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New Zealand's Māori Centre of Research Excellence

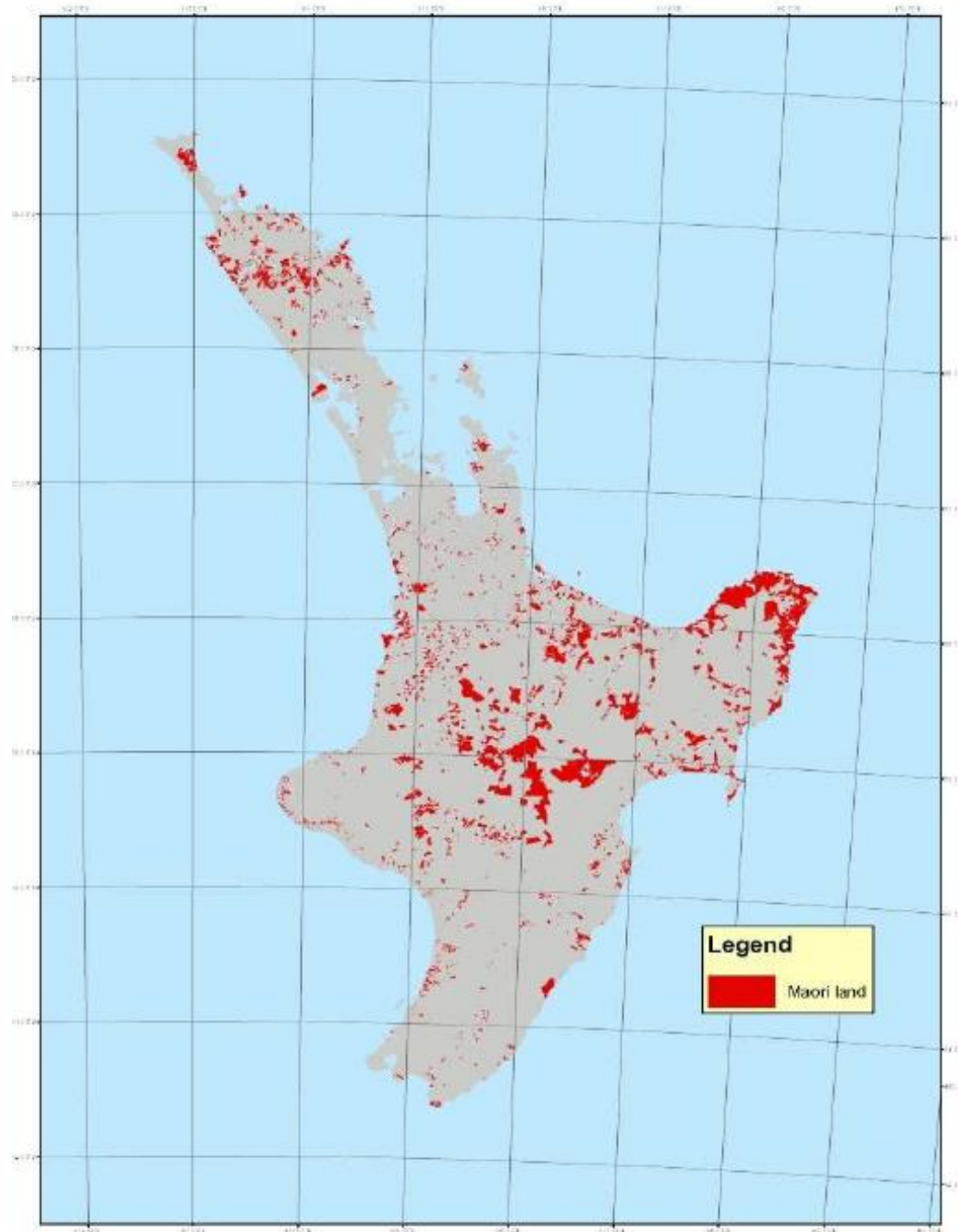
When the home is on Māori Land: beware the legal issues

