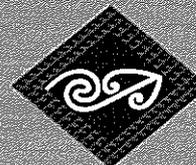


VF 1003

Chapman Tripp Sheffield Young
Wellington Library



Te Puni Kōkiri
Ministry of Māori
Development

Reform of the Māori Trust Boards Act 1955

A Discussion Paper

REFORM OF
THE MĀORI TRUST BOARDS
ACT 1955

A DISCUSSION PAPER

© Ministry of Māori Development

ISBN 0-478-09110-9

First published in 1996 by the Ministry of Māori Development,
PO Box 3943, Wellington

While every effort has been taken in the preparation of this publication, neither the Ministry of Māori Development nor the individual writers accept any responsibility or liability, whether in contract or in tort (including negligence) or otherwise, for anything done or not done by any person in reliance, whether wholly or partially, on any of the contents of this publication. Readers should also note that the materials in this publication are the personal views of the writers and do not necessarily reflect the official policy or the views of the Ministry of Māori Development.

Contents

<i>Foreword</i>		4
<i>One</i>	Consultation	5
	Release of discussion document	6
	Pre-consultation workshops	7
	Regional consultation hui	9
	Making submissions	10
<i>Two</i>	Introduction – Creation of the Māori Trust Boards	11
	Current context	12
<i>Three</i>	Objectives for reform of the Māori Trust Boards Act	13
	Changes in the business of the Boards	13
	Current accountability	14
<i>Four</i>	Possible options for reform of the Act	15
	Option A - Amendments to the current Act	15
	Option B - Replacing the Act with legislation as proposed by the Mason Committee	16
	Option C - Combinations of options A and B or other alternatives	21
	Māori Trust Board Contacts	22
<i>Five</i>	Glossary of terms	24

F O R E W O R D

In 1955, the proposed Māori Trust Board Bill was criticised in Parliament on the grounds that it was setting up a relationship of paternalism. The Act would make the Boards, receiving and administering annuities paid in settlement for past grievances, responsible to the Minister of Māori Affairs in order to protect the interests of beneficiaries.

The view that this relationship is inappropriate has, in recent times, gained significant impetus with the wide range of activities now being undertaken by the Boards, including commercial asset development, service provision and Treaty negotiations.

As Minister of Māori Affairs, I am very aware of the need for reform as soon as possible. I also recognise that there will be a range of views on how this might be achieved. This present consultation process has been designed to gather views on three options in particular.

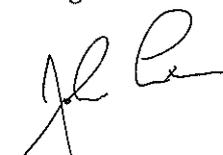
The first option contemplates amendments to the Act. The second involves repeal and replacement of the Act with legislation recommended by the Mason Committee, which carried out an independent review of Māori Trust Board operations in 1994. The third option outlines possible alternatives, implying that consideration of options for reform should not be limited to those alternatives developed by Government.

Recent amendments to the Māori Trust Board Act, which have effectively removed the Minister of Māori Affairs from the day-to-day business of the Boards, mark the beginning of a wider process of reform which will by its end, remove ministerial involvement altogether.

The process must be carefully managed to ensure that it is responsive to both Boards and beneficiaries, and provides for the activities now being undertaken by those iwi who have chosen to establish Māori Trust Boards under the Act.

At this point the Government does not have a preferred option for legislative reform, but hopes to formulate the final legislative framework based on what is generally supported or proposed by Boards and beneficiaries who respond in this process of consultation.

I take the opportunity now to thank you in anticipation that your responses will contribute significantly to Government's understanding of how Māori Trust Board reform might be achieved.



Hon John Luxton
Minister of Māori Affairs

One

CONSULTATION

In 1994 a committee was commissioned by the then Minister of Maori Affairs, the Hon Doug Kidd, to conduct meetings with Māori Trust Boards and other interested parties with the following terms of reference:¹

- A. Taking the position that the Maori Trust Boards Act 1955 has as its primary focus the relationship between the Minister of Maori Affairs and a Trust Board, provide advice on the following matters:
 - (i) if the accountability to the Minister of Maori Affairs was removed, what would be the appropriate accountability of the Board;
 - (ii) what recourse would be available by those to whom a fiduciary duty is owed by the Board;
 - (iii) What legislative framework would be appropriate for the fiduciary relationship envisaged in A(i) above.
- B. What would be the nature of the Boards' reporting responsibilities and would this be subject to audit.
- C. How would members of the Board be determined.
- D. Should the Board have authorisation to undertake business or an aspect of their business through sub-entities, eg companies and trusts; and
 - (i) what should be accounting and reporting of these entities;
 - (ii) what would be the extent of their delegated authority.
- E. Re-examine the constitutional framework of the Board under the assumption of D(i) above and in that context define its operations and constitutional objectives.
- F. Advise on any other significantly relevant matter which the team deems necessary for the purposes of the review.
- G. A written report on the above matters will be furnished by the Review Team to the Chief Executive of Te Puni Kōkiri for the consideration of the Minister of Māori Affairs no later than 2 May 1994.
- H. The Review Team will comprise:
 - Judge Ken Mason (Leader)
 - Mrs June Jackson
 - Mr Tama Nikora
 - Mr Sid Ashton

¹ Refer to pp 1-3 Mason Committee Report, August 1994. Copies of the report may be obtained from regional offices of the Ministry of Māori Development.

