of summary data only).

MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

- 2.13 Māori Land generally has multiple owners (ranging from 10% of titles with only one owner each, to 10% with an average of 425 owners each). The ownership of Māori Land titles is divided into more than 2.3 million interests, a comparable number to the interests represented in the other 94% of land area.
- 2.14 As owners die and their descendants succeed to their interests, the number of owners of Māori Land increases and the fragmentation of Māori Land ownership continues. Multiple ownership has increased the administrative costs for Māori Land owners because of the need to keep track of the identity and location of a growing number of beneficiaries – especially as a majority of owners is required to make decisions about the land. The Trustee, for example, now records ownership interests to eight decimal places because some shares in Māori Land have become so fragmented.¹³
- 2.15 It has been estimated that:
- 600,000 hectares of Māori Land (40%) are under-developed;
 - 80% of Māori Land is in the poorest land classes (non-arable)¹⁴ that support a limited range of productive uses, and/or are in remote areas;
 - up to 30% of Māori Land could be landlocked, lessening the viability of the land because of access issues; and
 - of around 26,000 blocks of Māori Land, almost 50% have not been surveyed and nearly 58% are not registered under the Land Transfer Act 1952.¹⁵
- 2.16 While a high proportion of Māori Land is unsuitable for development in economic terms, we acknowledge that cultural or spiritual ties to the land are often more important to Māori Land owners than the ability to profit from the land.

How Is Māori Land Administered?

- 2.17 The Māori Land Court is the only Court with specific jurisdiction over Māori Land, as conferred by the Act. Owners of Māori Land must apply to the Court if they want to administer their land.

¹³ For example, a person could have 0.00000009 of a share in a block of land.

¹⁴ As defined by the Ministry of Agriculture and Forestry Land Use Capability measures.

¹⁵ A block of land needs to be surveyed before obtaining a registered title.



MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

- 2.18 The Māori Land Court has the jurisdiction to determine the status of Māori Land. This can include converting General Land into Māori Freehold Land where requested and appropriate. The Māori Land Court also has the power to do the opposite – though this is rarely done, because the clear intention of the Act is to retain Māori Land in Māori hands.

Restrictions on the Administration of Māori Land

- 2.19 Māori Freehold Land is subject to a range of restrictions and protections under the Act that do not apply to privately owned General Land. For example, a descendant of a deceased Māori Land owner must apply to the Māori Land Court to establish their right to succeed to their interests, and must meet certain criteria under the Act. The process for applying for succession through the Māori Land Court is noted in Figure 2 on the next page. Other types of application, such as partitions, can involve more cost and effort for the applicant.
- 2.20 Other restrictions on dealing with Māori Freehold Land include:
- no-one has the legal capacity to alienate any interest in Māori Freehold Land, unless it is done in accordance with the Act;
 - no owner has the legal capacity to dispose of their interest in Māori Land through a will, except in accordance with the Act;
 - no interest in Māori Land is legally able to be taken for payment of an owner's debts or liabilities (an exception is in the case of bankruptcy); and
 - Māori Freehold Land cannot be charged, sold, or leased by local authorities for the non-payment of rates, except in accordance with the Act.
- 2.21 These restrictions can create difficulties for Māori wishing to develop or use their land. For example, banks and financial institutions prefer unencumbered collateral (like General Land) for any loan or mortgage. This can make it difficult for owners of Māori Land to obtain financing.





Figure 2
The Process for Succeeding to Interests in Māori Land Through the Māori Land Court

Before interests in Māori Land can be passed from a deceased person to their successor/s, a succession application must be made to the Māori Land Court. An application can be lodged at any MLC registry, but is sent to the registry that covers the area where the land interests are located. This registry is responsible for processing the application. The applicant completes a succession application form and supplies supporting documentation, such as a death certificate for the person whose interests they are succeeding to, as well as *whakapapa* links to that person and the block of land. Court staff check that the application is completed in full and that the supporting documentation and fee are included.



Court staff then search the historical records held by the Court to see what interests the deceased person had in Māori Land and from where they were derived. Staff also check the *whakapapa* details attached to the application for consistency with the record, and then compile a report for the Judge in preparation for a hearing.



If all details are confirmed, then the application is notified in a monthly Court publication that advises all interested parties about the time and place of hearings, and the applications to be heard. The applicant and interested parties are notified of these details at least two weeks before a hearing.



The hearing is held at one of several centres within the areas covered by the seven registries. The purpose of the hearing is to confirm the report compiled by the Court staff; to receive evidence and comments from the applicant and other interested parties; and for the Court to make a decision on the case.



After the hearing, Court staff produce minutes as a record of proceedings, which are then sent to the applicant and all interested parties. A Court order, which records the Judge's decision regarding the application, is subsequently sent to the applicant and, if necessary, to other interested parties.



If no rehearing or appeal is applied for within the time limits set for each, then the process is completed by entering the Court order on the Māori Land Information System (which updates details about blocks of Māori Land) and, where applicable, registering a copy of the order with the Land Registry Office. Actions required as a result of the Court order are forwarded to relevant parties, such as the Māori Trustee, who may hold funds on behalf of the deceased person.

MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

Barriers to the Development of Māori Land

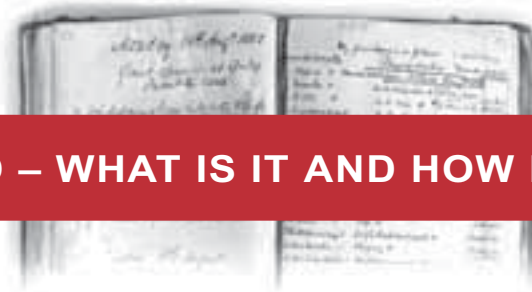
- 2.22 As part of the Government’s “Reducing Inequalities” initiative, TPK prepared a series of papers for submission to Cabinet. These papers identified six main barriers to the development of Māori Land (as shown in Figure 3 below) that do not apply to the development of General Land. As the barriers are all interlinked, the effect of addressing one barrier needs to be considered in the context of how the change will affect the other barriers.

*Figure 3
Six Barriers to the Development of Māori Land*

BARRIER	SPECIFIC PROBLEM
Multiple Ownership	This can lead to problems with obtaining agreement about land use and development, and also reduces the economic return to individual owners.
Governance and Management Issues	While appropriate management structures for the administration of Māori Land may exist, there is a lack of expertise to plan and make decisions about administration.
Access to Information	Data on the current use of Māori Land is not comprehensive, and it is costly to obtain information on potential use of Māori Land.
Access to Finance	Multiple ownership of land makes it difficult to use land as security when seeking finance for land development.
Access to Land	A large proportion of Māori Land is landlocked, reducing the options available for its use and/or reducing the options to lease the land.
Rating of Māori Land	Some local authorities are more determined than others to collect rates on Māori Land. In cases of arrears, some local authorities have tried to sell the land or place charging orders on the land to recover outstanding rates.



MĀORI LAND – WHAT IS IT AND HOW IS IT ADMINISTERED?

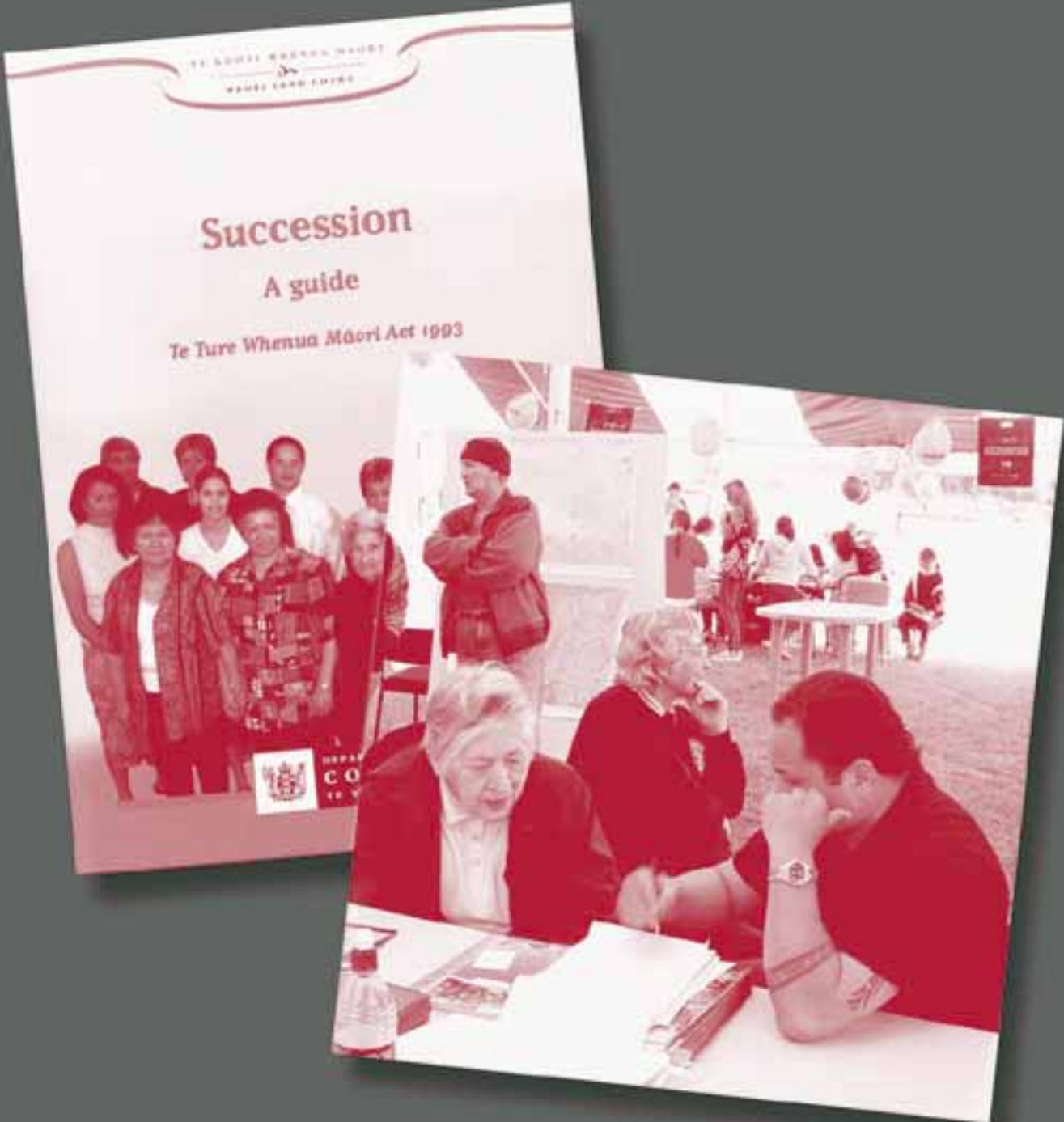


- 2.23 In our view, the barriers described in Figure 3 affect the client service abilities of the Māori Land Court Unit and the Trustee. For example, the fragmentation of ownership interests makes record-keeping more complex than if each piece of land had only one owner. Contacting owners, paying out funds, and generating consensus for decision-making are all complicated by the fragmentation of ownership. The Māori Land Court Unit and the Trustee must operate, according to legislation, within this fragmented system.