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Excellence

8 November 2017



North Island: Maori Land Court Blocks



**Māori freehold land:
about 5.5% of all land
in NZ (1.4 million
hectares)**

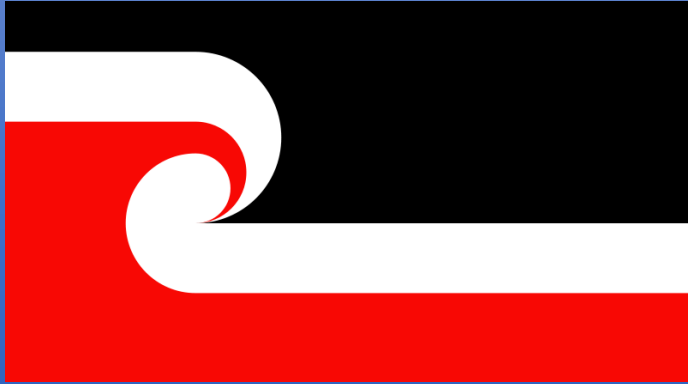
South Island: Maori Land Court Blocks



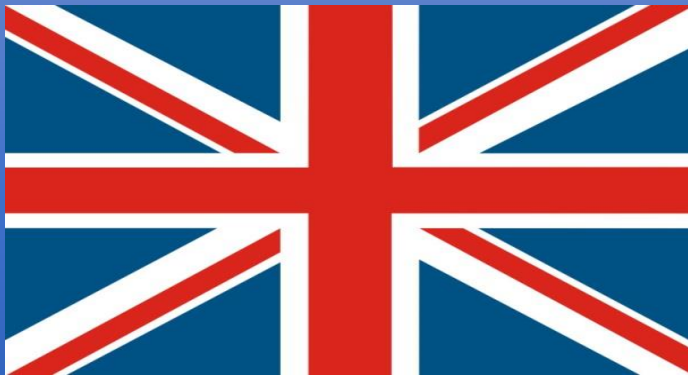
E Toomey, J Finn, B France-Hudson, J Ruru *Revised Legal Frameworks for Ownership and Use of Multi-dwelling Units* (External Research Report 23, Wellington, BRANZ, 2017)

J Ruru and L Watson “Should Indigenous Property be Relationship Property” in Jessica Palmer, Nicola Peart, Margaret Briggs, Mark Henaghan (eds) *Modern Family Finances. Legal Perspectives* (Cambridge: Intersentia Ltd, forthcoming 2017)