Based on the Committee's discussions with and submissions received from the Boards, the Mason Committee made recommendations on what it considered would be the most appropriate legislative framework to replace the Act. The Minister subsequently requested and received comment on the Mason Committee report from the Boards. Although, in general, the Boards supported the Mason Committee's assertions that the Act should be reformed, it was not obvious from the comments received whether the Boards rejected or endorsed the Mason Committee recommendations.

Government has considered the Mason Committee recommendations and formed three preliminary options for reform, for consideration by the Boards and beneficiaries. This discussion document has been designed to explain these options and stimulate thought, so that Boards and beneficiaries might indicate which *type* of option is generally more acceptable than another. For example, repeal and replacement of the Act with totally new legislation might be preferred over amendment to the Act.

The Government does not have a preferred option and is still considering wider issues of reform, including how Māori organisations in general might establish durable and flexible legal structures.

A separate process has also been established which will examine and seek comment from Māori on these issues. Preliminary questions being considered include, among other things:

- the appropriateness of various organisational structures being utilised by Māori to carry out their activities;
- Government's requirements of Māori organisations for Treaty settlement, service provision and other purposes; and
- the ability of Māori organisations to access debt and equity finance for assets development purposes.

Release of discussion document

The following timeline outlines the planned programme of consultation that the Ministry of Māori Development will facilitate between June and September 1996. The consultation strategy is based on a staged approach comprising information dissemination, pre-consultation workshops, and regional hui:

Discussion document released	End of June 1996
Pre-consultation workshops to explain the main elements of the discussion document and options	1 July – 19 July 1996 Over 4 weeks in all Ministry of Māori Development regional areas
13 regional hui	22 July – 31 August 1996 Over 3 weeks in all Ministry of Māori Development regional areas
Receive submissions	25 June – 16 September 1996 At any office of the Ministry of Māori Development
Last day for submissions	16 September 1996

Pre-consultation workshops

A number of pre-consultation workshops will be held in various regions. For information on exact dates, times and venues of workshops, contact the appropriate office of the Ministry of Māori Development listed in the below table:

Region	Ministry of Māori Development Regional Contacts
Christchurch	Te Pura Parata, Regional Director Te Waipounamu House, 127 Armagh Street PD Box 13-546 Christchurch Tel: (03) 379 5680 Fax: (03) 365 3641
Wellington	Harry Eruera, Regional Director Massey House 126-132 Lambton Quay PO Box 3943 Wellington Tel: (04) 494 7000 Fax: (04) 494 7020
Whanganui	Te Tiwha Puketapu, Regional Director Te Taura Whiri Building, 357 Victoria Avenue PO Box 436 Whanganui Tel: (06) 348 1400 Fax: (06) 345 2095
Taranaki	Mahara Okeroa, Regional Director Old Guardsman Building, 250 Devon Street East PO Box 744 New Plymouth Tel: (06) 759 5450 Fax: (06) 759 4601
Gisborne	Mere Pohatu, Regional Director Nga Wai e Rua, Lowe Street PO Box 140 Gisborne Tel: (06) 868 0208 Fax: (06) 868 0217
Hastings	Peter MacGregor, Regional Director Fruit Federation Building, 405 North King Street PD Box 1440 Hastings Tel: (06) 878 0750 Fax: (06) 878 0756

Hamilton	Maehe Maniapoto, Regional Director Level 4, Deka Building, Garden Place Private Bag 3020 Hamilton Tel: (07) 834 7100 Fax: (07) 839 2579
Blenheim	Jim Elkington, Regional Director Aorere Building, 54 Scott Street PD Box 729 Blenheim Tel: (03) 577 2350 Fax: (03) 578 4687
Tauranga	Mita Ririnui, Regional Director Level 7, Harrington House Cnr of Harrington and Willow Streets PO Box 69 Tauranga Tel: (07) 577 6254 Fax: (07) 577 6155
Rotorua	María Tini, Regional Director Ngāti Whakaue Building, 40-46 Hinemoa Street Private Bag 3017 Rotorua Tel: (07) 349 7810 Fax: (07) 349 0950
Whakatane	Kay Withers, Regional Director Louvain House, 4-10 Louvain Street PO Box 26 Whakatane Tel: (07) 307 1057 Fax: (07) 307 1033
Auckland	Pauline Kingi, Regional Director 114-116 Ponsonby Road Private Bag 92010 Auckland Tel: (09) 376 7650 Fax: (09) 360 1656
Whangarei	Paul White, Regional Director Tai Tokerau Trust Board Building, 3-5 Hunt Street Private Bag 9004 Whangarei Tel: (09) 430 3731 Fax: (09) 438 9088

These workshops will be facilitated by the Ministry of Māori Development regional staff and are designed to:

- explain the options government has been considering, described later in this paper;
- provide appropriate background information relevant to Māori Trust Board reform;
- stimulate discussion on issues which may form the basis of submissions made by individuals or groups;
- note feedback from workshop participants and contribute to the information gathering process; and
- receive any formal submissions that participants may wish to table.

It is hoped that these workshops will provide a forum for Board members and beneficiaries to formulate ideas and clarify issues for their submissions.