Part Three

Client Service Performance of the Māori Land Court Unit



Introduction

- 3.1 We examined the client service provided to Māori Land owners by the Māori Land Court Unit, through either the provision of information or the processing of applications. In our examination, we applied our expectations of good client service (see paragraph 1.4 on page 19). The audit did not evaluate the support provided to the judiciary. Our discussion of the judiciary considers only how judicial activities influence client service outcomes.
- 3.2 In this part we:
- provide an overview of the Māori Land Court and the Māori Land Court Unit;
 - consider client service changes made by the Unit since 1995;
 - make recommendations about how the Unit could improve its client service performance; and
 - make other observations about the Unit's client service performance.

Overview of the Māori Land Court and the Māori Land Court Unit

The Māori Land Court

- 3.3 The Māori Land Court is a significant institution for Māori Land owners as it hears matters relating to Māori Land. It is the only Māori Court, and it is unique in the way it operates. For example, a hearing may be conducted in *te reo Māori*, and it may begin and end with a *karakia*.
- 3.4 The Court has a Chief Judge and a Deputy Chief Judge, as well as seven Judges – one for each Māori Land Court registry (see paragraph 3.8). The Judges are constitutionally independent and are not employees or agents of the Ministry. The Māori Land Court sits regularly at venues throughout New Zealand.¹⁶
- 3.5 Administration of the Māori Land Court was transferred from the Department of Māori Affairs to the Department of Justice during restructuring of the departments in 1989. From 1 July 1993, the Department for Courts had responsibility for administration of the Māori Land Court. On 1 October 2003, the Department for Courts was merged back into the Ministry.

¹⁶ Court sitting venues, dates, and times are displayed on the Māori Land Court's web site.



Structure of the Māori Land Court Unit

- 3.6 The Māori Land Court Unit provides administrative support for the Māori Land Court and its judiciary, and provides services to Māori Land owners, particularly information and advisory services relating to Māori Land. In this regard, the Ministry received an appropriation through Output Class D6: Māori Land, Information and Case Management, of \$12.749 million (GST-inclusive) for 2003-04 under Vote Courts.
- 3.7 The Māori Land Court Unit is part of the Ministry's Special Jurisdictions Group – which also includes administrative units for the Waitangi Tribunal, the Environment Court, and Tribunals. The structure of the Māori Land Court Unit within the Ministry is shown in Figure 4 on the next page.
- 3.8 The Māori Land Court Unit has about 135 staff, seven registries, two dedicated Māori Land Information Offices, and a Head Office in Wellington (which also serves as an Information Office). Māori Land Court registries and offices are located in three regions. Region 1 consists of Taitokerau and Waikato-Maniapoto, Region 2 consists of Waiariki and Aotea, and Region 3 consists of Tairāwhiti, Takitimu, and Te Waipounamu. Figure 4 shows which registries cover these regions.

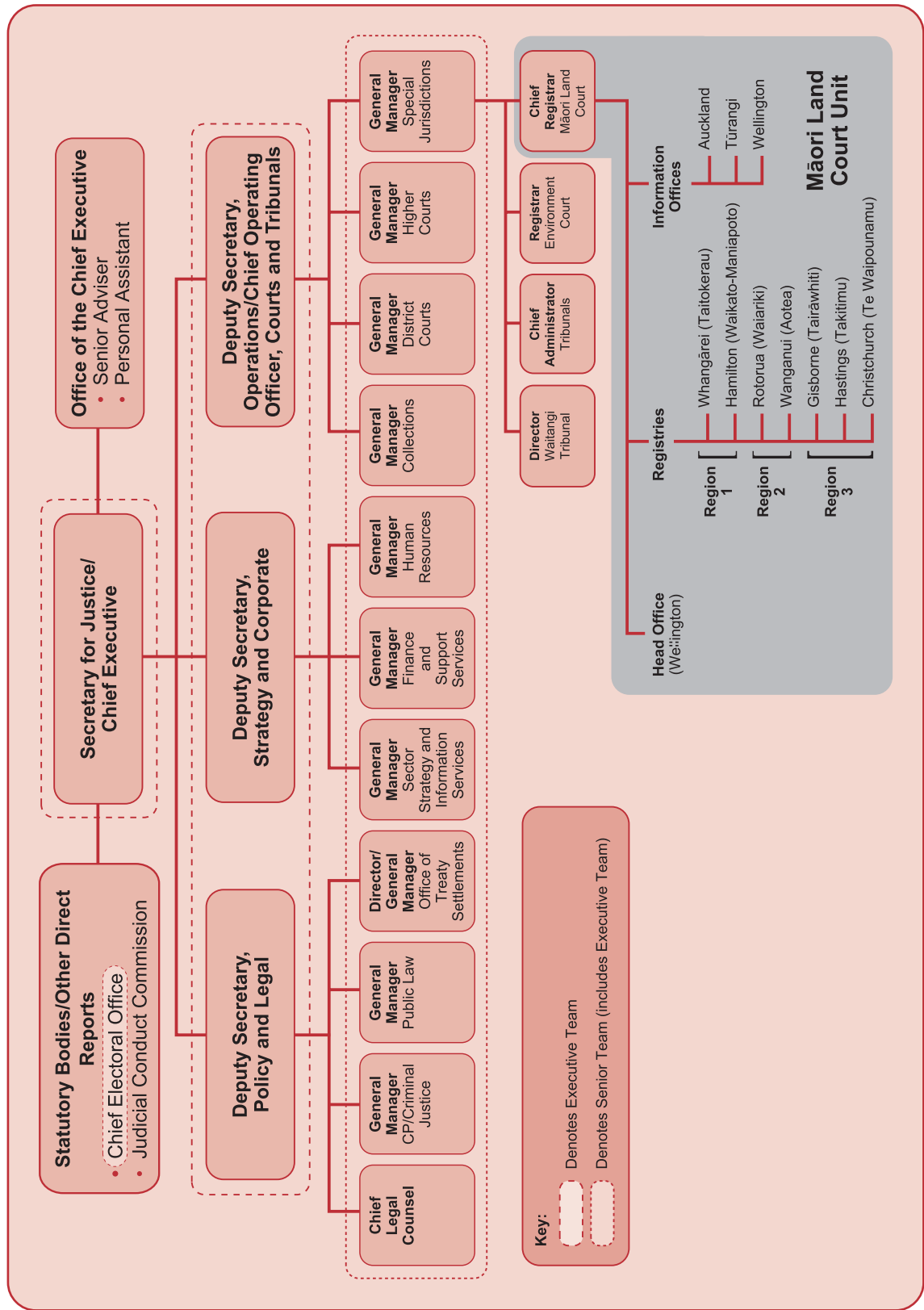
Role and Functions of the Māori Land Court Unit

- 3.9 As discussed in paragraphs 2.9-2.10 on pages 24-25, the preamble to Te Ture Whenua Māori Act 1993 serves as a guiding philosophy behind the operations of the Māori Land Court Unit.
- 3.10 In line with this philosophy, the functions of the Māori Land Court Unit are to:
- promote the management of Māori Land by its owners by maintaining the records of title and ownership information of Māori Land;
 - service the Māori Land Court and related tribunals (including the judiciary);
 - provide land information from sources such as the Minute Books held in the Māori Land Court's registries;
 - contribute to the administration of Māori Land; and
 - preserve Māori Land as *taonga Māori*.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT

Figure 4
Structure of the Māori Land Court Unit within the Ministry of Justice



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT



- 3.11 The Māori Land Court registries are repositories for extensive information about Māori Land. Information held by the registries includes land title and ownership records, management structure details and records, and historical information about judicial decisions and orders. Māori particularly view the Māori Land Court's Minute Books of Court hearings as treasures, because they hold *whakapapa* details stretching back several generations. As an indication of the extent of public interest in accessing this information, in the year ended 30 June 2003, there were 30,326 hits on the Court's web site and 1125 enquiries lodged with Court offices through the web site.

Scoping Report (1995) on the Future Development of the Māori Land Court Unit

- 3.12 In 1995 the former Department of Justice commissioned independent consultants to provide a scoping report on the future development of the Māori Land Court Unit. The purpose of the report was to examine the key processes of the Unit and to assess the Unit's ability to deliver an effective and efficient service to the clients of the Māori Land Court.
- 3.13 The report identified areas where the Unit's services fell short of a modern client-focused organisation and the extensive scale of change required to improve service provision. The report found that:
- The Māori Land Court Unit had virtually no client service focus. There was no survey of client service needs, or analysis of service gaps, or setting of – or drive to achieve – client-defined needs.
 - Processes were driven mostly by the administrative needs of the Unit rather than any client service goals.
 - The act and manner of completing a procedure had become the basis of performance rather than the completion of an end-to-end client service.
 - Staff had responsibility for completing a single part of the process, rather than taking an application through the whole process.
 - There was a lack of consistency in operational systems and procedures throughout the network of Māori Land Court registries.
 - There was a lack of informal and formal contact with other parties in the Māori Land sector.



What Changes Has the Māori Land Court Unit Made Since 1995, and Have the Changes Worked?

- 3.14 We considered four areas of significant change made by the Māori Land Court Unit as a result of the 1995 report:
- introduction of strategic planning;
 - appointment of Advisory Officers;
 - introduction of the Māori Land Information System (MLIS); and
 - adoption of case management.
- 3.15 It was useful for us to examine the changes made in these four areas as they indicate the Māori Land Court Unit's response to the 1995 report in terms of our expectations of client service (see paragraph 1.4 on page 19). The focus on strategic planning indicates the goal of client service and an understanding of clients and their needs. The appointment of Advisory Officers indicates the Unit's understanding of clients' needs and the provision of access to services, while the introduction of the MLIS and the move to case management has enabled the Unit to measure its client service performance.

Introduction of Strategic Planning in the Māori Land Court Unit

- 3.16 As a result of the 1995 report, the Māori Land Court Unit recognised the need to strategically improve co-ordination among registries by adopting a national approach.
- 3.17 The Unit's drive for change is set out in its *Strategic Plan 1 January 2001 – 31 December 2002*. This Plan is regularly reviewed, and Regional Directors are required to report progress against the plan on a monthly basis. The Plan refers to a variety of client service topics including:
- listings of key expectations by clients – both Māori Land owners and the Government;
 - clear statements of the Māori Land Court Unit's eight strategic issues¹⁷, six of which have client service as a driver; and
 - deadlines for implementing change.