Tiriti o Waitangi / Treaty of Waitangi 1840



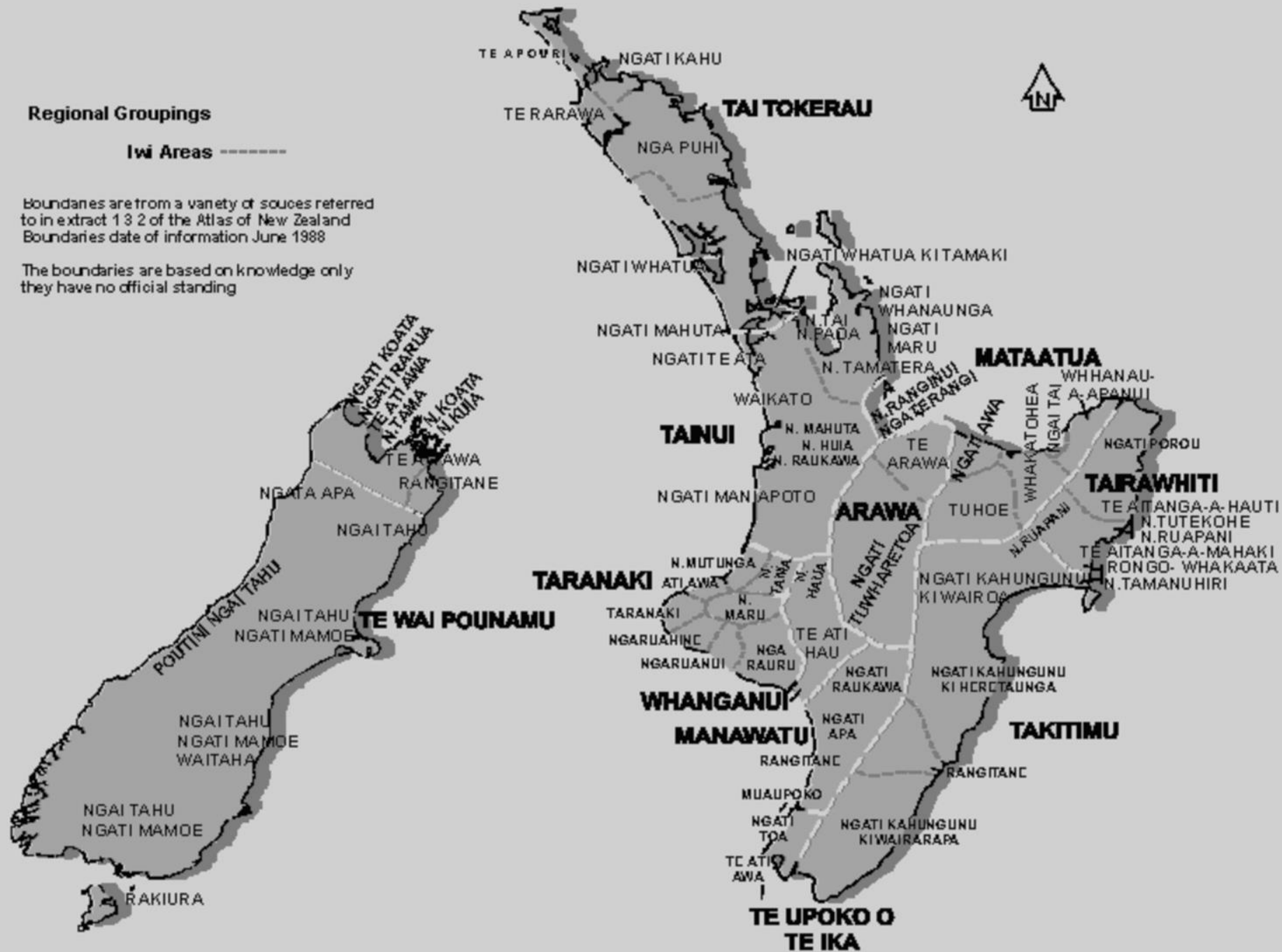
- Article 1: Crown acquires kawangatanga
- Article 2: Māori retain tino rangatiratanga



- Article 1: Crown acquires sovereignty
- Article 2: Māori retain full and undisturbed possession of lands ...