Regional consultation hui

Thirteen regional consultation hui will begin immediately after the four weeks of workshop programme. The hui will be held in the various Ministry of Māori Development regions as indicated below:

Area	Date	Venue	Trust Boards in Region
Whangarei	31 July 1996	Parawhenua Marae SH1 Te Ahuahu, Ohaeawai Tai Tokerau	<ul style="list-style-type: none"> • Tai Tokerau Māori Trust Board • Aupouri Māori Trust Board • Te Rūnanga o Ngāti Whātua
Auckland	24 August 1996	Orakei Marae 59b Kitemoana St Orakei, Auckland	<ul style="list-style-type: none"> • Ngāti Whātua o Orākei Māori Trust Board
Hamilton	8 August 1996	Wings Events Centre Te Rapa, SH 1 Hamilton	<ul style="list-style-type: none"> • Tainui Māori Trust Board • Hauraki Māori Trust Board • Maniapoto Māori Trust Board
Tauranga	24 July 1996	Hairini Marae Tamanika St Hairini Tauranga	<ul style="list-style-type: none"> • Tauranga Moana Māori Trust Board
Rotorua	22 July 1996	Te Pakira Marae Whakarewarewa Rotorua	<ul style="list-style-type: none"> • Te Arawa Māori Trust Board • Tūwharetoa Māori Trust Board
Whakatane	23 July 1996	Kokohinau Marae Te Teko-Edgecumbe Rd Te Teko	<ul style="list-style-type: none"> • Tūhoe Waikaremoana Māori Trust Board • Te Rūnanga o Ngāti Awa Māori Trust Board • Whakatōhea Māori Trust Board

Gisborne	7 August 1996	Te Poho o Rawiri Marae Titirangi Drive Gisborne	<ul style="list-style-type: none"> • Te Rūnanga o Ngāti Porou • Wairoa Waikaremoana Māori Trust Board
Hastings	3 August 1996	Rakautatahi Marae Takapau	<ul style="list-style-type: none"> • Aōrangī Māori Trust Board
Wellington	26 July 1996	Waiwhetu Marae Puketapu Grove Waiwhetu Lower Hutt	<ul style="list-style-type: none"> • No resident Māori Trust Board
Whanganui	31 August 1996	Ngāti Ruaka Marae River Road Ranana Whanganui	<ul style="list-style-type: none"> • Whanganui River Māori Trust Board
Taranaki	12 August 1996	Owae Marae Waitara	<ul style="list-style-type: none"> • Taranaki Māori Trust Board
Christchurch	2 August 1996	Rehua Marae Springfield Rd Christchurch	<ul style="list-style-type: none"> • Ngāi Tahu Māori Trust Board
Blenheim	1 August 1996	Whakatu Marae 99 Atawhai Drive Nelson	<ul style="list-style-type: none"> • No resident Māori Trust Board

Although the workshops and regional hui are to be held in Ministry of Maori Development areas, beneficiaries of any Board can attend any workshop or hui in the region which is most convenient.

Making submissions

Submissions can be made from the time this paper is released until three weeks after the final consultation hui. The entire process of consultation on this discussion paper will take approximately three months. Submissions can be sent to any office of the Ministry of Māori Development, for which addresses and other contacts are provided on pages seven and eight of this paper. Additional copies of this paper and the Mason Committee Report may also be obtained from Ministry of Māori Development offices.

I NTRODUCTION - CREATION OF THE MĀORI TRUST BOARDS

Between 1922 and 1953, 10 Māori Trust Boards were established under various laws. All 10 were set up to administer compensation 'in settlement' of grievances by Māori against the Crown. The Māori Trust Boards Act 1955 was later enacted to make better provision for the administration of these Boards. There are now 19 Māori Trust Boards within the meaning of the Māori Trust Boards Act. The following 13 Trust Boards were created between 1922 and 1981 for the purpose of receiving compensation monies in settlement of tribal grievances against the Crown:

- Aōrangi Māori Trust Board;
- Arawa Māori Trust Board;
- Aupouri Māori Trust Board;
- Ngāi Tahu Māori Trust Board;
- Ngāti Whātua o Orākei Māori Trust Board;
- Tainui Māori Trust Board;
- Tai Tokerau Māori Trust Board;
- Taranaki Māori Trust Board;
- Tauranga Moana Māori Trust Board;
- Tūhoe-Waikaremoana Māori Trust Board;
- Tūwharetoa Māori Trust Board;
- Wairoa-Waikaremoana Māori Trust Board; and
- Whakatōhea Māori Trust Board.

The Mason Committee noted that the Māori Trust Board mechanism was adopted by the Crown, not because it was convenient for Māori, but because it was considered impractical, impossible or undesirable for such funds to be paid directly to individuals. In simple terms, the Crown opted to pay compensation in the form of annuities to the tribal estate, as distinct from individual beneficiaries, to avoid potential problems resulting from the fragmentation of ownership.

Six more Boards have been created since 1981:

- Te Rūnanga o Ngāti Porou;
- Te Rūnanga o Ngāti Awa;
- Hauraki Māori Trust Board;
- Maniapoto Māori Trust Board;

- Whanganui River Māori Trust Board; and
- Te Rūnanga o Ngāti Whātua.

The tribes concerned chose to establish these Boards under the Act to secure Government recognition in order to take up service contracts, or to secure a mandate in order to pursue Treaty of Waitangi claims. Some of these Boards give other reasons.² For example, Te Rūnanga o Ngāti Whātua, established under the Act in 1988, has been described by one of its commentators as having deliberately been chosen on the premise that the mana of the iwi representative body should be enshrined at the highest level (a special Act of Parliament), rather than via a charitable trust or incorporated society.

Although there are other forms of Māori authorities and iwi organisations, most tribal authorities exist as Boards under the Māori Trust Boards Act 1955.