¹⁷ The eight strategic issues are: paper-based records; relevance of the Māori Land Court's information; Consultation Forum; matching resources to demand; Advisory Service outcomes; impact of policy initiatives; consistency of service; and building management strength.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT



- 3.18 The Māori Land Court Unit's strategic business planning is supported by client surveys undertaken in 2000 and 2002, which provide the Unit with an understanding of clients' needs. Specifically, the surveys looked at the information needs of Māori Land owners, with 1197 responses received from 6490 survey forms distributed. Some consistent themes emerged from the survey responses, such as a perceived loss of staff expertise on more unusual applications, and a lack of timeliness when responding to client requests for information.
- 3.19 The Māori Land Court Unit has noted the timeliness comments and is addressing the issue through the new Timeliness Report, and the Operational Resource Model (ORM) that is currently being created.
- 3.20 The Timeliness Report – released in December 2003 – identifies the average time taken to complete each step in processing the various types of application that are filed in the Māori Land Court. The average time taken can be identified at a national, registry, team, and individual level. The Timeliness Report also assists in identifying trends in workloads from year to year, from district to district, and from team to team, as well as categorising applications by type.
- 3.21 The ORM will track the time taken to process specific application types and provide a unit cost for the various services that the Māori Land Court Unit is funded for. The data will then be compared with present staff levels. The Unit hopes that this information will identify whether resources should be relocated or whether additional resources are required. The ORM will also confirm whether best practices are being followed or whether modified practices are needed to meet client demand. The ORM is due to be completed before the preparation of budgets for the 2004-05 financial year.

Monitoring Implementation of Tasks

- 3.22 The Māori Land Court Unit closely monitors progress in implementing tasks that are identified in the strategic business plan. Responsibility is assigned to one of the Unit's Regional Directors (who are also Registrars of the Māori Land Court) who regularly report to the Chief Registrar on what has been completed and what further action is required.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT

- 3.23 For an organisation of only 135 staff, and with a small management team, the Māori Land Court Unit has set a challenging number of goals.¹⁸ However, our audit found that the Unit was making progress towards meeting its goals – for example, the development of the ORM.

Appointment of Advisory Officers

- 3.24 To further address client service issues identified by the 1995 report, the Māori Land Court Unit implemented a number of new initiatives¹⁹, including the formation of an Advisory Service in 2000. Introduced as part of the “New Initiatives” proposal that was presented to Cabinet by the former Department for Courts, the Advisory Service was designed in response to the complexities of Māori Land legislation and aimed to:

- provide information on procedural matters to clarify requirements to be met by Māori Land Court clients in preparation for any hearing;
- make the Māori Land Court more user-friendly for clients by increasing their awareness of what might be required of them as participants in the Court process;
- eliminate or reduce the need for costly advice from lawyers on procedural and non-legal matters; and
- encourage an efficient and expedient use of the Māori Land Court and the services provided by the Māori Land Court Unit.

- 3.25 Thirteen Advisory Officer positions were created to deliver the Advisory Service. While it was intended that the service would be mobile, the Māori Land Court Unit (through the Department for Courts) sought funding to equip only 4 of the 13 Advisory Officers with a vehicle and a laptop computer. The other 9 Advisory Officers were to operate at Māori Land Court registries.

18 The Māori Land Court Unit's goals include:

- ceasing operational dependence on paper records;
- eliminating duplication, obsolete information, and inaccuracies from the MLIS;
- developing the Operational Resource Model to assist matching of resources to demand;
- enhancing reporting systems to assist predictions of future workload;
- assessing the operational impact of the Advisory Service; and
- developing consistent standards of service and standardised templates consistent with Māori Land Court Rules throughout registries.

19 Other new initiatives were the Geographic Information System, a nationwide *panui*, new information resources, new operational staff for the Māori Land Court, new training programmes, a web site Māori Landonline, and a Consultation Forum.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT



- 3.26 The role of an Advisory Officer is to increase the ability of Māori Land owners to access the services provided by the Māori Land Court Unit. Advisory Officers fulfil this role by visiting Māori Land owners in their home areas, participating in *hui*, and co-ordinating information workshops and clinics. The advice of an Advisory Officer does not extend to legal or economic matters, although the officers are at times asked questions of this nature.

Evaluating the Impact of the Advisory Service

- 3.27 In 2002, the former Department for Courts commissioned a Wellington consultancy firm with experience in Māori Land issues to undertake an evaluation of the Advisory Service. At the time, the Advisory Service had been operating for 18 months. Although noting that insufficient time had passed to accurately evaluate the effect of the Advisory Service, the consultant's report concluded that formation of the Advisory Service had led to tangible benefits being achieved for and among Māori Land owners. Māori Land owners who were surveyed said that a benefit of using the Advisory Service was a subsequent decrease in costs to access the Māori Land Court and to use the Māori Land Court Unit's services.
- 3.28 The Advisory Service has been a valuable addition to the Māori Land Court Unit and the wider Māori Land sector – an observation confirmed by people we spoke to, including Māori Land Court Unit staff, Māori Land Court Judges, and Māori Land owners. For example, we noted that some Judges request that Advisory Officers attend meetings of owners in order to provide procedural advice and to act as a direct liaison for owners. In many instances, Advisory Officers have been expected by applicants to perform an advocacy role but, in their position as officers of the Court, there are limits to the advice and support that they can properly provide.
- 3.29 The 2002 consultant's report identified an issue of under-resourcing of the Advisory Service, which in our view is a risk to client service. While all Advisory Officers were not intended to be mobile (that is, each equipped with a vehicle and a laptop computer able to access the Māori Land Court Unit's electronic records system from the field), demand from clients has seen all of them act in a mobile role even though not all are equipped to be mobile.



**CLIENT SERVICE PERFORMANCE OF THE
MĀORI LAND COURT UNIT**

- 3.30 Performance measures for Advisory Officers are based on the number of applications generated and the number of meetings held by each Advisory Officer. An Advisory Officer can provide a client with information and application forms, but it is up to the client to choose whether or not to make an application to the Māori Land Court. In our view, measuring the number of applications that are generated does not take into account the actual work carried out by the Advisory Officers, including two important aspects of their work:
- improving the quality of applications submitted by Māori Land owners, by imparting greater understanding of the options available; and
 - reducing the need for Māori Land owners to attend Court in some cases, by informal mediation or by facilitating the resolution of disputes.
- 3.31 A further useful function that Advisory Officers fulfil outside their formal role is as the “face” of the Government in remote areas. Advisory Officers told us that Māori Land owners often ask them questions relating to other government agencies, such as the Inland Revenue Department. This was because the Advisory Officer was the only person linked to government services that they knew who visited the area. If the Advisory Officer could not answer the query on the spot, they often used their networks with colleagues in other agencies to quickly obtain the necessary information for the client.

Recommendations

We recommend that the Māori Land Court Unit –

1. Review whether the current Advisory Officer role aligns with the role initially defined for the Advisory Service by the former Department for Courts.
2. Review whether the current Advisory Officer role adequately serves the needs of Māori Land owners.

We also recommend that –

3. If that review identifies a new role for Advisory Officers, the Māori Land Court Unit ensure that appropriate training and equipment is available to enable Advisory Officers to fulfil the new role.
4. Regardless of the review’s outcome, the Māori Land Court Unit revise the performance measures for Advisory Officers.





Introduction of the Māori Land Information System

- 3.32 Before the electronic database known as the Māori Land Information System (MLIS) was introduced, most of the Māori Land Court Unit's work was paper-based, and information about Māori Land could not be easily transferred from one registry to another. This often meant that research²⁰ could only be undertaken in the region where the records were held. For example, a Whangārei block of land could not be researched from Wellington. This caused issues for client service. Using the MLIS, research can be carried out from any registry, and the time taken to complete a basic land title report has been reduced from 40 minutes to less than one minute.
- 3.33 The Māori Land Court Unit is mindful of the balance required between providing access to information stored on the MLIS and protecting information (particularly regarding *whakapapa*) that some Māori wish to remain confidential. For example, the Māori Land Court Unit has delayed the introduction of internet access to the MLIS until consultation has been completed with Māori about what content should be available on-line.
- 3.34 Another useful feature of the MLIS is the ability to track the workloads of case managers and to provide detailed reporting on the Māori Land Court Unit's performance. The Unit has set time parameters for each step of the application process, which the MLIS can automatically monitor. If a case manager is late in progressing an application to the next step, then the case is highlighted in red in their electronic "work basket".
- 3.35 The MLIS also has an impressive ability to provide reports about the processing of applications. The system allows the Chief Registrar to identify the status of every application, who is responsible for progressing the application, and who is responsible for any delay in the process. This information is categorised by the registry and the case manager so that, if the Māori Land Court Unit is responsible for a delay, it can be quickly addressed.

²⁰ Research is for many purposes, such as looking for *whakapapa* and/or interests in Māori Land.



Adoption of Case Management in Māori Land Court Registries

- 3.36 At the same time that the MLIS was introduced, the Māori Land Court Unit adopted a case management system.²¹ Previously, staff had been involved only in single steps in the administrative process, rather than taking responsibility for processing an application from the initial stages to completion. Case management encourages staff to understand the system as a whole and recognises the effect of time delays at different stages of the process.
- 3.37 The introduction of case management has led to a more team-focused approach within the Unit. This approach should help the Unit to integrate what it learns from the quality-based reporting of the MLIS and ORM project to improve work practices and processes.

How Could the Māori Land Court Unit Improve Client Service Performance?

- 3.38 Overall, in our view, the Māori Land Court Unit provides a good level of service to its clients. However, we identified three aspects that could be improved:
- management and reporting of case progress;
 - training of case managers; and
 - standardisation between registries.

Management and Reporting of Case Progress

- 3.39 We sampled applications made to the Māori Land Court for each of the last four years. We found that, nationally, 80% of applications were completed within 12 months, and that 8-10% of applications took longer than 18 months to complete. Applications that take longer than 12 months to process are referred to as a backlog.
- 3.40 The Māori Land Court Unit was not always responsible for the delay of applications that took longer than 12 months to process. Often, the Unit could not process the application because it was awaiting further evidence and information from the applicant, or the application was a complicated one (such as section 45 applications for amendment of the Māori Land Court's record) that required special consideration by a Judge.

21 MLIS is the single most important tool supporting the Māori Land Court Unit's case management system as it allows the case manager to electronically access all relevant information on a specific case.

CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT



- 3.41 There were two main reasons for the backlog of unprocessed applications:
- Māori Land Court registries give new applications priority over old ones that may have stalled for various reasons; and
 - the complexity of some types of application.
- 3.42 The Unit has recently sets targets relating to the completion of applications from previous years, and aims to implement a case management system based on the Timeliness Report that was released in December 2003.
- 3.43 In our view, separating cases that are waiting for internal action from those that require external action could improve the management of the backlog of applications.
- 3.44 Rule 38 of the Māori Land Court Rules 1994²² provides for the disposal of long-standing applications where the Māori Land Court Unit is waiting for further evidence and information from the applicants. The applications can be disposed of through recommendations made by Māori Land Court Registrars to the Court. We understand that the Registrars have not referred cases to the Court under rule 38 recently but are now being encouraged to do so. Such an approach, if adopted with a corresponding change in the manner of reporting, would provide further scope for efficiency gains, with consequent benefits to clients.
- 3.45 The Māori Land Court Unit has recently started producing trial comprehensive Timeliness Reports, which identify backlogs and provide for changes to be made. When these reports are routinely produced, the Māori Land Court Unit will be able to set performance standards for each stage in the application process. This will have two benefits:
- the identification of any issues arising by application type, registry, or team; and
 - clients can be informed, when making an application, of the average time such applications take to be completed in total, and stage by stage.

