

## Submission form

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### Have your say

The government welcomes your feedback on this consultation document, particularly on the specific questions set out in this submission form. This submission form can also be downloaded from [www.justice.govt.nz](http://www.justice.govt.nz). The direct link to this information is: [www.justice.govt.nz/policy-and-consultation/reviewing-the-foreshore-and-seabed-act-2004](http://www.justice.govt.nz/policy-and-consultation/reviewing-the-foreshore-and-seabed-act-2004).

Submissions are due by **5.00pm on Friday 30 April 2010**. Late submissions will not be considered.

To make a submission fill in the submission form or write your submission in a separate document and either:

- send your submission as an attached document by email to [foreshoreseabedreview@justice.govt.nz](mailto:foreshoreseabedreview@justice.govt.nz); or
- mail a hard copy to the following address:

FreePost Authority number 224164  
Foreshore and Seabed Review  
Ministry of Justice  
c/- PO BOX 180  
WELLINGTON 6140

### **All submissions will be publicly available.**

The Ministry of Justice will publicly release your submission, a summary of submissions and a list of names of submitters on its website: [www.justice.govt.nz/policy-and-consultation/reviewing-the-foreshore-and-seabed-act-2004](http://www.justice.govt.nz/policy-and-consultation/reviewing-the-foreshore-and-seabed-act-2004).

### **Your name will be made publicly available as part of your submission when it is released.**

Your contact details will be removed from your submission before it is posted on the website, recorded in the summary of submissions or released under the Official Information Act 1982 (OIA).

If you do **not** wish your name in your submission to be released, please clearly state this in your submission or tick the option below:

- I request that my name be removed from my submission before it is released and that it is recorded as 'anonymous' in the summary of submissions.

If there is particular information in your submission that you wish to remain confidential, please clearly indicate this and explain your reasons for wanting the information kept confidential.

The Ministry is subject to the OIA and copies of submissions sent to the Ministry will normally be released in response to an OIA request from a member of the public. If your submission is subject to an OIA request, the Ministry will consider your confidentiality request in accordance with the grounds for withholding information outlined in the OIA. You can view a copy of the OIA on the New Zealand Legislation website: [www.legislation.govt.nz](http://www.legislation.govt.nz).

The Privacy Act 1993 governs how the Ministry collects, holds, uses and discloses personal information about you which is contained in your submission. You have the right to access and correct this personal information.

*I am responding as (please tick one):*

**An individual**

Name

Email

Address

or

**On behalf of a group or organisation**

Name of group or organisation: Christian World Service

Email cws@cws.org.nz

Address PO Box 22652, Christchurch 8142

*1. Should the Foreshore and Seabed Act 2004 be repealed?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: The Foreshore and Seabed Act 2004 was discriminatory against Maori and removed rights from Iwi and hapu.

*2. The government proposes the following approach to ownership of the foreshore and seabed:*

- the 2004 Act would be repealed and Crown ownership removed;
- customary title extinguished by the 2004 Act would be restored;
- no one owns, or can own the foreshore and seabed (except land in existing private titles);
- instead of identifying an owner of the foreshore and seabed, legislation would specify roles and responsibilities;
- customary interests of hapū/iwi would be tested and, if proven, recognised through awards; and
- the Crown and local government would continue to have regulatory responsibility (subject to awards recognising customary interests).

*Do you support this approach?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: Conscious of the responsibilities of the Crown under Te Tiriti O Waitangi and the place of Maori as tangata whenua, we support the concerns raised by hapu and iwi around this approach as the groups discriminated against in the existing legislation. The third proposal, vesting ownership rights to the Foreshore and Seabed with Maori comes closest to the position CWS supports. In previous submissions CWS has made clear its support of Maori tino rangitiratanga. Maori have indicated their willingness to grant what we consider a fair resolution that will respect their rights and obligations and repair some of the injustice of previous practice and legislation. This would be a courageous step for the government to take and a recognition of international agreements on human rights and indigeous peoples.

*3. The government suggests the name 'public domain/takiwā iwi whānui' for its proposed new approach. Do you agree with the name, or do you suggest another name for the area?*

Please give the reasons for your response.

Yes, I agree with the name 'public domain/takiwā iwi whānui'

No, I don't agree with the name 'public domain/takiwā iwi whānui'

I suggest another name for the area:

I/We have no view or preference

Comment:

4. *Do you think coastal hapū/iwi should be able to negotiate with the Crown for recognition of their customary interests?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: CWS continues to support the position of Maori who find that the Crown's way of negotiating and defining customary rights is based on an unjust presumption of ownership and the Crown's prerogative to "grant" such rights rather than recognition of preexisting rights and the tino rangitiratang and mana of iwi and hapu.

5. *If customary interests are recognised through negotiation, should the awards be negotiated, or should the awards be the same as those the government proposes to set out in legislation?*

Please give the reasons for your response.

Awards should be negotiated

Awards should be as proposed to be set out in legislation

I/We have no view or preference

Comment: The Crown has an obligation to negotiate with iwi and hapu in a fair and mutually agreed process. The Crown cannot make decisions unilaterally on such matters.

6. *Do you think coastal hapū/iwi should be able to claim recognition of their customary interests through the courts?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: We do not believe the onus should be on hapu and iwi to 'claim' their tipuna rights.

