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## South Island Landless Natives Act 1906 (SILNA): past, present and future

January 2021

### History

Following the signing of the Treaty of Waitangi in 1840, the Crown negotiated several large-scale purchases of land in Te Waipounamu (the South Island) whereby almost the entire land base of Ngāi Tahu, some 34.5 million acres of land, was sold for £14,750.<sup>1</sup>

Ngāi Tahu's landlessness was the subject of several Crown investigations in the mid-to-late nineteenth century. The most significant of these was the Mackay Commission of 1886-1887, which found that Ngāi Tahu as an iwi and its members had been left without a sufficient land base.<sup>2</sup>

In 1892, the Crown agreed to make certain lands available to South Island landless Māori.<sup>3</sup> Judge Mackay and Percy Smith, the Surveyor-General, compiled a list of landless Māori in the South Island and assigned sections of land to them, assisted by Tame Parata.<sup>4</sup> By 1905, 142,463 acres had been allocated to 4,064 people.<sup>5</sup>

### The South Island Landless Natives Act 1906

In 1906, the South Island Landless Natives Act (SILNA) was passed intended to formally authorise the transfers of land that had been made by Mackay and Smith. Most of the land set aside under the Act was transferred to the intended beneficiaries, but in 1909 the SILNA Act was repealed by the Native Lands Act before all the grants had been completed.<sup>6</sup> Also, the lands set aside under SILNA were of inferior quality, isolated, inaccessible, and often far distant from the traditional lands that had been taken under the earlier Crown purchasing.<sup>7</sup>

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<sup>1</sup> Te Rūnanga o Ngāi Tahu "SILNA" (5 October 2017) Ngāi Tahu <[https://ngaitahu.iwi.nz/our\\_stories/silna-tk75/](https://ngaitahu.iwi.nz/our_stories/silna-tk75/)>.

<sup>2</sup> Ngāi Tahu Deed of Settlement, section 15, preamble.

<sup>3</sup> Individuals from Te Tau Ihu iwi were also included in the lists.

<sup>4</sup> Ngāi Tahu Deed of Settlement, section 15, preamble.

<sup>5</sup> Ngāi Tahu Deed of Settlement, section 15, preamble.

<sup>6</sup> Te Rūnanga o Ngāi Tahu "SILNA" (5 October 2017) Ngāi Tahu <[https://ngaitahu.iwi.nz/our\\_stories/silna-tk75/](https://ngaitahu.iwi.nz/our_stories/silna-tk75/)>.

<sup>7</sup> Te Rūnanga o Ngāi Tahu "SILNA" (5 October 2017) Ngāi Tahu <[https://ngaitahu.iwi.nz/our\\_stories/silna-tk75/](https://ngaitahu.iwi.nz/our_stories/silna-tk75/)>.

Four of the SILNA blocks were not allocated and remain in Crown ownership today: Hāwea-Wānaka at Wānaka, Whakapoai by the Heaphy River, and Toitōi and Port Adventure on Rakiura.<sup>8</sup>

### The Ngāi Tahu Settlement

Ngāi Tahu's grievances concerning the SILNA lands were reported on by the Waitangi Tribunal in 1991 in the Ngāi Tahu Report. The Crown conceded that it had failed to ensure Ngāi Tahu were left with sufficient lands for their needs, and the Tribunal found the Crown had acted unconscionably and in repeated breach of the Treaty. Its subsequent efforts to make good the loss were found to be 'few, extremely dilatory, and largely ineffectual'.<sup>9</sup> The Crown accepted that its failure to complete the transfer of lands under SILNA was a breach of the principles of the Treaty of Waitangi and agreed to provide redress.<sup>10</sup>

The Ngāi Tahu Report provided a basis for settlement negotiations between the Crown and Ngāi Tahu, eventually leading to a Deed of Settlement in 1997, and the Ngāi Tahu Claims Settlement Act of 1998.

Section 455 of the Ngāi Tahu Claims Settlement Act 1998 provides the Māori Land Court with the jurisdiction to identify successors and successors' interests in SILNA lands. The Māori Land Court's role is to identify all successors and their relative beneficial interests by identifying all persons entitled to succeed to the interest of an original beneficiary in SILNA lands:

- (a) As though the land was Māori freehold land; and
- (b) As though the deceased person died intestate (applying the principles of s 109 of Te Ture Whenua Māori Act 1993 (TTWMA)).

### The Māori Land Court

In 2003, the Minister of Māori Affairs applied to the Māori Land Court for an inquiry pursuant to s 29 TTWMA as to successors to the four remaining SILNA blocks. In 2009, Ngāi Tahu compiled and presented an updated list to the Court based on the original list of grantees. While work had been done to identify successors to these grantees, this list still contained many deceased persons.

Since that time, the Māori Land Court in Te Waipounamu has continued the work of identifying successors. This is a unique undertaking as the jurisdiction of the Court stems from the Ngāi Tahu Claims Settlement Act, as opposed to TTWMA. The goal is to replace as many

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<sup>8</sup> Te Rūnanga o Ngāi Tahu "SILNA" (5 October 2017) Ngāi Tahu <[https://ngaitahu.iwi.nz/our\\_stories/silna-tk75/](https://ngaitahu.iwi.nz/our_stories/silna-tk75/)>.