22 Disposal of outstanding applications –

(1) The Registrar, shall, at intervals of not less than 6 months, prepare a schedule of applications that, without proper cause, –

(a) have not been prosecuted; or

(b) have not been finally disposed of.

(2) The Registrar shall send a copy of every schedule prepared in accordance with subclause (1) of this rule to the parties to the applications listed in that schedule and shall inform those parties that the applications will be referred to the Court for dismissal unless extensions of time are sought and obtained from the Court.

(3) Any dismissal of an application that has been referred to the Court under subclause (1) of this rule shall be without prejudice to the right of the applicant to make another application in respect of the matter or to the power of the Court to reinstate the application dismissed.



Recommendations

We recommend that the Māori Land Court Unit –

5. Actively target completion of applications that have taken more than 12 months to process, especially those delayed in the registries.
6. Continue to encourage greater use by Māori Land Court Registrars of the mechanism provided by rule 38 of the Māori Land Court Rules 1994.
7. Finalise the establishment of Timeliness Reporting.

Training of Case Managers

- 3.46 The level of service that clients receive from the Māori Land Court Unit depends on the level of experience of the staff member delivering the service. The Unit's 2000 and 2002 client surveys identified further training of case managers²³ as vital to meeting some of the concerns raised by clients.
- 3.47 Currently, training takes place within a team structure – with more experienced case managers teaching less experienced case managers. With small teams, this form of training works well for the most common types of applications. However, new case managers can have difficulty gaining experience in handling the less common or more complex applications. For example, they may feel reluctant to distract their colleagues by asking questions when they know that experienced case managers have a high workload. Furthermore, this type of arrangement can make it difficult to achieve consistency throughout Māori Land Court registries, as an individual case manager's good and bad practices can be passed on to new case managers.
- 3.48 As part of the response to concerns about training of case managers, the Unit designed a new training package that would lead to the award of a diploma. It was intended that this package would be approved by the New Zealand Qualifications Authority, although this has not yet occurred.²⁴ The diploma training package was to be independent of the former Department for Courts' three-year course, which included two years of generic subjects for all Department staff, and a final year that included a Māori Land Court component.

²³ Case managers process an application from receipt to completion, as distinct from the Advisory Officers who are out in the field dealing with client queries and generating applications.

²⁴ The Ministry is currently assessing the relationship between the proposed new package and the existing course.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT



- 3.49 We examined the structure of the new diploma training package and, in our view, it would have a positive impact on client service if completed by case managers. The diploma training package would be a valuable induction tool for the Māori Land Court Unit, and would also be helpful to fill any identified knowledge gaps for more experienced case managers.
- 3.50 There would also be benefit in introducing formalised training sessions to ensure that all staff members regularly complete training.²⁵ Attendance at this training should be compulsory. This would reduce the likelihood of case managers not undergoing training because of the pressure to meet application-processing requirements. We consider that formalised training would improve the:
- consistency of practice throughout registries; and
 - knowledge of staff in the Māori Land Court Unit.

Recommendations

We recommend that the Ministry –

8. Monitor the uptake of the agreed Ministry training programme by staff of the Māori Land Court Unit as a check that it is aligned with their needs.
9. Ensure that staff undertake the Māori Land Court Unit training modules.
10. Introduce formalised training sessions for all staff, and ensure that all case managers attend.

Standardisation Between Registries

- 3.51 The processes and procedures that a Māori Land owner needs to complete when dealing with the Māori Land Court Unit vary between registries. Variations occur for a number of reasons, including:
- different protocols of *iwi* across the country;
 - the sort of land involved;
 - the geographical spread of the Māori Land Court registries; and
 - the level of experience of staff in the Māori Land Court Unit.

²⁵ This sort of training regime operates on a weekly basis at several government agencies, including the Accident Compensation Corporation and Work and Income.



**CLIENT SERVICE PERFORMANCE OF THE
MĀORI LAND COURT UNIT**

- 3.52 Different processes and procedures between registries can also arise from the administrative preferences of individual Judges. This can have practical consequences for Māori Land owners and the staff in the Māori Land Court Unit. For example, because there is no standard application form, it is likely that a Māori Land owner with two blocks of land located in areas covered by different registries will encounter different application forms and will need to satisfy different requirements.
- 3.53 There is also variation between registries in the production of the minutes of Māori Land Court hearings. This is influenced by the way a Judge chooses to record the minutes of a hearing – some prefer a transcription format while others use a summary format which is quicker to produce. The sooner the minutes are produced, the sooner the applicant can undertake the activities requested in the application. While the Māori Land Court Unit has an informal measure for the timeliness of minute production, it has not been considered suitable to report this externally because of the variations between the different registries. We recognise that the Māori Land Court Unit has made attempts at introducing standardisation in certain areas in the past, and that the Unit still views standardisation as an area for improvement.
- 3.54 It is important that any variation in practice is considered in terms of client service performance. If there is a negative effect upon timeliness or quality of service, or if the variation creates inequality of service, then standardisation should be considered. One way of identifying negative effects is to measure the influence that specific practices have on the timeliness and quality of the whole application process.

Recommendation

We recommend that the Māori Land Court Unit -

11. Continue its efforts to standardise application processes and procedures (including application forms) and the format of minutes for Māori Land Court hearings.





Other Observations About the Māori Land Court Unit's Client Service

- 3.55 We also have some observations that, while outside the scope of our audit, raise questions about access by Māori to legal and dispute resolution services. We note these observations so that further thought can be given to their implications by Māori Land Court staff and Judges. They are:
- the need for applicants and other persons to attend Māori Land Court hearings; and
 - the role of the Māori Land Court Unit in meeting the wider needs of clients, such as unmet legal needs.

The Necessity to Attend Court

- 3.56 The Māori Land Court often requires uncontested cases to be heard in person. We understand that this practice varies, and that some Judges and Registrars are more comfortable than others about dealing with matters through written submissions without the need for a formal hearing.
- 3.57 Because the authenticity of some written and signed documents has historically been called into question, people are required to attend the Court to validate evidence in support of applications.
- 3.58 By having an applicant appear before the Court, the Judge has an opportunity to satisfy himself or herself that the applicant is fully aware of the implications and consequences of the application. Affected parties are also given the opportunity to participate in the hearing. This reduces the risk of later challenges or amendments to Court orders.
- 3.59 However, requiring attendance may increase the cost to applicants (for example, travel costs and loss of income). Often, other parties also attend hearings, even if simply to express their support for the applicant. This can have practical consequences – for example, when a case is adjourned several times because it is difficult to get a supporting party to appear because of work commitments or distance issues. An alternative may be to allow supporting parties to have their evidence admitted by affidavit. Although applicants would usually bear the cost of compiling written evidence, this could be offset by other savings of time and cost.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT

- 3.60 Although these are primarily judicial matters and, to that extent, are outside the scope of our audit, we raise them as worthy of consideration from a client service perspective.

Meeting the Wider Needs of Clients of the Māori Land Court Unit

- 3.61 During our audit we became aware that many clients of the Māori Land Court Unit expect staff and Judges of the Māori Land Court to help them with their otherwise unmet legal needs.

Legal Support

- 3.62 Legal services for Māori Land Court applicants are scarce. Māori Land law is a specialised discipline within the legal profession, and the number of practitioners is small. Community-based legal services for Māori (especially in respect of Māori Land Court matters) are also thinly spread. Most applicants choose to represent themselves before the Māori Land Court, but many also look to staff of the Māori Land Court Unit, including Advisory Officers, to provide them with legal advice about what their options are within the Court process. Although neither staff nor Judges can provide legal advice, the Judges may make orders granting special aid, which can include legal costs.
- 3.63 The need for advice can also extend to wider issues. Staff of the Māori Land Court Unit are expected to confine themselves to providing advice of an administrative nature and are not to give legal advice. But, in practice, the sheer nature and extent of needs, and the non-availability of other sources of advice and assistance, makes it difficult for staff to maintain the distinction. The role of Advisory Officers as advocates may require further investigation in this regard.

Wider Dispute Resolution

- 3.64 Many of the applications that are adjudicated by the Māori Land Court reveal disputes that are wider than the status of the land – for example, personal issues between members of a *whanau* or *hapu*. Some of these cases are amenable to mediated settlement, and Judges are increasingly using the judicial conferencing procedure available under the Act to encourage such parties to explore options for resolution. However, the Māori Land Court Unit has no formalised role either in respect of wider disputes or in the use of mediation as a procedure for dispute resolution.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT



- 3.65 In the view of the Chief Judge, mediation is strictly a judicial function. However, staff sometimes find themselves, in effect, mediating between parties. Decisions about the use of mediation are also judicial matters, and it is not for us to comment.

Implications for the Māori Land Court Unit and Clients

- 3.66 As far as the Māori Land Court Unit is concerned, the existence of unmet legal needs can have consequences for applicants and for the effectiveness of the administration processes that support the Māori Land Court. For example, at the hearings we attended there were some cases where the Māori Land owners had made a particular type of application – and had been given administrative help by staff to do so. However, when the Judge discussed the case with the applicants in Court, the applicants discovered that this was not necessarily what they wanted to do, or that it was not the best way of achieving what they wanted. These sorts of situations can result in the application taking even longer to resolve, increasing the possibility that Māori Land owners will disengage from the process.
- 3.67 The establishment of the Advisory Service was a direct response to these types of problems. While the service has been a success, we were also impressed by the sensitivity shown by Māori Land Court Unit staff and Judges of the Māori Land Court towards the wider issues of unmet legal need among applicants, and their sense that more needs to be done to support Māori Land owners.
- 3.68 We are also aware that the Government has been considering changes that will broaden the Māori Land Court's ability to decide applications in the most appropriate manner – for example, by formalising the use of mediation and enabling *kaumatua* to sit with Judges. We encourage this approach to continue to the extent that such changes would improve access to justice.

Client Costs

- 3.69 Again, it is not for us to comment on whether or not fees should be charged, but, since ease of access to the Māori Land Court is an element in the mix of factors when deciding on client service performance, we do have some comments on client costs.



CLIENT SERVICE PERFORMANCE OF THE MĀORI LAND COURT UNIT

- 3.70 The Ministry is currently conducting a review of civil court fees that includes Māori Land Court fees. The Ministry's Consultation Document of May 2003 recommends introducing a nil fee for matters relating to ownership of Māori Land (currently the majority of Māori Land Court applications) and maintaining a two-tier fee structure for other activities.²⁶
- 3.71 However, any application fee is only part of the total cost of doing business within the Māori Land system.²⁷ Māori Land owners told us that these wider costs are an issue for them. For example, the current application fee for a succession is \$61 but associated costs can easily match this – for example, \$26 for each birth and death certificate to prove familial connection, plus any costs associated with travel to the Māori Land Court hearing, and any lost wages/income for the day.
- 3.72 We note that the Māori Land Court has the ability to waive fees in circumstances where it believes access to justice would be jeopardised. We also saw cases where the Judge determined that the applicant would receive the first \$61 of any money that may come to a family group as a result of the applicant's efforts.