Current context

In the past few years, Government has made a number of attempts to grapple with the issues of tribal restructuring and iwi identification. The development and enactment of the Rūnanga Iwi Act 1990 was an attempt to address a number of issues, particularly that of legal identity. The Rūnanga Iwi Act was repealed with a change of government shortly after its enactment.

Efforts made in the areas of tribal restructuring and iwi identification have been in recognition of the need to provide more appropriate structures for the better management of assets and governance of iwi.

It should be noted that most iwi operate with a very modest asset base, their wealth of communally-held property, particularly land, having been eroded by various acts or omissions of government since 1840.

The Government has however taken significant steps in the resolution of Treaty of Waitangi grievances, for example the Sealords settlement and the recent historical settlement of Waikato's raupatu grievance.

Reforms over the last decade have seen the Crown disengage from its role as primary service provider. In many instances the Crown has taken one step back from its position as the entity to which providers are primarily accountable (the health sector reforms are an example of this). The direct accountability of the Boards to the Crown is one of the last existing relationships of this nature. It has been recognised by successive Ministers of Māori Affairs, the Boards and their beneficiaries, that this situation is in need of change. This is becoming particularly urgent as the settlement process progresses.

For both the Crown and iwi, it has become essential that the body which receives assets in settlement of a claim must be:

- properly constituted;
- represent a clearly identified Māori group or groups; and
- have the mandate of those whom it purports to represent.

Generally, the submissions made to the Mason Committee noted that the present Trust Board structure is outdated and does not serve the interests of beneficiaries. It is within this context that a review of the Māori Trust Boards Act 1955 has become necessary.

² Refer to pp 33-36 of the Mason Committee Report.

OBJECTIVES FOR REFORM OF THE MĀORI TRUST BOARDS ACT

The main objectives of reform as determined by Government are, in order of priority:

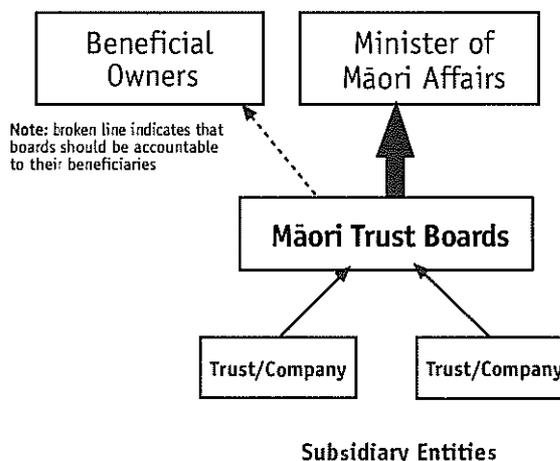
1. To create a legislative framework which allows existing Trust Boards to carry out their present functions (political, social and commercial) effectively with accountability to their beneficiaries rather than to the Minister of Māori Affairs; and
2. To provide a legislative framework which might be used to establish structures to govern and manage tribal activities (including commercial developmental activities) and to facilitate proper accountability of the resulting entities to beneficiaries of the settlement of Treaty claims.

Changes in the business of the Boards

In the past few years, the Boards have gone through major changes in the nature of their core business and the size of their turnover and asset ownership. Boards are now also being called on to perform a wider range of functions, from activities as diverse as providing educational grants for beneficiaries, to negotiating the settlement of Treaty claims with the Crown, through to managing complex commercial businesses.

The Māori Trust Boards Act established the Boards to manage tribal assets for the general benefit of their beneficiaries. The Boards are able to provide money for the benefit or advancement of the beneficiaries through the promotion of health, social and economic welfare, and education and vocational training.³ They do this by providing direct funding, subsidies, grants, or loans.

Some iwi have adopted the Māori Trust Board structure in preference to company, charitable trust or incorporated society structures. A number of these Boards have also created separate trusts or companies to manage particular aspects of their operations. This is due largely to the increased complexity of their activities. The diagram at right depicts the typical accountability relationship where subsidiary entities exist.



Any entities created under a Board are indirectly accountable to the Minister. This means that the wider beneficiary group (beneficiaries who are not Board members)

³ As provided for by section 24 of the Māori Trust Board Act 1955.

does not often have the opportunity to participate directly in the management of the assets they own.

Boards are involved in a broad range of activities, most boards having several core businesses. Education or training programmes are among the most common, being undertaken by about half of the 19 Boards. Involvement in the fishing industry is the next most common, with seven Boards active in the industry. Property investment, farming, tourism, business loan portfolios and employment schemes are also favoured activities. Some Boards have invested in other areas such as the hospitality industry, housing construction, meat processing, broadcasting, orcharding, community welfare, and property administration.

The Boards are characterised by the diversity in the range and scope of their activities, driven principally by objectives to create cultural, social and economic benefits for beneficiaries.

The most significant changes in the focus of the businesses undertaken by Boards have occurred in recent years. These changes are, in most cases, a result of the changes in the administration of the Māori Access Scheme (Maccess) by the government, the entry of the Boards into the fishing industry, and the vesting of Mana Enterprises loan portfolios in the Boards.

Current accountability

Boards are required to keep full and accurate accounts of all receipts and payments. Boards' accounts may be inspected, and copies taken free of charge by any beneficiary, member or officer of the Board, or any person authorised by the Minister of Māori Affairs.

Boards are required to prepare yearly statements of accounts setting out their financial position and operations during that year. These must be audited by the Audit Office and sent to the Minister who forwards them, with his comments, to the Boards. Boards are also required to furnish to the Minister for his approval, yearly statements of estimated receipts and proposed payments or budgets.