*7. Should the Māori Land Court hear and determine claims?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: Again the assumption that iwi and hapu have to prove their claims discriminate against Maori. There needs to be an agreement with iwi and hapu over the legal process to settle such matters with a special court or tribunal

*8. Should the High Court hear and determine claims?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: We support the proposal from Maori that an appropriate court or tribunal system be set up in negotiation with them.

*9. Should the applicant alone be responsible in court for proving a test for customary interests is met?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: CWS's position is that until a mutually agreed process has been established between iwi and hapu and the Crown cases should not go to court.

10. *Should the applicant and the Crown share the responsibility in court for proving a test for customary interests is met?*

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

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Comment: As above

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11. *Should any new legislation set out the tests and awards or should these be left to the courts to develop?*

Please give the reasons for your response.

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Legislation should set out the tests and awards

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The courts should be left to develop the tests and awards

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I/We have no view or preference

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Comment: As above

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12. *Do you agree that any new legislation should recognise two types of customary interests (non-territorial and territorial)?*

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

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Comment: The documentation is not clear on the scope of such rights. The solution must be mutually agreed with iwi and hapu.

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13. *Do you agree with each of the elements of the test for determining **non-territorial** interests proposed by the government?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: The tests rely on hapu and iwi proving these rights as upheld continuously from 1840 and do not allow for changed uses and opportunities made available by different technologies or new developments.

14. *Do you agree with each of the elements of the test for determining **territorial** interests proposed by the government?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: The tests also discriminate against hapu and iwi by asking them to prove continuous usage in making a claim rather than recognising their existing rights.

15. *Do you agree that the awards to recognise proven customary interests should be a combination of property rights and input to environmental management processes?*

Please give the reasons for your response.

Yes  No

I/We have no view or preference

Comment: The awarding of such rights does not recognise preexisting tino rangitiratanga and cannot guarantee this in environmental processes. It is likely to lead to further backlash against Maori in local body affairs for example, as others see them receiving special favour. The better way is to support Tipuna title.



16. *Do you agree with each of the elements of the awards for **non-territorial** interests proposed by the government?*

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

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Comment: The assumption behind this question is that the Crown grants rights rather than recognise Tipuna title.

17. *Do you agree with the customary title award for **territorial** interests proposed by the government?*

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

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Comment: The assumption behind this question is that the Crown grants rights rather than recognise Tipuna title.

18. *Do you agree with the government's proposals for the allocation of coastal space? These are:*

- the existing processes for the allocation of space would be retained on the basis that it is the Crown's role to regulate and manage resources in the foreshore and seabed;
- the Crown would continue to delegate the role of allocating space to regional councils; and
- this would be done in conjunction with those coastal hapū/iwi whose customary interests in the area have been recognised.

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

Comment: The assumption behind this question is that the Crown grants and controls rights rather than has an obligation to negotiate a just resolution with iwi and hapu.

19. *Do you agree with the government's proposals regarding structures? These are:*

- ownership of existing structures will remain with existing owners;
- new structures will be owned by those who own the material in the structures; and
- coastal hapū/iwi whose customary interests have been recognised will have an enhanced role in decision-making processes in relation to new structures (through the planning document described).

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

Comment: The assumption behind this question is that the Crown grants rights rather than recognise Tipuna title.

20. *Do you agree with the government's proposals regarding reclamations?*

*These are:*

- existing decision-making processes would continue in respect of reclamations although the nature of the interest granted may change;
- existing applications would continue to be dealt with as though the Crown were the owner of the underlying land; and
- for new applications, local authorities would continue to perform their current role of considering the environmental effects of a proposed reclamation.

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

Comment: The assumption behind this question is that the Crown grants rights rather than recognise Tipuna title.

21. *Do you agree with the length of time proposed for the new form of coastal permit for port companies (50 years or more, renewable)?*

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

Comment: The assumption behind this question is that the Crown grants rights rather than recognise Tipuna title.

22. *Do you agree with the government's proposals regarding local authority-owned land? These are:*

- any existing local authority-owned land within the foreshore and seabed would be incorporated into the 'public domain/takiwā iwi whānui'; and
- the Crown would pay compensation for that land (if there is any) to the local authority.

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

Comment: CWS does not believe the government's favoured proposal is the best fit for recognition of the rights of iwi and hapu. Maori have indicated that they have other models that more closely recognise their kaitiaki responsibilities and we support their aspiration to reach a more just resolution to the injustices of the past. The negotiations must be with them in the first instance rather than the general public.

23. *Do you agree with the government's proposals that any new law on the foreshore and seabed would contain provisions on adverse possession and prescriptive title similar to those in the 2004 Act?*

Please give the reasons for your response.

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Yes  No

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I/We have no view or preference

Comment: This matter should be negotiated with Iwi and hapu in recognition of their tino rangitiratanga.

24. *What are your views on leases and licences within the foreshore and seabed in view of the government's proposals?*

Comment: This matter should be negotiated with Iwi and hapu in recognition of their tino rangitiratanga.

*25. What are your views on coastal occupation charges within the foreshore and seabed in view of the government's proposals?*

Comment: This matter should be negotiated with Iwi and hapu in recognition of their tino rangitiratanga.

*26. What are your views on roads within the foreshore and seabed in view of the government's proposals?*

Comment: This matter should be negotiated with Iwi and hapu in recognition of their tino rangitiratanga.

*27. What are your views on local Acts in relation to the foreshore and seabed in view of the government's proposals?*

Comment: This matter should be negotiated with Iwi and hapu in recognition of their tino rangitiratanga.