Issues for Future Judicial Workload

- 3.73 The Māori Land Court Judges also sit on the Waitangi Tribunal. If their workload was to rise without a corresponding increase in the number of Judges, then it might take longer for applications to be processed.

26 The Ministry's Consultation Document suggests the following fee levels:

- a fee of \$61 for routine applications (such as the approval of a charitable trust under section 245 of Te Ture Whenua Māori Act); and
- a fee of \$122 for more complex applications (such as an appeal from any order of the Māori Land Court to the Māori Appellate Court under section 58 of Te Ture Whenua Māori Act).

27 As noted previously, owners of Māori Land must use the Māori Land Court, so these costs are not discretionary.



Part Four

Client Service Performance of the Māori Trustee



CLIENT SERVICE PERFORMANCE OF THE MĀORI TRUSTEE

Introduction

- 4.1 The role of the Trustee is to help manage Māori Land. The Trustee is independent of the Crown²⁸ and is accountable both to clients and to the Māori Land Court. Overall, the Trustee manages about 7% of all Māori Land.
- 4.2 In this part we:
- provide an overview of the Trustee;
 - describe the Trustee's operating environment;
 - consider the Trustee's client service performance;
 - recommend how the Trustee could improve client service performance; and
 - identify areas of risk that could affect the Trustee's future client service performance.

Overview of the Trustee

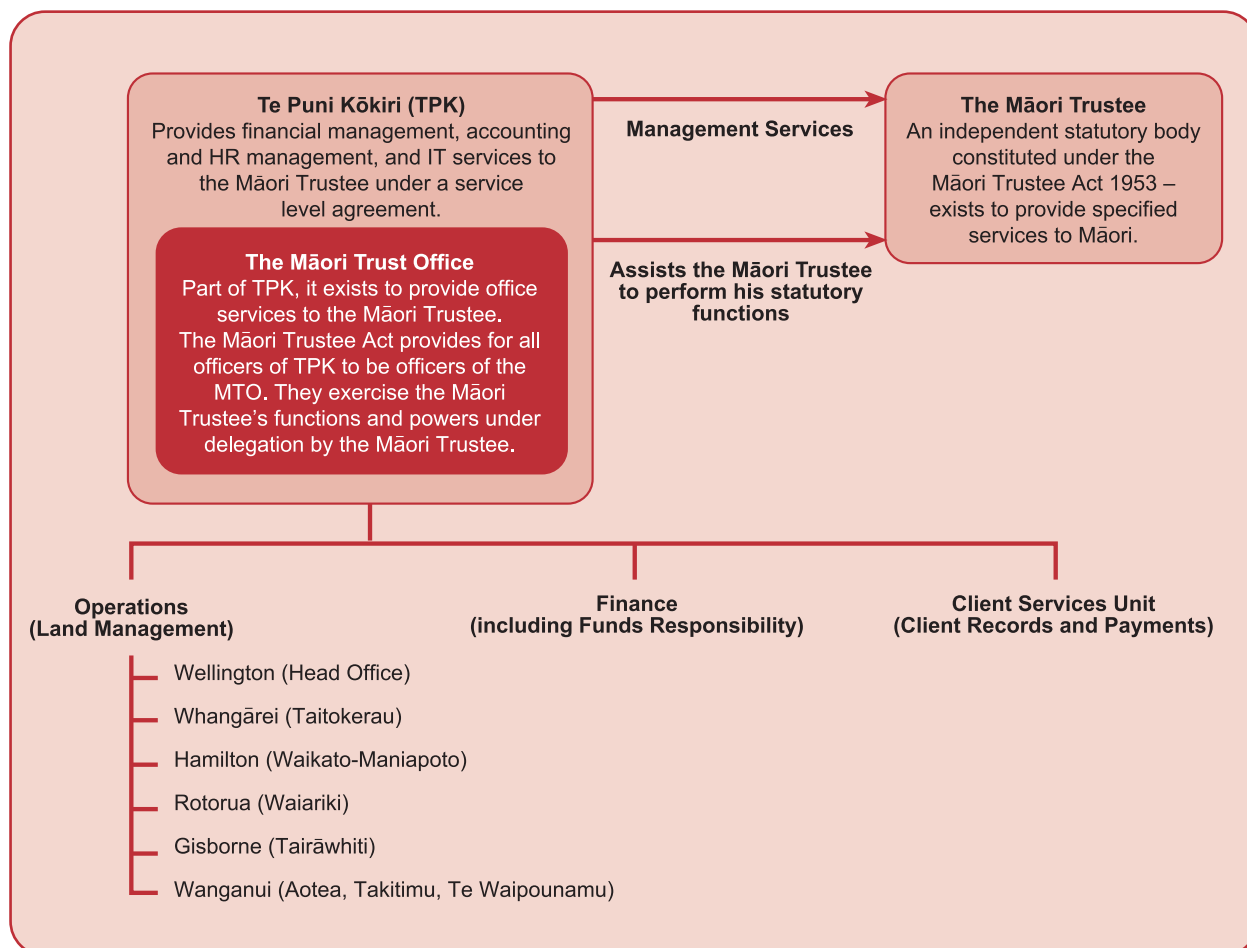
Structure of the Trustee

- 4.3 The Trustee is a statutory body, constituted as a corporation sole under the Māori Trustee Act 1953. Under that Act, the Chief Executive of the Ministry of Māori Development *Te Puni Kōkiri* (TPK) – or an officer nominated by TPK's Chief Executive – must carry out the role of the Trustee.
- 4.4 The Trustee carries out his duties through the MTO, which is part of TPK. The MTO provides the Trustee with staff, office accommodation, corporate support, and IT services. Unless specified otherwise, when we refer to the Trustee, we also include the MTO.
- 4.5 The MTO has 48 full-time staff, five regional offices, and a Head Office in Wellington. The Whangārei office covers Taitokerau, Hamilton covers Waikato-Maniapoto, Rotorua covers Waiariki, Gisborne covers Tairāwhiti, and Wanganui covers Aotea, Takitimu, and Te Waipounamu. Figure 5 on the next page illustrates the relationships between TPK, the MTO, and the Trustee, and shows the MTO's structure and office locations.

28 The Māori Trustee is independent of the Crown even though *Te Puni Kōkiri* provides the Trustee with the services of the Māori Trust Office.



Figure 5
Structure of the Māori Trustee and Organisational Relationships



Role and Functions of the Trustee

4.6 The Trustee's main role is to manage Māori Land on behalf of its owners, mostly through leasing for conventional farming. The Trustee provides trust and agency services, and oversees the administration of leases. The Trustee also disburses rental funds, and invests client funds when requested.

4.7 The Trustee's purpose is to:

- protect the interests of Māori clients and their land; and
- overcome the adverse effects of fragmented and multiple ownership and uneconomic land through fair, proper, and prudent administration and management within the principles and obligations of trusteeship and agency.



CLIENT SERVICE PERFORMANCE OF THE MĀORI TRUSTEE

- 4.8 The Trustee maintains about 111,000 client accounts. As at 31 March 2003, the Trustee was responsible for managing about 116,000 hectares of Māori Land (about 7% of all Māori Land), with an associated annual rental income of \$9.5 million.
- 4.9 Like any private trustee, the Trustee is ultimately accountable to the owners of the land (and other assets) that he administers for the exercise of his fiduciary duties. The degree of accountability varies according to the type of trust arrangement that operates between the Trustee and the clients.

The Trustee's Operating Environment

The Trustee Operates In a Competitive Market

- 4.10 Most of the Trustee's work (both land management and funds management) is subject to market forces. In most cases, the Trustee's clients are not required by legislation to use the Trustee's services.²⁹ If clients are dissatisfied with the service they receive from the Trustee, they can take the administration of their land from him and place it in some other form of administration whenever they choose. For example, Māori Land owners can take their business to another trustee if they feel that:
- the Trustee is not looking after their land properly; or
 - the fees charged are too high in comparison with someone else carrying out similar functions; or
 - they want to administer the land themselves.
- 4.11 These market forces also apply to the Trustee's funds management functions. If the Trustee's performance is below a client's expectations, the client can choose to have another provider manage their funds.

Funding of the Trustee

- 4.12 The cost of the services provided by the MTO to the Trustee is funded by an appropriation through Output Class D5: Services to the Māori Trustee of \$4.225 million (GST-inclusive) for 2003-04 under Vote Māori Affairs. This level of funding has remained static for several years³⁰, and can be recovered by the Government using the powers of the Māori Trustee Act.

²⁹ The Māori Land Court requires the Trustee to administer a small number of blocks of land that no other trust service provider will handle, but otherwise the Trustee has the freedom to administer any block of land that he wants to from those offered to him.

³⁰ Appropriations for each financial year since 1999-2000 have been \$4.225 million.