In the past, few Boards have kept up to date with their statutory reporting requirements. If financial reports are to be of any use for planning and communicating performance to the beneficiaries to whom the Boards should be accountable, it is important that Boards produce this information in a timely manner. For a number of reasons, this is not currently occurring. Obviously, the timeliness and quality of the reporting becomes increasingly important as the assets and responsibilities of Boards grow and become more diverse.

Possible Options FOR REFORM OF THE ACT

Government has considered three preliminary options for legislative reform. They are:

- A. To amend the Act ;
- B. To repeal and replace the Act with new legislation as recommended by the Mason Committee;
- C. Combinations of A and B, or other alternatives as may be determined.

All three options would achieve the first of Government's objectives, that is, to change the accountability of Boards from the Minister of Māori Affairs to their beneficiaries.

Options B and C, however, have the potential to achieve more effectively the second of Government's objectives, that is,

- to provide a legislative framework to establish structures to govern and manage tribal activities (including commercial developmental activities); and
- to facilitate proper accountability of the resulting entities to beneficiaries of the settlement of Treaty claims.

It is hoped that this present consultation will indicate to Government the view held by beneficiaries and Boards on the role Boards should take, if any, in representing Treaty claimant groups.

It is hoped that the options described below will provide food for thought as to whether the Boards should be replaced, or their accountabilities to beneficiaries more clearly prescribed by the legislation.

Whatever legislative framework replaces the Māori Trust Boards Act, it must facilitate the transfer of the rights, responsibilities, assets and liabilities of the Boards to entities which are representative of the existing beneficiary groups. It must therefore be realised by those who might suggest the dissolution and replacement of the Boards, that this cannot be achieved without careful consideration of what might replace them.

Option A – Amendments to the current Act

This option involves the removal of the provisions requiring accountability of the Boards to the Minister and replacing them with provisions requiring accountability of the Boards to beneficiaries. This can be achieved by *removing*:

1. the requirement for Boards to seek approval from the Minister before making major decisions, *requiring instead* that the full Board ratify such decisions;
2. the requirement that the Boards have their audited accounts checked by the

- Minister, *requiring instead* that they be noted as received by the Māori Land Court and then presented at an annual general meeting for scrutiny by beneficiaries;
3. the Minister's authority to direct an investigation, *requiring instead* that allegations of Board misconduct are heard by the Māori Land Court;
 4. the authority of the Minister to suspend annuity payments, *replacing it* with an authority of the Māori Land Court to withhold payments when it appears that an allegation may have some validity;
 5. the authority of the Governor-General to remove members of the Boards on the recommendation of the Minister, *giving authority instead* to the Māori Land Court in the event that a successful application is made by the Board or a beneficiary to the Court.

The following changes, while not directly related to the removal of accountability to the Minister, are consistent with the objective of removing some paternalistic aspects of the Act:

1. removal of the requirement that the Governor-General appoint members elected in accordance with the Act, *requiring instead* that appointments, validations, declarations and orders be made by the Māori Land Court;
2. clarification of the functions of the Boards, in particular the ability of the Boards to establish or to take an interest in subsidiary entities;
3. removal of the requirement for Boards to use Audit New Zealand to audit accounts, requiring instead that the Boards use an approved auditor.

The Māori Land Court would thus have responsibility for:

- overseeing the election process;
- registering and holding copies of the Board accounts for access by beneficiaries on request;
- hearing claims of breaches of the Act;
- appointing and removing members when necessary; and
- adjudicating disputes between the Boards and beneficiaries.

Under this option, the Act will continue to prescribe what the election process for each Board should be; but the Māori Land Court rather than the Governor-General would validate appointments and so on.

Compared with options B and C, this option could be implemented simply and quickly. Removing the accountability of the Boards to the Minister and transferring, in general, the responsibilities of the Minister to the Māori Land Court would mean that an independent mechanism was employed to protect the interests of the beneficiaries. Furthermore, this option would have the least effect on the current status and operations of the Boards.

Option B – Replacing the Act with a legislative vehicle as proposed by the Mason Committee

Recommended by the Mason Committee, this approach involves:

- i Enactment of an 'Iwi Incorporation Act' to replace the current Act. The latter would

- expire four years from the date on which the former comes into force;
- ii Appointment of an 'Iwi Commissioner' pursuant to the Iwi Incorporation Act;
 - iii A requirement that Boards must apply to the Iwi Commissioner within three years of the enactment of the Iwi Incorporation Act for incorporation under the Act. A Board will be eligible for incorporation only after having satisfied the Commissioner that it has:
 - (a) prepared a constitution which describes:
 - the functions of the Board;
 - the principles by which the Board will be guided;
 - the manner in which the Board will be accountable to iwi;
 - the process by which conflicts between iwi members and the Board are to be resolved; and
 - the basis on which members of the Board are to be elected and appointed;
 - (b) obtained an iwi mandate for that constitution;
 - (c) an up-to-date roll of beneficiaries;
 - iv. An arrangement whereby the costs of the transition (for example, to employ experts in the development of a new structure and costs to ensure that the transformation of the Boards results in a debt-free entity) be covered by the Crown.

The Mason Committee also suggested that Government establish a Crown-Māori Trust Board Joint Working Group to, among other things, estimate the amount of funds required to cover incorporation costs associated with preparation of the constitution, updating registers and skills training for directors or trustees. Expert advice would initially be sought by the Boards represented on the working group and would provide an indication of what the overall costs of transition might be.