Iwi Areas -----

The boundaries are based on knowledge only
they have no official standing

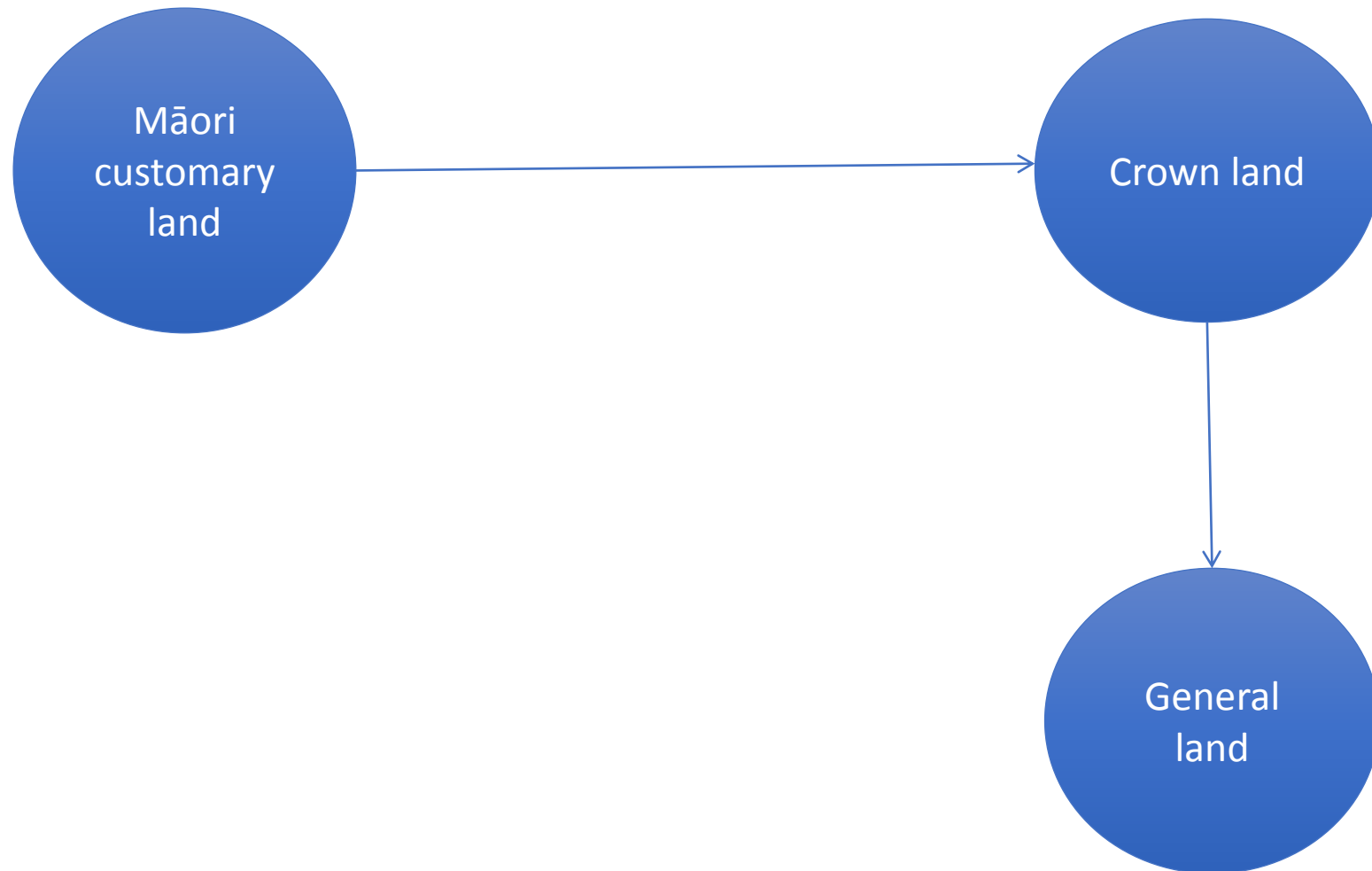




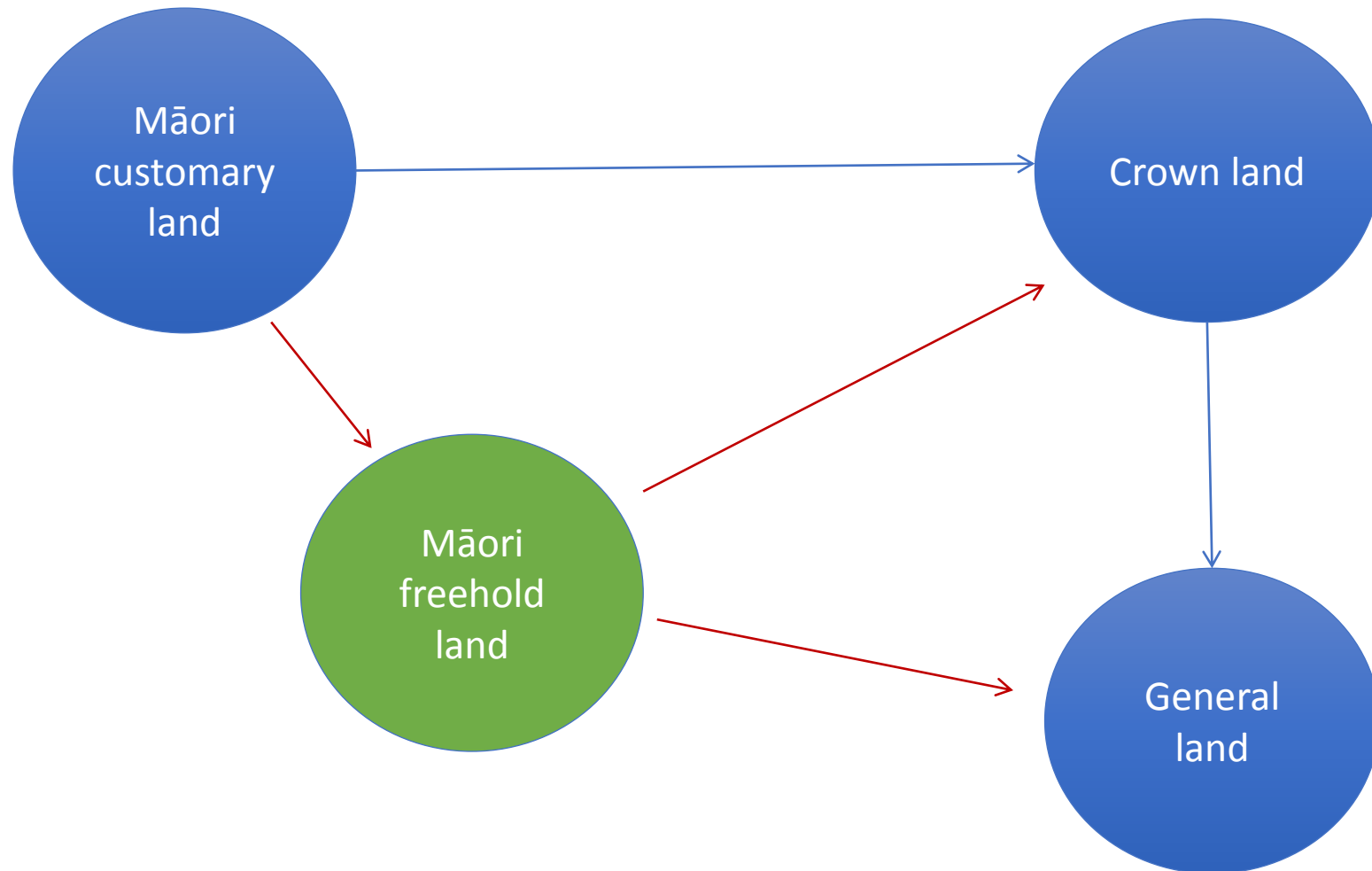
Māori
customary
land

**land that is held by Māori in
accordance with tikanga Māori**

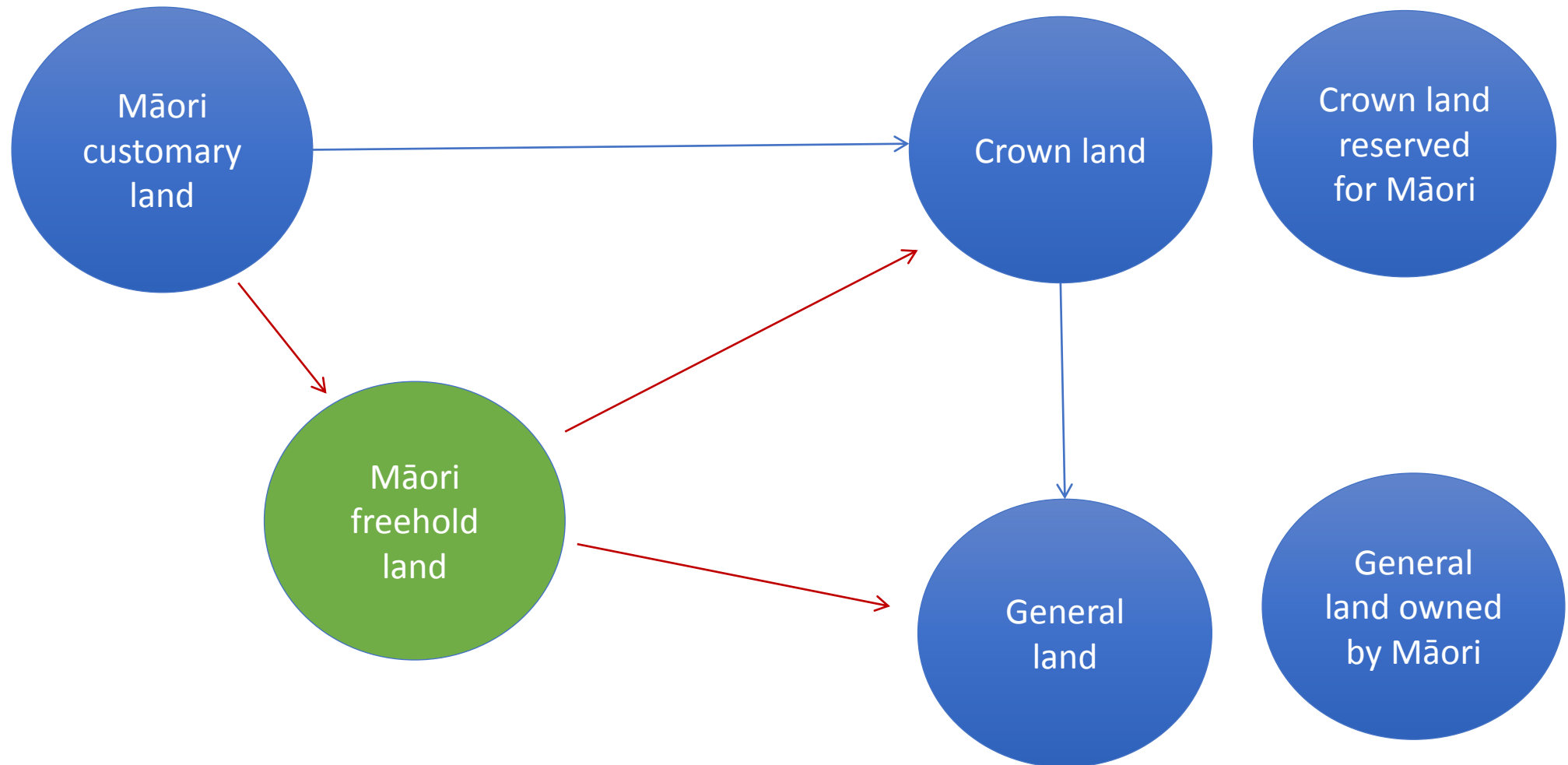
1840 - 1862



1862 onwards: Native Land Laws



1862 onwards: Native Land Laws



Te Ture Whenua Māori Act 1993 (Māori Land Act)




Māori
customary
land

**land that is held by Māori in
accordance with tikanga Maori**



Māori
freehold
land

**land, the beneficial ownership of
which has been determined by
the Māori Land Court by freehold
order**



A large, solid green oval shape is centered on a white background. Inside the oval, the text "Māori freehold land" is written in a white, sans-serif font.

Māori freehold land

Partition Orders

**“... represents a final severance
of collective ownership ... a
terminal step ...”**

Occupation Orders