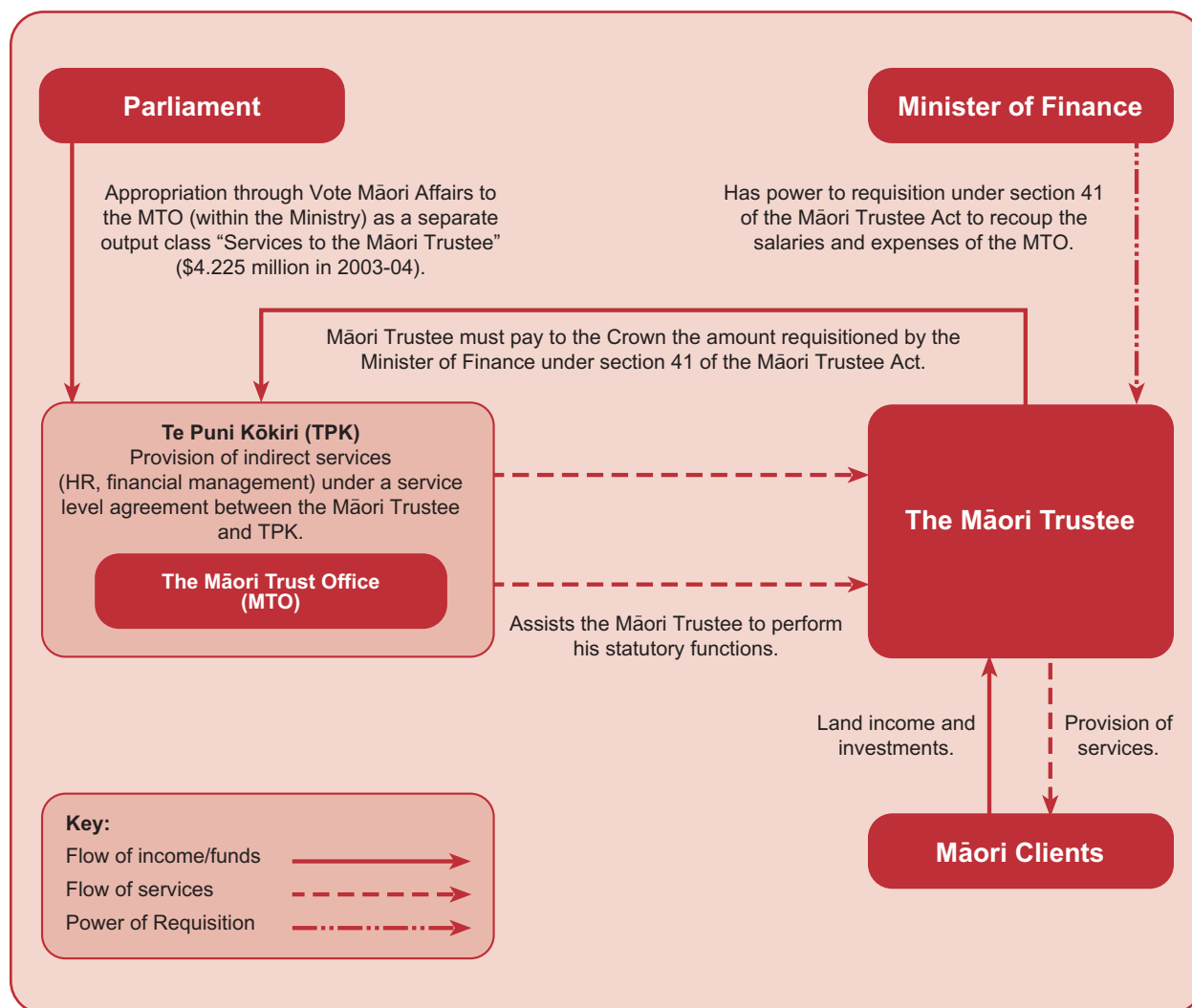
- 4.13 Unlike the situation that exists for most government agencies, the Minister of Finance has the power to requisition the return to the Crown of any of the funding provided to the Trustee. This is based on the premise that the fees the Trustee charges cover the costs of his operations, therefore enabling him to return the funding to the Crown and keep any “profit”.³¹ The Minister of Finance last exercised this power of requisition in 1993 (for \$7.4 million). Since then, about \$40 million has accumulated in the Māori Trustee’s General Purposes Fund and is recorded as a debt to the Crown.
- 4.14 Figure 6 on the opposite page shows how the Trustee is funded, and the service relationships between TPK, the MTO, and the Trustee.
- 4.15 Parliament provides TPK with funding for the MTO. This makes TPK, not the Trustee, accountable to Parliament for the funding of the MTO. However, even though not legally required to, the Trustee has provided annual reports to Parliament in recent years. This shows that the Trustee is open to reporting performance – one of our client service expectations. The annual reports mainly provide information relevant to the Trustee’s clients, such as the rate of return on the funds invested on their behalf. We discuss issues of operational land management reporting in the section on time recording in paragraphs 4.38-4.41 on page 67.
- 4.16 The State Services Commission, TPK, and the Treasury are jointly reviewing the Trustee’s role and functions. While this review has been in progress for more than 10 years, no clear decisions have been made, and, at present, no part of the accumulated \$40 million can be used for the Trustee’s normal operating costs.
- 4.17 Completing the review (something this Office considered necessary back in 2001³²) would reduce some of the uncertainties concerning the Trustee’s operations and funding, and would allow full attention to be given to client service. We discuss the review in detail in paragraphs 4.43-4.46 on pages 68-69.
- 4.18 The Trustee also carries out tasks for which fees cannot be recovered and which, consequently, no other provider is willing to carry out. These include the management of uneconomic blocks of land (see paragraphs 4.19-4.21 on pages 61-62), and services to the Māori Land Court (especially searches on behalf of clients of the Māori Land Court Unit to find out whether the Trustee holds rental income from their interests in Māori Land). While these tasks have been recognised in past reviews, the Trustee is not given dedicated funding to carry them out. Costs are recorded against those blocks of land that are economic in the sense that the owners have rental income from which to pay for services received.

31 Presently, revenue from fees does not cover the Trustee’s operating costs.

32 Report of the Controller and Auditor-General, *Māori Trustee – Governance and Accountability*, Central Government: Results of the 2000-01 Audits, parliamentary paper B.29 [01b], pages 89-103.

CLIENT SERVICE PERFORMANCE OF THE MĀORI TRUSTEE

Figure 6
Financial and Service Relationships of the Māori Trustee



Uneconomic Blocks of Land

- 4.19 Some of the land handled by the Trustee is uneconomic in the sense that it cannot support costs being applied to it (for example, administration costs such as fees for rent reviews, and activity-related costs such as surveying to create access to landlocked land).
- 4.20 The Trustee is under no obligation to manage any land, let alone uneconomic land. However, a significant proportion of the land that the Trustee administers earns little or no income and actually incurs costs for the Trustee. The Trustee is also given such land by the Māori Land Court to administer.³³

³³ While the Trustee is under no legal obligation to undertake the administration of this sort of land, he usually does as a matter of principle.



- 4.21 As no other trust service providers would administer these blocks of land (because they would lose money), only two other options are available for Māori Land owners:
- manage the block of land themselves; or
 - leave the block of land without any form of management.

Duties Imposed on the Trustee by the Māori Land Court

- 4.22 Decisions of the Māori Land Court can require the body administering a block of land to incur extra costs (such as extra notice of proceedings) before the Court is satisfied that an application should be granted. In that sense, the Trustee is no different to other organisations. However, we did note instances where the duties imposed by the Māori Land Court were quite demanding (for example, requiring further meetings of owners, and even specifying the methods by which owners were to be contacted). The demands placed on the Trustee varied between Māori Land Court registries.
- 4.23 The Māori Land Court has the ability to make such directions. However, these extra requirements are falling on an organisation whose funding has not been adjusted to cope with the resulting increase in workload.

The Trustee's Client Service Performance

- 4.24 Unlike clients of the Māori Land Court, clients of the Trustee are able to choose whether or not to use his services. Trustee clients, especially those with land that returns good rental income, can engage someone else to manage their land if they become dissatisfied with the Trustee's performance. Accordingly, the Trustee's ability to maintain a stable client base can be seen as a positive indicator of client service performance.
- 4.25 It is important for the Trustee to provide clients with clear and concise information about the Trustee's operations and the returns able to be given to them. The Trustee is able to do this because of having staff with a sound knowledge of the clients, their land, and their needs. This knowledge is a prerequisite to providing good client service.



CLIENT SERVICE PERFORMANCE OF THE MĀORI TRUSTEE

- 4.26 We were impressed by the way regional MTO staff were able to recall details relating to particular blocks of land under their administration. Staff members also attend meetings of owners that are often held outside business hours, and occasionally provide reports to the owners on the current status of the block of land. Staff consistently raised a concern with us that the present level of funding made it difficult to continue such work (which they thought was a valuable client service). Nevertheless, we saw that staff put in a lot of effort to identify possible avenues of development for their clients' land.
- 4.27 We found a number of examples where the Trustee is working on innovative solutions to increase returns to Māori Land owners. In Gisborne, for example, the Trustee is aiming to gain more bargaining power with corporate lessees by amalgamating the management of individual blocks of land into one large unit for lease. Such arrangements, while time-intensive to set up, can result in major benefits for owners.

How Could the Trustee Improve Client Service Performance?

- 4.28 Overall, the Trustee is providing clients with a good level of service. However, we identified four areas where the Trustee could improve service to clients:
- use of more qualitative land management performance measures – particularly in regard to rent collection and review;
 - providing Reports to Owners;
 - maintaining client account records; and
 - implementing a time-recording system.

Land Management Performance Measures – Rent Collection and Review

- 4.29 In the files that we reviewed, the amount of rent received generally matched that suggested by registered valuers. However, this does not occur for all of the land administered by the Trustee because the Trustee does not always have control over leasing arrangements. For example, owners can direct the Trustee to lease the land to someone who is offering to pay less rent but is associated with the owners in some way.³⁴

³⁴ The Trustee can act in several roles in relation to a block of land. He can be appointed:

- as agent by the Māori Land Court (this appointment is specific and is decided by an owners' meeting and set out in the Māori Land Court order. Any actions that are considered necessary that are outside the order require agreement at another meeting of owners);
- as agent by the Responsible Trustees, which means he does only what the Responsible Trustees direct and does not hold the land or have signing power;
- as the Custodian Trustee, where he looks after the day-to-day administration of the block of land under the written direction of the Responsible Trustees but does not have, for example, signing powers; or
- as in only one instance, as an Advisory Trustee.



4.30 There have been significant improvements in respect of rent reviews as a result of intense management. For example, the Trustee has concentrated on reducing the level of rent arrears, and the length of time taken to collect them. Figure 7 below illustrates how rent arrears in Rotorua, and in total, have reduced between 1994 and 2003.

*Figure 7
Reduction in Rental Arrears Since 1994 for Māori Land Rent
Collected by the Māori Trustee*

Date of Arrears	Number of rental arrears, and time taken to collect them	
	Rotorua Office	National Total
June 1994	106, with a value of \$414,063. Average collection time 151 days.	881, with a value of \$1,710,868. Average collection time 77 days.
June 2003	34, with a value of \$88,942. Average collection time 18 days.	187, with a value of \$455,823. Average collection time 17 days.

4.31 The Trustee measures completion of rent reviews, property inspections, and lease renewals in one performance target called “work on hand”. This measure sets a numerical target for the number of tasks that each regional office must complete in a month, and then reports on the number achieved. While this measure serves as a good indicator of workflow from the Trustee’s perspective, it would be appropriate to use more client-focused measures – such as timeliness and quality of the service provided to clients. For example, the Trustee could adopt a measure that looks at the percentage of lease renewals completed before the due date.



CLIENT SERVICE PERFORMANCE OF THE MĀORI TRUSTEE

Recommendation

We recommend that the Trustee –

12. Review performance measures to ensure that targets are more relevant to client service, particularly in regard to timeliness and quality of the service.

Providing Reports to Owners

- 4.32 During our file reviews we found that owners of some blocks of land received a Report to Owners from the Trustee. These short documents contained a brief description of the block of land and its background, valuation details, financial particulars (including lease arrangements and income), and details of ownership (including the number of unknown addresses for beneficiaries). These reports are a valuable method of informing Māori Land owners of the land's status, and of important issues such as the imminent end of a lease.
- 4.33 The Trustee charges standardised rates to cover the cost of staff time to produce these reports. Predominantly, reports are produced for blocks of land that are economically viable. Certain regional offices also have more contact with owners through meetings than other offices. We do not expect the Trustee to undertake the reports on all blocks of land, given that some will never earn enough to cover the cost of providing a report. However, these reports are a valuable client service tool, and are an example of the Trustee clearly communicating with clients.

Recommendations

We recommend that the Trustee –

13. Extend the provision of Reports to Owners.
14. Establish criteria to determine which clients should receive a Report to Owners, and whether or not a formal meeting is required (as opposed to simply mailing out the information), based on the costs and potential benefits to the client/s of receiving a report.
15. Set a performance target that reflects the number of clients who actually receive a Report to Owners when they meet the criteria.



