



ANGLICAN DIOCESE OF AUCKLAND

SOCIAL JUSTICE COUNCIL

P O Box 37 242 Parnell 1151

Ph: 09 302 7201

Email jscott@auckanglican.org.nz

17 November 2010

Committee Secretariat
Maori Affairs Select Committee
Parliament Buildings
Wellington
New Zealand

Submission concerning the Marine & Coastal Areas (Takutai Moana) Bill

This submission is by the Auckland Anglican Social Justice Council.

The Auckland Anglican Social Justice Council is an Anglican Tikanga Pakeha Diocesan Body, and is appointed by the Auckland Anglican Diocesan Council each year.

Present members are:

Rev Anne Moody (Convenor)
Mr Peter Bargh
Rev Jean Brookes
Mrs Philippa Colgan
Rev Dr Janet Crawford
Mr David Hall
Rev Ian Render
Ms Lysie Samson

The contact person for this submission is:

Rev Jean Brookes

Between us we have decades of work in church and community projects in the Auckland region in urban and rural areas.

We have worked alongside tangata whenua and mana whenua, denominationally and ecumenically in many communities. We recognise that we are Tangata Tiriti. We continue to seek the shape of our commitment to tangata whenua as the indigenous peoples of this country.

We support the proposal to repeal the 2004 Foreshore and Seabed Legislation. This is an excellent proposal.

We oppose the Marine & Coastal Areas (Takutai Moana) Bill in its present form.

We do not see evidence that the Bill expresses a more informed and just mindset towards Maori tikanga and culture since the 2004 legislation. We are concerned that the Bill in general reflects a continuation of a discriminatory and divisive attitude towards Maori as tangata whenua.

We illustrate our general opposition to the tone of the whole Bill by addressing specific sections of it.

We oppose Part 3, Sub-Part 2: Protected customary rights – clause 53 especially sub-clause (1)

We have two particular concerns with this part of the Bill:

1. Although direct negotiations can be held with the Crown, this customary title (that is also referred to as customary interests) will in practice only be available to those few Iwi and Hapu that can meet the relevant test. We consider this to be very discriminatory.

2. This new customary title is neither the customary title recognised in Maori law nor that recognised in the Pakeha law of aboriginal title. Also, it is still treated as a lesser form of title than freehold title. It is a subordinate title based on an underlying assumption of subordinate Maori rights.

We oppose Part 4, Sub-Part 1, Clause 93 Agreement, sub-clause (2)

We oppose a cut off point of 6 or any number of years for Maori to apply for customary title, as this establishes a new and unjust principle in civil and human rights discourse.

We oppose Part 4 clauses 104 and 105 that refer to Evidence and Burden of Proof respectively.

Our concern here (as in Clause 53) is that Maori have to prove continuous exercise of customary rights from 1840 if they lodge a claim. We believe this is the wrong way round if justice is to be served for Maori. It should be up to the Crown to prove that these rights have been fully and consensually extinguished: a reversing of the burden of proof. The tangata whenua should be assumed to have continuing customary rights unless the Crown can prove otherwise.

We thank you for the opportunity to make this submission.

We do not wish to appear before the Select Committee, but please inform us of the dates when the Select Committee will be holding hearings in Auckland, as we are interested in the discussions.

Yours Sincerely,

Jean Brookes (Rev)
for the Auckland Anglican Social Justice Council