Office of the Iwi Commissioner

Under this legislative framework the Iwi Commissioner will:

- i in conjunction with the Boards, undertake a comprehensive publicity campaign, informing beneficiaries about the new Iwi Incorporation Act and encouraging them to enrol with their respective Boards;
- ii confer Iwi Incorporation status on the Boards that have met the criteria; and
- iii administer any funding provided to prepare constitutions, annual corporate plans and facilitate training programmes to upskill directors/trustees and employees.

In general terms, the Commissioner's function will be to facilitate incorporation of the current Boards under the Iwi Incorporation Act, and to ensure that the requirements for incorporation have been complied with. The office of the Iwi Commissioner will be disestablished once all applicant Boards have met the requirements for incorporation.

Constitution

Boards would be required to develop their constitution in consultation with their beneficiaries. The nature and form of the organisation to replace the Boards would be determined during this process.

It is important, when developing the constitution, that Boards and beneficiaries be free to choose the most appropriate organisational form, ensuring that the responsibilities and accountability mechanisms of the new entity are clearly spelled out in that document. The aim is to create an organisation which will function effectively and is suited to the requirements of its members. The elements set out below should achieve that objective.

The constitution will include the following elements⁴:

- i The name of the Iwi Incorporation;
- ii A description of the Iwi Incorporation's rohe;
- iii A statement by the Iwi Incorporation setting out to whom it will be accountable and the guiding principles by which it will conduct its affairs and administer assets on behalf of its members;
- iv A description of the aims, roles, powers and responsibilities of the Iwi Incorporation. This may include a definition of the term 'social and cultural development';
- v The basis on which directors/trustees of the Iwi Incorporation are to be elected or appointed. If election or appointment is on a district basis, the boundaries of each district must be defined;
- vi Where appropriate, a description of the beneficiaries or members of the Iwi Incorporation. The term 'beneficiary' in this context is to have the meaning assigned to it by section 2 of the Māori Trust Boards Act 1955;
- vii A statement about the rights of members and the process by which conflict between members and the Iwi Incorporation are to be resolved;
- viii A description of the duties, liabilities and obligations that each director/trustee assumes on taking up office. Where necessary, an acceptance in writing, of those duties, liabilities and obligations may be required;
- ix A provision that the standard of care required of directors/trustees must be commensurate with that required of directors of publicly listed companies;
- x A description of the roles and accountabilities of all subsidiaries created under the constitution in relation to the fulfilment by the Iwi Incorporation of its objectives under the constitution. Those subsidiaries may include management, commercial, social and cultural organisations;
- xi Provisions relating to:
 - methods of controlling subsidiaries;
 - monitoring of performance, profitability and efficiency;
 - policies for the allocation of assets;
 - reporting requirements; and
 - corporate, annual and strategic planning statements.

In providing for these, the Iwi Incorporation may be required to have regard to the social and cultural development of members of the iwi including those who reside outside the rohe.

⁴ Refer to the 'Model Constitution' appended to the Mason Committee Report.

- xii A provision similar to section 129 of the Companies Act 1993, which deals with major transactions;
- xiii A description of the circumstances under which reports and audited accounts will be made available to members. Other reporting mechanisms may also be referred to;
- xiv A requirement to hold annual general meetings, and specification of the procedures to be adopted in respect of annual, general, special and other meetings that may be convened. Matters dealt with under this heading may include resolutions, notices of meetings, matters relating to quorum, adjournments, voting procedures, proxy representation, and a description of the purpose of an annual general meeting;
- xv The powers of, and the procedure to be adopted by, any executive committees appointed by the Iwi Incorporation to exercise delegated authority;
- xvi A description of the manner in which minutes of meetings and resolutions of the Iwi Incorporation will be recorded;
- xvii A description of the registers of beneficiaries/iwi members and trustees/directors;
- xviii Indemnity and insurance matters;
- xix Address of the Iwi Incorporation;
- xx The custody and use of the seal of the Iwi Incorporation;
- xxi A description of the duties, powers and responsibilities of the Chief Executive Officer;
- xxii A description of the account date, accounting records including those of subsidiaries, an acknowledgement that the best accounting practices will be adopted, and the appointment of auditors to the Iwi Incorporation and any of its subsidiaries.

Mandate

The Mason Committee stated that any organisation which replaces the Boards will require widespread support and approval by those people for whose benefit it has been established. In order to obtain widespread support and approval, the beneficiaries must first be fully and fairly informed about those matters upon which they are required to make a judgement.

The Mason Committee considered that, unless there is specific delegation, an executive or ad hoc group should not be able to make a binding decision for its members. Before a decision is made it is necessary to provide information and consult widely with the beneficiaries.

Before the Iwi Commissioner may accept a constitution for the purposes of incorporation, she or he must be satisfied that there is clear proof of an Iwi mandate. As a minimum the Commissioner would require that:

- i All beneficiaries on an updated beneficiary roll be advised, in writing, of the Board's intention to apply for incorporation;
- ii Each beneficiary be sent an edited draft of the proposed constitution along with

an explanation in simple, non-legal language, of the principal components of that constitution. In particular, each beneficiary must be advised of:

- the aims and objectives of the Iwi Incorporation;
- the proposed accountability relationships; and
- the basis upon which its directors/trustees will be elected;

Information must also be given as to any possible alternative methods of election. Examples include, election by postal ballot, hapū, papatipu rūnanga, marae or general vote at an annual general meeting;

- iii Written notice be given to each beneficiary, and that there be public advertising of the dates, times and places at which hui-a-iwi will be held for the purpose of discussing the proposed constitution and to receive any suggested amendments;
- iv Beneficiaries will need to advise the Board, in writing, of any objection, either to incorporation or to the content of the constitution.