<sup>9</sup> Waitangi Tribunal "The Ngai Tahu Report 1991, Volume 1: Report Summary" <[https://forms.justice.govt.nz/search/WT/reports/reportSummary.html?reportId=wt\\_DOC\\_68476209](https://forms.justice.govt.nz/search/WT/reports/reportSummary.html?reportId=wt_DOC_68476209)>.

<sup>10</sup> Ngāi Tahu Deed of Settlement, section 15, preamble.

deceased persons on the list with living successors to enable meetings of successors to be called under Part 9 of TTWMA.

Under cl 15.7.1 of the Ngāi Tahu Deed of Settlement, once satisfied that the list is sufficiently advanced, the Minister of Māori Affairs will apply to the Māori Land Court to call a meeting of successors. Under cl 15.7.5, successors at this hui will consider alternative redress options, alongside determining the status of the land and the manner in which it will be held. Therefore, the Court's role is to ensure the list is updated quickly to ensure living successors are able to attend and vote at the meeting.

On 9 November 2015, the Court approved a list of 1071 persons for the Hāwea-Wānaka substitute block.<sup>11</sup> An updated list was referred to the Court on 5 October 2017, which included a list of 1146 interim beneficiaries for the block. This new list was intended to be a "stake in the ground" from which updates could be added.

Subsequently, errors have been found in these lists and there is work underway to remedy these before a further list is referred to the Court for approval. Because the individuals involved were "landless", evidence from other successions is not always readily found.

The main priorities for the Court now are first, to remedy errors in the lists, using s 86 of TTWMA, and second, to update the list of successors based on previous and new evidence, the latter of which requires hearings to be held so evidence can be heard. An application form based on the existing form for successions has been modified for the purposes of SILNA determinations, and individual applications are linked to a central file to ensure consistency.

### Challenges

At the time of the Ngāi Tahu settlement, the difficulty of identifying the successors to the original grantees of the SILNA blocks was underestimated. The Deed of Settlement did not specify a deadline for completion of the identification phase and the work was not prioritised over and above the business as usual work of the Māori Land Court. As a result, progress was intermittent in the period 2009–2017. This was compounded by the impact of the Canterbury earthquakes and the re-structure of the Māori Land Court in 2016-2017.

Understandably, the slow progress of this aspect of Ngāi Tahu's settlement has caused frustration. In 2017 an article in *Te Karaka*, Te Rūnanga o Ngāi Tahu's on-line magazine, noted:

While work is almost complete on identifying successors for the Hāwea-Wānaka block, minimal mahi has been done for the Toitōi block and almost nothing for the remaining two blocks. Government officials blame inadequate Māori Land Court resourcing, the underestimation of the task, lack of available expertise, and logistical delays caused by the 2011 Christchurch earthquake.<sup>12</sup>

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<sup>11</sup> This is a block of land that has been negotiated as a substitute, as the original block was not available to be part of settlement redress for Ngāi Tahu.

<sup>12</sup> Te Rūnanga o Ngāi Tahu "SILNA" (5 October 2017) Ngāi Tahu <[https://ngaitahu.iwi.nz/our\\_stories/silna-tk75/](https://ngaitahu.iwi.nz/our_stories/silna-tk75/)>.

The article also referred to comments by Jo McLean, Hāwea-Wānaka successor and Te Rūnanga representative for Waihao Rūnanga:

Jo also notes the Māori Land Court has been significantly under resourced since settlement, causing years of delays in successor identification. She thinks this needs to be prioritised, and resources placed into facilitating engagement of successors in the various hui.

### Recent progress

In 2018 Te Arawhiti, Te Puni Kōkiri, and the Māori Land Court formed an officials working group to expedite the Crown's progress on its outstanding obligations with respect to s 15 of the Ngāi Tahu Settlement Act. For the Māori Land Court, our focus is on being able to progress the successions as quickly as we can in order to update the lists of successors so that meetings of successors can be called.

This renewed focus has resulted in the recruitment of additional staff dedicated to the SILNA work within the Te Waipounamu team. Following the initial success of a fixed term FTE over a 12-month period, a further 2.0 permanent FTE and an additional 6-month fixed term FTE have been added to the team. It is now likely that the Hāwea-Wānaka list will be sufficiently advanced in 2021 for the Minister of Māori Development to apply for a meeting of successors. With the current level of dedicated staff, the succession work for the remaining blocks could be completed within a minimum of 5 years. To ensure the momentum gathered over the last 12 months continues, a business case is being prepared for a further 3.0 FTE dedicated to the SILNA work.

The Māori Land Court is very aware of the importance of this work to the completion of Ngāi Tahu's settlement and is working hard with dedicated resources to make further progress as quickly as possible while also ensuring care is taken in dealing with the whakapapa.

Mō tātou, ā, mō kā uri a muri ake nei.

\*Judge Sarah Reeves, resident judge for Te Waipounamu

Thanks to Research counsel Allie Maxwell, Caroline Green and Telsa Buckley for their contributions and assistance with this article.