**Exclusive use and occupation
of the whole or any part of
the land as a site for a house**

Licences to Occupy

**Personal only, end upon the
licencee's death**

Change of status

... to General land ...

**Other law still relevant,
including Resource Management Act 1991
and the Building Act 2004**

<http://www.newshub.co.nz/home/new-zealand/2017/10/gang-member-builds-home-without-council-consent-faces-council-action.html>

The particularly perplexing issue: the Family Home

“Nothing in this Act shall apply in respect of any Maori land within the meaning of Te Ture Whenua Maori Act 1993”

section 6 Property (Relationships) Act

Surviving partner can only receive a life interest in Māori freehold land

in will: s 108(1)(4)

- spouse,
- civil union partner,
- de facto partner

by intestacy: s 109(2)

- spouse, or
- civil union partner

until remarries or enters into a civil or de facto relationship

Determining ownership of existing house on Māori freehold land



“land, the beneficial ownership of which has been determined by the Maori Land Court by freehold order” (s 129(2)(b))

“includes ... all buildings and other fixtures attached to the land, and all things growing on the land” (s 99(2)).

is the house fixed to the land?

- **Yes: it's part of the land**
- **No: it's a chattel and can be removed**

But what if the relationship breaks down and divorce is sought?

Solutions

- **House is a chattel**
- **Constructive trust over the house**
- **'hide property in a trust': create whanau trust**

Welcome to the Law Commission

A stack of three law books with green covers and gold lettering. The top book is titled 'REVIEW OF THE REACT 1908'. A woven basket handle with a net and beads is draped over the books. The background is a warm, orange-brown color.

Dividing Relationship Property – Time for Change?

<https://www.maoritelevision.com/news/regional/law-commission-looks-rewrite-property-law-include-tikanga-maori>





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