In addition to these requirements, hui-a-iwi would have to be held of sufficient numbers at appropriate locations to fully and fairly inform all beneficiaries about the proposed incorporation and constitution, and to receive any comment on each.

Updating the registers of beneficiaries

Most of the Boards' rolls are out of date, and a great number of beneficiaries would be excluded from input into the development of the constitution if the current rolls were used as the basis for consultation. Significant improvement is therefore necessary in this area. The onus to enrol would remain with the beneficiaries; however, the Board and Iwi Commissioner would be responsible for ensuring that it was well known by beneficiaries that they need to enrol so that they are able to:

- i participate in the development of the constitution; and
- ii receive an entitlement to benefits derived from the use of the Board's assets.

Method of ensuring accountability

The Mason Committee considered that, in regard to accountability of the Boards, it will be the responsibility of beneficiaries, who frame the constitution, to determine the manner in which the Board (and subsequent Iwi Incorporation) will be made accountable.

Electoral process

Two predominant views on the method of election were expressed by those consulted by the Mason Committee. One view supported the election of Board members by general consensus decisions at a hui-a-iwi or similar venue. Another view held that a postal ballot is the only fair and valid way of electing candidates. Those who held the second view emphasised that all eligible voters must be able to vote in an environment that is non-intimidating and conducive to a free, open and democratic choice.

In their findings the Mason Committee responded to these differing views by stating that 'no one electoral system will provide tailor-made solutions for all iwi...ultimately it will be left to iwi to decide how best to elect their own representatives.' The Mason

Committee recommended that elections be held every three years and that each beneficiary be provided with information on the methods of election.

Option C – Combinations of options A and B, or other alternatives

Options C1 and C2 described below comprise components of options A and B. These options are by no means comprehensive, rather, they are designed to stimulate thought and to indicate that the legislative framework to replace the current Act has not been predetermined in line with either options A or B.

OPTION C1

AMENDMENT TO THE CURRENT ACT MAKING PROVISION FOR BOARD-SPECIFIC CHARTERS

This option is essentially a variation on option A, but involves removing those provisions from the Act which prescribe how the Boards must operate.

Option C1 involves a primary requirement that the Boards develop, and register a Board-specific charter or constitution with the Māori Land Court. The constitution or charter will comprise the same features as recommended by the Mason Committee.

As a minimum the constitution should prescribe the following:

- the functions of the Board;
- the principles by which the Board will be guided;
- the manner in which the Board will be accountable to iwi;
- the duties of care to be exercised by board members;
- the process by which conflicts between iwi members and the Board are to be resolved;
- the basis on which members of the Board are to be elected and appointed; and
- any other requirements.

Maori Land Court

The Māori Land Court would have the following functions in respect of Board administration under option C1:

- to receive and register iwi charters consistent with the amended Act;
- to verify that the charter and proposal for registration were developed with, and had the support of, the iwi;
- to ensure that all interested parties are notified through consultation, written correspondence and the media, of the proposal for registration;
- to hear and make determinations regarding objections to registrations;
- to resolve disputes in the event that procedures set out in the charter are not followed; and
- to make accounts accessible to beneficiaries.

The Māori Land Court is considered to be a particularly appropriate body to perform the above functions in relation to the Boards because it is an apolitical body and has much experience in dealing with Māori organisations (Māori incorporations and trusts constituted under Te Ture Whenua Māori Act 1993 being the obvious examples).

OPTION C2

REPEAL THE ACT, AND REPLACE IT WITH LEGISLATION WHICH:

- **requires the Boards to re-constitute under other applicable legislation; and**
- **enables the new entities to obtain recognition as the 'authorised representatives of the iwi'.**

This option would involve the enactment of new legislation comprising two parts. The first part would dissolve the Boards after facilitating their reconstitution under other appropriate existing legislation for the purposes of holding assets on behalf of their owners, such as: the Companies Act 1993; the Incorporated Societies Act 1908; the Charitable Trusts Act 1957; and the Trustee Act 1956. The development of various contractual and other arrangements of the Boards with subsidiary companies and trusts would allow for prudent asset management.

The second part of the new legislation would include provisions very similar to those in Part II of the Runanga Iwi Act 1990. These provisions would allow Boards which tend to represent iwi in dealings with central government, local government and other iwi to apply for registration as an 'authorised voice of the iwi', after meeting criteria very similar to that required for 'iwi incorporation' under Option B (refer to iii on page 17). The Māori Land Court would assume the responsibility for registering entities as the 'authorised voice'. In this capacity the Māori Land Court would have the same functions as it would under Option CI.

Under this legislative framework the Boards could assume a limited or comprehensive role in their relationship with iwi, depending on whether they currently have an asset management role or they assume a wider iwi representative role. New entities wishing to assume that wider role would also have the opportunity to apply for registration as the authorised voice of the iwi, provided that the entity meets the criteria for 'iwi incorporation'.