Maintenance of Client Account Records

- 4.34 The Trustee distributes about \$5 million annually to clients through direct credit or cheque payments. The payments are made regularly throughout the year, with payments made only when the client account has reached a set minimum level. Client accounts are activated to enable payments once the client's identity has been verified. Further, all accounts above a threshold balance are checked at the time the payments are made.
- 4.35 Another important aspect of the Trustee's operations is maintaining an accurate and complete record of Māori Land owners and beneficiaries. This includes updating ownership records in line with Court orders (for example, amending records to take into account a succession application processed by the Māori Land Court) as well as keeping existing records as current as possible. The Trustee's performance in these two areas is currently under pressure, because of a backlog of both Court orders and correspondence.
- 4.36 The Trustee uses solely volume-based measures to assess performance in the client records area. For example, the Trustee sets a monthly processing milestone of 700 Court orders, and records performance against this target.
- 4.37 The Trustee should measure the timeliness and quality of the processing, as well as the volume. A quality measure could be introduced, along the lines of the percentage of orders completed within 10 days of receipt, or the accuracy of the processing. Such a measure will not resolve the backlog, but we recognise that the Trustee is investigating ways to do this. We consider that a quality measure would help the Trustee in terms of reporting, and would provide clients with useful information about the Trustee's performance.

Recommendations

We recommend that the Trustee –

16. Actively manage the backlog of Court orders, and devise a strategy to ensure reduction of the backlog.
17. Review Court order and correspondence processing performance measures to include timeliness and quality of processing, as well as volume.



Implementation of a Time-recording System

- 4.38 It is standard practice, where fees are charged for services provided to the public, that those fees are based on the time and resources that the service provider has used in providing the service. This has two benefits:
- the provider is fully aware of the cost of the service they provide to individual clients and, by aggregation, the total cost of services; and
 - the client has a clear understanding of what they are being charged for.
- 4.39 The Trustee does not operate any time-recording system that allocates staff time to individual clients as a matter of course. Nor does the Trustee invoice clients on a “time and cost” basis. Rather, owners of blocks of land earning rent are charged standardised rates for services (such as a Report to Owners) while owners of uneconomic blocks of land are not charged for many of the services they receive. This means that the Trustee does not:
- know the cost of the services provided to individual clients;
 - know the extent of cross-subsidisation, if any, occurring between owners of different blocks of land; and
 - have full access to useful management information.
- 4.40 The introduction of a time-recording system would solve these problems. In addition, a time-recording system that allows for more accurate charging for the time spent administering land will also better identify the time spent administering uneconomic blocks of land.
- 4.41 Moreover, among the issues that are being looked at by the government review of the Trustee is how the Trustee is funded and the level of funding that the Trustee should receive. The review would benefit from having explicit information about the Trustee’s cost structure and the extent of cross-subsidisation, if any, that exists between owners of different blocks of land. Such information would allow the Government to make explicit decisions about activities that it wants to fund.



Recommendation

We recommend that the Trustee –

18. Implement a time-recording system.

Areas of Risk That Could Affect the Trustee's Future Client Service Performance

- 4.42 We identified three areas of risk for the Trustee that could affect future client service performance:
- the ongoing government review of the Trustee's role and functions;
 - retention of institutional knowledge; and
 - training staff to meet changing needs of the Trustee's portfolio.

Government Review of the Trustee's Role and Functions

- 4.43 For more than 10 years, the Trustee has been the subject of a review by a team of officials from TPK, the State Services Commission, and the Treasury. Progress on this review has been very slow. This situation has not been helped by the turnover of officials from the agencies on the review team, which has led to re-litigation of points previously agreed. Simply put, there has never been any great impetus to complete the review.
- 4.44 The review team is considering a number of options for the accountability structure of the Trustee. The aim is to increase the transparency of the Trustee's operations and expenditure beyond that currently provided by the annual reports of TPK and the Trustee.
- 4.45 In addition, the review is looking at ways to reduce any potential conflicts of interest about the current structural arrangement whereby the Deputy Chief Executive of TPK is also the Trustee (having had this role conferred by the Chief Executive of TPK). Options have been sent to the Minister of Māori Affairs, but a Cabinet paper for final decision has not yet been prepared.



CLIENT SERVICE PERFORMANCE OF THE MĀORI TRUSTEE

- 4.46 When the review team has clear instructions on how the Trustee should be accountable, the team will be in a position to consider the question of funding. Issues to resolve include how (and at what level) the Crown should be funding the Trustee on an ongoing basis, including the degree to which it might wish to fund the administration of uneconomic blocks of land. If this is not completed in time to be made part of the 2004 Budget decisions, another year will pass with the ongoing funding position unresolved, and the Trustee's situation will remain uncertain.

Recommendation

We recommend that –

19. Once Te Puni Kōkiri has received guidance from the Minister of Māori Affairs, it complete the government review of the Trustee, in conjunction with officials from the Treasury and the State Services Commission, in a timely manner.

Retention of Institutional Knowledge

- 4.47 Many of the staff within the MTO have acquired core skills and knowledge over a period of many years. As at September 2003, the average length of service at the MTO was 9.2 years.
- 4.48 We witnessed circumstances where a high standard of service was provided because of the intimate knowledge that MTO staff have of the backgrounds, influences, and connections of each block of Māori Land in a given district.
- 4.49 Length of service also influences interaction of MTO staff with other agencies – especially when many of the Trustee's staff gained their knowledge of the Māori Land system by working within the former Department of Māori Affairs, and alongside some present-day staff of the Māori Land Court Unit.
- 4.50 While this is an advantage in conducting day-to-day Trustee business, it also generates capability risks for the future as the Trustee is such a small organisation. As time passes and these staff members leave the MTO, it may well affect the level of service available to clients and could mean the loss of the specialised knowledge associated with individual blocks of land.



Recommendation

We recommend that Te Puni Kōkiri –

20. Ensure that MTO capability is maintained through, for example, good retention and recruitment policies, and by ensuring that institutional knowledge is recorded before key staff members leave the organisation.

Training Staff to Meet the Demands of a Changing Trustee Portfolio

- 4.51 It is important that the skills and experience of MTO staff match the needs of the portfolio of assets that the Trustee holds. Planning by the Trustee needs to assess such demands (even on a regional basis) and identify whether training in business planning or finance, for example, would enhance the ability of MTO staff to meet the demands. As stated above, the MTO is in a good position to be able to do this as the current high level of staff knowledge and experience means that core-competency training is of little use.
- 4.52 For example, in a number of regions there is a growing demand for Trustee staff to help clients to access finance for improving land, or to provide some form of business planning/development advice. While detailed aspects of this advice can be outsourced or provided by other agencies, this is an area where the Trustee could provide training to staff to improve client service. This is particularly so if uneconomic blocks of land increase as a percentage of the future portfolio, requiring innovative ways to manage them successfully.

Recommendation

We recommend that the Trustee –

21. Consider training staff in ways that would help to improve client service, such as providing advice on business planning, land development options, and how to obtain finance for improving land.



Part Five

Communication and Co-ordination Between Agencies in the Māori Land Sector



COMMUNICATION AND CO-ORDINATION BETWEEN AGENCIES IN THE MĀORI LAND SECTOR

Introduction

- 5.1 The strength of the relationships between the various agencies with an interest in Māori Land issues can affect the quality of the service provided to Māori Land owners. We have focused on the interaction between the Māori Land Court Unit and the Trustee. However, throughout the course of our audit, we found that other agencies such as TPK and Land Information New Zealand (LINZ) also play an important role in the administration of Māori Land.
- 5.2 In this part we consider the:
- exchange of information between the Māori Land Court Unit and the Trustee; and
 - communication and co-ordination between the Māori Land Court Unit and the Trustee, and the various other agencies involved in Māori Land administration.

Exchange of Information Between the Māori Land Court Unit and the Trustee

- 5.3 Generally, a high level of interaction occurs between the Māori Land Court Unit and the Trustee in regard to client service. In many cases, the strength of this interaction is a result of informal networks between staff who previously worked with each other when both agencies were part of the former Department of Māori Affairs.
- 5.4 However, we found that the exchange of information (particularly of client addresses) between the two agencies is sporadic and informal, and usually depends on the informal staff networks. There is a risk that, as staff leave each organisation, these networks will disappear. We consider these staff networks to be invaluable client service links.
- 5.5 Although the Māori Land Court Unit and the Trustee are now serviced by separate government departments, they are part of a wider Māori Land sector. In our view, they need to co-operate more in the future to improve information exchange, particularly to resolve the incomplete transfer of Court orders, and to share Māori Land owner addresses. As the Trustee's clients are a subset of the Māori Land Court Unit's clients, we consider that there could be significant client service benefits if the information systems of both organisations were able to easily interface with each other.





- 5.6 As the Trustee administers only about 7% of all Māori Land, any information provision initiatives by the Māori Land Court Unit need to take into account any administrators of the remaining 93% of Māori Land.

Incomplete Transfer of Court Orders

- 5.7 We noted in paragraph 4.35 on page 66 that the Trustee was having difficulty processing Court orders received from the Māori Land Court. At present, Court orders are sent to the Trustee sporadically and in hard copy only, and there is no procedure in place to ensure that the Trustee receives every Court order relating to the blocks of land that the Trustee administers.
- 5.8 Processing Court orders is time-consuming because of the requirement to calculate the division of shares in a block of land for those owners listed in the order. Orders often involve numerous people receiving interests in a number of blocks of land – requiring the Trustee’s staff to update a large number of records. This task would be much simpler if the information could be transferred electronically, allowing the Trustee to establish automatic updating of electronic records.
- 5.9 Difficulties also arise when records relating to the same person or block of land are listed under different names within the two organisations’ systems. There needs to be some standardisation between the two systems to reduce possible confusion and mistakes.

Recommendations

We recommend that the Māori Land Court Unit and the Trustee –

22. Jointly investigate the introduction of electronic transfer of Court orders.
23. Jointly investigate the development of a system to allow for the transfer of more generic information, ensuring that such transfers would take account of the inconsistencies between the records held by each organisation.



Locating Māori Land Owners

- 5.10 The Trustee has about 111,000 client accounts, of which only 37% have valid addresses or account details. This results in a significant amount of money from leased lands being accumulated every year by the Trustee because the beneficiaries cannot be found. As at 31 March 2003, this amount stood at \$8,688,388, a figure that has increased at an average of \$701,650 (or about 12%) annually over the last four years.
- 5.11 A part-time project officer has been assigned to reduce the amount of unclaimed money by tracing those with the largest amounts outstanding.³⁵ This has enabled the Trustee to pay out around \$300,000 of previously unclaimed money each year. However, the issue will only be substantially resolved if:
- significant further resources are assigned to finding contact details of those with unclaimed money; and/or
 - interaction with other agencies is increased to obtain address information.
- 5.12 One of the main challenges for agencies within the Māori Land system is keeping track of Māori Land owners who are scattered around New Zealand and overseas. If owners cannot be found, the Māori Land Court Unit and the Trustee are not able to fully perform their functions. For example, the Māori Land Court regularly calls on the Trustee to distribute any funds it holds to owners of a block of land, even though the Trustee has only 37% of the valid addresses/bank account details that are needed.
- 5.13 There is no co-ordinated approach to obtaining Māori Land owner addresses. The Māori Land Court Unit does not view collecting and updating addresses as its responsibility, and the MTO collects addresses only for its own records. Private trusts, including Māori Incorporations, also compile their own databases, separate from those of the Māori Land Court Unit and the Trustee.

