Submission to the Maori Affairs Select Committee

Marine and Coastal Area (Takutai Moana) Bill

I make this submission as a Pakeha individual who has for the past twenty years been an educator working with governmental and non-governmental bodies on Treaty of Waitangi matters.

The Bill places many Maori people and a considerable number of non-Maori in a dilemma. I accept that at a technical level it carries out the agreement between the Parliamentary Maori Party and the Parliamentary National Party to repeal the 2004 Act and restore access to the Court to establish customary title. It is clear that it represents the furthest that the Government is willing to go at present. It does ensure that customary title is inalienable, and that public access is assured. And it does contain some concepts (eg mana tuku iho) which may be able to be built on.

However, it remains in important respects discriminatory against hapu and iwi, and can in no way be accepted as "full and final". It is a temporary political solution which has nothing much to do with justice and will certainly remain controversial.

The creation of the idea of 'common space' would be more impressive if in practice the Crown did not under the Bill remain completely in charge of that space, and if local government and other decision-makers had to do more than "have regard to" or "take account of" the plans and aspirations of hapu and iwi. This would have been an opportunity to develop processes of true co-management, but instead leaves hapu and iwi in the role of supplicants.

The test for customary title is set unrealistically high, given that many hapu have been prevented by the actions of government from exercising continuous or exclusive use of their traditional coastal territories. Holding land abutting the coast is one of the proposed factors for customary title. This penalises hapu who lost land in ways which breached the Crown's Treaty obligations, and who may well prize the takutai moana area even more because it may be the very last of their territory. Even the generosity of hapu in not excluding others from using the beaches and inland waters is likely to tell against their claims to customary title.

The Bill uses key terms either without negotiated definitions to guide practice (eg 'mana', 'tikanga') or with a restrictive definition ('customary title') which is unilaterally imposed.

For all of these reasons, if the Bill becomes law it will be no more than a temporary expedient, and no substitute for the fuller Treaty-based dialogue which the Waitangi Tribunal recommended in relation to the 2004 Act. On that occasion 94% of submissions on that legislation opposed it. I trust that more notice may be taken of the weight of informed submissions on this occasion.

David James,
November 2010.