Māori Trust Board Contacts

Tai Tokerau Māori Trust Board PO Box 716, Whangarei Tel: (09) 438 1466

Aupouri Māori Trust Board PO Box 407, Kaitiaki Tel: (09) 408 2754

Ngāti Whātua o Orākei Māori Trust Board PO Box 42-045, Orākei, Auckland Tel: (09) 521 0617

Te Rūnanga o Ngāti Whatua PO Box 1784, Whangarei Tel: (09) 438 2870

Tainui Māori Trust Board PO Box 10-392, Hamilton Tel: (07) 849 3682

Hauraki Māori Trust Board PO Box 33, Paeroa Tel: (07) 862 7521

Maniapoto Māori Trust Board PO Box 36, Te Kuiti Tel: (07) 378 6234

Tauranga Moana Māori Trust Board PO Box 98, Tauranga Tel (07) 571 8686

Te Arawa Māori Trust Board PO Box 128, Rotorua Tel (07) 346 1761

Tūhoe Waikaremoana Māori Trust Board PO Box 1842, Rotorua Tel: (07) 348 6911

Whakatōhea Māori Trust Board PO Box 207, Opotiki Tel: (07) 315 6150

Tūwharetoa Māori Trust Board PO Box 87, Turangi Tel: (07) 386 8832

Te Rūnanga o Ngāti Awa Māori Trust Board PO Box 76, Whakatane (07) 307 0760

Te Rūnanga o Ngāti Porou PO Box 226, Ruatoria Tel: (06) 864 8121

Wairoa Waikaremoana Māori Trust Board PO Box 113, Wairoa Tel: (06) 838 8226

Aorangi Māori Trust Board PO Box 61, Takapau Tel: (06) 374 1703

Whanganui River Māori Trust Board PO Box 690, Whanganui Tel: (06) 345 8150

Taranaki Māori Trust Board PO Box 194, Waitara Tel: (06) 758 1424

Ngāi Tahu Māori Trust Board PO Box 13-046, Christchurch Tel: (03) 366 4344

GLOSSARY OF TERMS

Accountability	Clearly showing the lines of responsibility between an organisation and a group or individual.
Adjourn	To put off or postpone.
Adjudicating disputes	Making a judgement on a disagreement between two parties.
Annuity	Sums of money payable in settlement on an annual basis.
Apolitical body	An organisation which is politically neutral.
Audited accounts	Annual accounts that have met their reporting requirements and been issued a certificate by the Audit Office.
Authorised representation	A body that is mandated to stand for, or correspond on behalf of, an individual or group of individuals.
Beneficiary	A person who has rights to receive benefits from the assets administered by a Maori Trust Board.
Companies Act 1993	An Act established to regulate the activities of companies registered under this Act in New Zealand.
Compensation	The act or process of making amends for a loss.
Constitution	A document setting out the fundamental principles or rules of an organisation.
Contractual	A written or spoken agreement between two or more parties intended to be enforceable by law.
Delegated authority	An elected representative.
Director	A person who makes general rather than managerial policy decisions for a company.
Dissolution	Bring to an end.
Executive Committee	A body of persons responsible for administration and management.
Fragmentation of ownership	The division of ownership interests as a consequence of additional owners being identified.
Guiding principles	Fundamental principles on which rules for operation are based.

Hui-a-Iwi	A meeting of all iwi members.
Incorporated Society	An organisation formed under the Incorporated Societies Act 1908.
Indemnity	Security against possible loss.
Iwi	Tribe(s).
Iwi Commissioner	The office with which Boards would apply in order to be registered as iwi incorporations.
Iwi Incorporation Act	An Act proposed by the Mason Committee (1994) under which Māori Trust Boards can register as iwi incorporations.
Legal Entity	An entity or organisation established under a particular statute/law.
Legislation	A law or laws.
Legislative framework	A framework set up under a statute/law.
Liabilities	Debts.
Maccess	Government programme delivering training modules.
MANA	Government programme providing venture capital to Māori businesses.
Mandate	The authority to negotiate, speak or sign for a group or individuals.
Māori Land Court	The body that administers Te Ture Whenua Māori Act 1993.
Misconduct	Improper or unprofessional behaviour.
Non-intimidating	Something that does not frighten, overawe or subdue.
Omissions	Leaving out or overlooking something.
Parent Body	An entity or organisation which represents a group of subsidiary organisations.
Paternalistic	Limiting freedom and responsibility by well meant regulations (of Government).
Proxy representation	A person authorised to represent someone in their absence.
Prudent Asset Management	Effective or good asset management.
Purport	To put forward or assert a view.
Quorum	The fixed minimum number of members that must be present to make a meeting valid.
Rangatiratanga	Full chiefly authority, tribal control/autonomy over their own resources.

Ratify	Confirm agreement to rules or a constitution using a formal process.
Reconstitute	Re-establish/restructure under appropriate legislation.
Reform	To change.
Repeal	To revoke, rescind or annul a statute/law.
Review	To assess or consider the need for change.
Runanga a Iwi Act 1990	An Act established to provide a generic legal entity for iwi to enable them to contract with Crown agencies to deliver social services using Government resources. Repealed 6 months after it was enacted in 1990.
Scrutiny	A close examination or investigation of details.
Statutory	Required by law.
Subsidiary	A company, trust or other type of entity which carries out activities for a parent Trust or Trust Board.
Successive	Following one after another.
Suspend	To temporarily stop.
Te Ture Whenua Act 1993	An Act to promote the retention of Māori land in the hands of its owners, and to facilitate the occupation, development and utilisation of that land for the benefit of its owners.
Trustee	A member of a Board (given control or powers of administration of property in trust with a legal obligation to administer it solely for the specified purposes).
Validation	To confirm or make valid.