³⁵ The MTO also regularly produces a list of clients with unclaimed money that is available for viewing at its offices, as well as those of TPK, the Māori Land Court, various Runanga, Trust Boards, and local authorities.



Collection of Information from the Births, Deaths and Marriages Office

- 5.14 In 2003, the Māori Land Court Unit tested an initiative where information was supplied from the Births, Deaths and Marriages Office of the Department of Internal Affairs to assist with maintenance of the Unit's records. Through this initiative, the Unit receives information monthly on Māori who have died. This information is then matched with data held in the Unit's computer system so that staff can identify those clients who are deceased. From this information, the staff can then contact the person's descendants to inform them of the process to succeed to interests in Māori Land. This is a positive step by the Unit to improve its records and it also holds potential benefits for the Trustee and other parties in the Māori Land sector.

Other Ways to Collect Information

- 5.15 There are two further areas that could be explored for the collection of address information:
- the Treaty settlement process; and
 - electoral rolls.
- 5.16 Part of the Treaty settlement process involves claimants setting up a register for all those who belong to a given *iwi*, because only those who belong to the *iwi* are allowed to vote on the ratification and benefit from the settlement. For example, Ngāi Tahu currently has a tribal register recording about 31,000 members. Such registers would provide valuable information to the Māori Land Court Unit, if access was granted. The same goes for information provided through the census process, though issues of privacy could limit access to this information.
- 5.17 Information provided through the electoral rolls is freely available in hard copy, though it would be a tedious exercise to go through it manually to find any useful information. Some of the Trustee's regional offices have already undertaken this lengthy task, with limited success, and their work was complicated by the fact that many owners have multiple names. If the Māori Land Court Unit and the Trustee were able to negotiate electronic access to the rolls, their task would be made much easier.



Recommendations

We recommend that –

24. The Trustee consider further ways to find contact details for unlocated beneficiaries.
25. The Māori Land Court Unit and the Trustee negotiate joint electronic access to the Electoral Roll.

The Benefits of a Centralised Database

- 5.18 A centralised database of Māori Land owner addresses would benefit all the parties in the Māori Land system. We believe that the Māori Land Court Unit is best placed to manage a centralised database because it deals with all Māori Land owners who want to administer their land.³⁶
- 5.19 However, the Trustee would also have a role because the MTO holds information that the Māori Land Court Unit does not, and the Trustee stands to benefit from any improvement in the accuracy of address information. Any centralised database should be made available to all trustee service providers in some way, to ensure that all trustees have access to the same information.
- 5.20 We recognise that the Māori Land Court Unit and the Trustee will face challenges in maintaining the database, particularly because of the difficulty in tracing Māori Land owners. Accordingly, the onus should be on individual Māori Land owners to assist the Māori Land Court Unit and the Trustee by advising them of any change of address. While there is no quick remedy for this situation, which is a direct result of the complexities of the Māori Land system, we see overcoming this issue as a key step in increasing the effectiveness of the client service of the Māori Land Court Unit and the Trustee (along with other trustees).

³⁶ The Māori Land Court Unit should collect as much contact information as possible from its clients when they attend the Court. Another collection point could be when the Advisory Officers meet clients in their community.



Recommendations

We recommend that the Māori Land Court Unit and the Trustee –

26. Co-ordinate their approach to the collection and maintenance of client addresses.
27. Jointly investigate the feasibility of establishing a centralised database of Māori Land owner addresses, which would benefit all parties in the Māori Land system.

Communication and Co-ordination Between the Māori Land Court Unit and the Trustee, and the Various Other Agencies in the Māori Land Sector

- 5.21 To examine how well the Māori Land Court Unit and the Trustee communicate and co-ordinate with other agencies in the Māori Land sector, we considered a range of initiatives that involved various sector agencies – including:
- the Capacity Building programme;
 - the Māori Land Liaison Committee;
 - the Heartland Services programme;
 - the establishment of Māori Land information databases; and
 - trustee training.
- 5.22 While we found instances of positive communication and co-ordination, we have identified areas for improvement. In particular, to overcome a lack of co-ordination in some areas, we discuss the establishment of an inter-agency committee to co-ordinate the activities of agencies within the Māori Land sector.

Capacity Building Programme

- 5.23 The Māori Land Court Unit and the Trustee are involved in the Regional Inter-sectoral Forum, which meets every two months to consider applications made under the Capacity Building programme. Under this scheme, all government services have given an undertaking to improve outcomes for Māori. Applications for Capacity Building funding are received by TPK, which then co-ordinates action with agencies who can assist with processing the application.



COMMUNICATION AND CO-ORDINATION BETWEEN AGENCIES IN THE MĀORI LAND SECTOR

- 5.24 We noted regional differences in relationships between the Māori Land Court Unit, the Trustee, and other organisations with an interest in Māori Land ownership. For example, the relationship between the Māori Land Court registry and TPK in Hastings was particularly strong because of the regular contact between the organisations. This contact gave registry staff a good understanding of the Capacity Building programme, which could then be passed on to clients if they asked.
- 5.25 However, the situation in other registries appears less co-ordinated, with irregular contact between agencies. This has led to a lack of understanding by staff in some of the registries and MTOs of how to access Capacity Building funding for the benefit of their clients.

Māori Land Liaison Committee

- 5.26 Another example of inter-agency co-ordination is the Māori Land Liaison Committee, which involves representatives from the Māori Land Court Unit and LINZ. The committee meets every 2-3 months to work on projects of joint interest. One such project is the development of a computer-generated diagram that would replace full surveys of land by providing sufficient information to Judges for partition applications. This project will reduce the time and expense of partition applications for clients, and will satisfy LINZ requirements for such proceedings.

Heartland Services Programme

- 5.27 While the Heartland Services programme includes a wider range of government agencies than those involved in the Māori Land sector, it facilitates access for Māori Land owners to the Māori Land Court Unit's (and occasionally the Trustee's) services. Heartland Services is made up of a number of government agencies whose representatives travel to towns located away from the main centres at specified days of the week/month (depending on the location) to hold clinics where people can access government services, such as those offered by:
- the Accident Compensation Corporation;
 - the Inland Revenue Department;
 - Housing New Zealand; and
 - Work and Income.





- 5.28 We visited a Heartland Services clinic³⁷ to see how it worked, especially given the Māori Land Court Unit's presence, and found that it was an ideal opportunity for the Unit's clients to obtain information. Even though we are unsure of the extent of the programme's reach to Māori Land owners, we think that the Heartland Services programme is a positive example of government agencies working together to try to ensure that their clients in more remote areas are adequately serviced. We would like to see this level of co-ordination more evident among the parties in the Māori Land sector, because co-ordination is lacking in some areas.

Establishment of Māori Land Information Databases

- 5.29 There are a number of examples of a lack of co-ordination between the agencies in the Māori Land sector. One example is the Geographical Information System (GIS) developed by TPK. This system shows a vast amount of information in relation to Māori Land, such as the location of various blocks of land, population, and the location of forests, lakes, and geothermal areas.
- 5.30 While the GIS was initially aimed at Māori Land owners and the Māori Land Court Unit, the Unit is unable to use it because of incompatibility issues between the GIS and the Unit's computer system. Consultants employed to advise the Unit on the cost of overcoming the incompatibility issues have advised that the system is not user-friendly, and that there would be a high cost involved to make the systems compatible. Accordingly, the consultants recommended that the Unit should purchase a new product so that it can specify the features it wants.
- 5.31 There is an abundance of databases containing information on blocks of Māori Land that have been created by a number of government agencies, which have looked for internal organisational benefits ahead of wider cross-agency benefits. We know of at least four databases created by TPK, LINZ, the Ministry of Agriculture and Forestry, and the Community Employment Group (within the Department of Labour).³⁸ Some of this duplication of effort is the result of a lack of co-ordination between the agencies responsible for the databases.

37 The Heartland Services programme also includes "Outreach", which involves a number of agencies holding joint clinics in places (such as Featherston) that are closer to the main centres than the programme's service centres.

38 However, these databases were never designed to solve the address problems mentioned in paragraph 5.10 on page 75.



Trustee Training

- 5.32 We are aware that a number of organisations offer training for trustees of Māori Land. For example, the Federation of Māori Authorities has run such training, as well as BizInfo in conjunction with the Western Institute of Technology at Taranaki.
- 5.33 The number and range of organisations providing training for such a technical area means that it is difficult to get a measure of the standard or consistency of the training. The expertise of the presenters is also unknown, which means that trustees could receive incorrect information. We were told of one instance where the presenter of a seminar rang the Operations Manager of a Māori Land Court registry to get some basic information on the various trust structures available to Māori Land owners.
- 5.34 Once the Māori Land Court sets up a trust, it has no further involvement with that trust until issues are raised about the performance of the trustees. Therefore, there is scope for training to ensure that trustees are aware of their rights and obligations when a trust is formed. Co-ordination of providers of such training would ensure consistency and accuracy, but this is currently not a role of the Māori Land Court Unit.
- 5.35 The Māori Land Court Unit already provides training/seminars through some of the more experienced Advisory Officers who attend *hui* to talk about the Māori Land Court process and the different trust structures available to Māori Land owners. We understand that Māori Land Court Judges have also conducted trustee training sessions. However, there remains a concern about the potential for misinformation to be circulated by private trustee training providers about Māori Land Court processes and the options available to owners.

Establishment of an Inter-agency Committee

- 5.36 In our view, there is a lack of communication between parties in the Māori Land sector. While we found instances of inter-agency co-ordination on specific projects, some (like those noted above) have been developed without consultation with other organisations that have an interest in the Māori Land system. We therefore consider that an inter-agency committee is needed to co-ordinate the development of such projects, to ensure maximum value from publicly funded initiatives involving Māori Land, and to avoid any duplication of effort. Such a committee could also prioritise projects, and assign them to the agencies best able to carry them out.



COMMUNICATION AND CO-ORDINATION BETWEEN AGENCIES IN THE MĀORI LAND SECTOR



5.37 The committee would provide a forum in which agencies could present proposals and receive feedback from other agencies, to ensure that all interested parties are aware of the proposal's existence, and that there is a consistent purpose and direction. It would also serve as a forum for outside interests to table any proposals for the use of Māori Land. Two examples where this co-ordination committee could help are:

- the development of Māori Land information databases; and
- trustee training.

Recommendation

We recommend that the Ministry –

28. Establish and manage an inter-agency committee to co-ordinate projects by government agencies, as well as proposals for the use of Māori Land, to ensure maximum effectiveness and to avoid duplication of effort in the Māori Land sector.



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Client Service Performance
of the Māori Land Court Unit
and the Māori Trustee**

Controller and Auditor-General

Tumuaki o te Mana Arotake

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