



Peace Movement Aotearoa

PO Box 9314, Wellington 6141. Tel 04 382 8129, email pma@xtra.co.nz

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Submissions due: Foreshore and Seabed Act Review

Kia ora,

this action alert has information about the Foreshore and Seabed Act Ministerial Review, and how you can contribute to it. There are three main sections below: 1) About the Ministerial review; 2) What you can do, including details of how you can make submissions to the Review and some points you could include in your submission; and 3) Where you can get more information. This document is available online at <http://www.converge.org.nz/pma/fsr0409.htm>

1) About the Ministerial Review

One of the terms of the Confidence and Supply Agreement between the National Party and the Maori Party in November 2008 was that the two parties would: "initiate as a priority a review of the application of the Foreshore and Seabed Act 2004 to ascertain whether it adequately maintains and enhances mana whenua. Ministers representing the two parties will work together to prepare agreed terms of reference for the review by 28 February. The review will be completed by 31 December 2009."

On 4 March, the government announced a Ministerial Review of the Foreshore and Seabed Act 2004, with a Panel consisting of Justice Edward Taihakurei Durie (Chair), Richard Boast and Hana O'Regan who will undertake the review and provide advice to the Attorney-General by 30 June 2009.

The terms of reference for the review state that the Panel is asked to provide independent advice on:

- a) What were the nature and extent of the mana whenua and public interests in the coastal marine area prior to Attorney-General v Ngati Apa [2003] 3 NZLR 643
- b) What options were available to the government to respond to the Court of Appeal decision in Attorney-General v Ngati Apa [2003] 3 NZLR 643
- c) Whether the Foreshore and Seabed Act 2004 effectively recognises and provides for customary or aboriginal title and public interests (including Maori, local government and business) in the coastal marine area and maintains and allows for the enhancement of mana whenua
- d) If the Panel has reservations that the Foreshore and Seabed Act does not provide for the above, outline options on what could be the most workable and efficient methods by which both customary and public interests in the coastal marine area could be recognised and provided for; and in particular, how processes of recognising and providing for such interests could be streamlined.

The terms of reference require the Panel to undertake consultation with Maori and the general public through a series of hui and public meetings. The full terms of reference are available at <http://www.justice.govt.nz/ministerial-review>

2) What you can do

There are two ways you can contribute to the Ministerial Review - by making an oral submission at one of the public meetings (which start next week), and by making a written submission (the deadline for written submissions is 19 May).

- **Oral submissions**

Public meetings and consultation hui will be held in different towns and cities, starting in Bluff on Monday, 20 April, and ending in Blenheim on Tuesday, 19 May. The public meetings are in the evenings, and the hui are during the day - dates, times and venues are available at <http://www.justice.govt.nz/ministerial-review/ConsultationDatesFINAL.pdf> and will be published in local newspapers.

If you would like to make an oral submission at a public meeting, you can either send a message indicating your wish to do so (including the date, time, and venue of the meeting you will be attending) to email foreshorereview@justice.govt.nz or you can register to speak at the start of the meeting. It seems that anyone wanting to say something will be given a number, which will determine speaking order, and the amount of time for each speaker will be allocated according to how many people ask to speak at each public meeting.

- **Written submissions**

The Ministerial Review Panel has published several documents related to the Review: - a Discussion Paper on the Foreshore and Seabed Act at <http://www.justice.govt.nz/ministerial-review/Discussion%20Paper.pdf> - an Issues Paper at <http://www.justice.govt.nz/ministerial-review/issues%20Paper.pdf> - and a page with FAQ at <http://www.justice.govt.nz/ministerial-review/faq.html>

Of interest is a section in the Issues paper which says: "While comment on all issues within the Terms of Reference is welcome, at this time we would particularly appreciate comment on the following matters:

- (a) Whether the tests and procedures in the Foreshore and Seabed Act 2004 are appropriate.
- (b) Whether the Foreshore and Seabed Act 2004 should be: i. retained unchanged; ii. amended; iii. wholly repealed, and the status quo after the Ngati Apa decision in 2003 reverted to; or iv. repealed but replaced with something new, such as a new kind of title or investigative process.
- (c) How well the Foreshore and Seabed Act 2004 relates to the rest of the law relating to the management of coastal areas."

There is a step by step outline of how you can make a written submission on the Review's public participation page at <http://www.justice.govt.nz/ministerial->

review/Publicparticipation.html with a link to a submissions form (which has details about public availability of submitter's details) - you do not have to use the form to make a submission.

Written submissions should be sent by 5pm on Tuesday, 19 May 2009, to email foreshorereview_submit@justice.govt.nz or by post to Foreshore and Seabed Review, Ministry of Justice, c/o PO Box 180, Wellington 6140.

Please also consider sending a copy of your submission (or the link to it if it is on your web site) to Peace Movement Aotearoa, email pma@xtra.co.nz to be uploaded to the 'Foreshore and Seabed Act Ministerial Review' page at <http://www.converge.org.nz/pma/fsarev.htm>

- **Points you could include in your submission**

If you made a submission on the foreshore and seabed policy in 2003, or on the legislation in 2004, that would be the best place for you to start putting together a submission for the Review because the fundamental issues remain the same. More recent information, and links to resources such as the Waitangi Tribunal Report on the foreshore and seabed, and the UN Committee on the Elimination of Racial Discrimination's comments about the legislation, are in section 3 below.

As well as your own points, you could include the following in your submission:

- a reminder that the foreshore and seabed legislation is an ongoing major injustice to Maori. It involves substantial breaches of the Treaty of Waitangi, of human rights protected in domestic legislation and international law, and it removed the possibility of common law recognition, inadequate though that might be, of the full extent of Maori title and rights in foreshore and seabed areas;

- that alternatives to the legislation which would not have discriminated against hapu and iwi were not even considered, let alone explored, by the government in 2003/04;

- that the Act must now be repealed and a more positive way forward, which fully respects the rights of Maori, must be set in place;

- that the process going forward should be the reverse of what has occurred to date, that is, it must be based on the assumption that the foreshore and seabed areas belong to hapu and iwi, rather than on an assumption of Crown ownership. You could refer to the necessity for what the Waitangi Tribunal referred to as "the full restoration of te tino rangatiratanga over the foreshore and seabed" ^[1]. When considering the government's policy in 2004, the Tribunal pointed out that: "a government whose intention was to give full expression to Maori rights under the Treaty [in 2004] would recognise that where Maori did not give up ownership of the foreshore and seabed, they should now be confirmed as its owners." ^[2]

Related to the process going forward, you could comment on the time constraints put on the Review Panel by the terms of reference - six weeks is simply not sufficient time to adequately consult with hapu and iwi. If the Review process mirrors the unfortunate haste with which the foreshore and seabed legislation was enacted, then a process of full and proper consultation with hapu and iwi should be a primary recommendation of the Review report.

In this context, you could include a reminder of the Waitangi Tribunal's first recommendation about the foreshore and seabed: the need for a longer conversation. "It may be that the conversations would be long ones, and would take place over an extended period. We think that is appropriate. The issues are complex. The rights being interfered with are important ones."^[3] The need for dialogue with Maori to seek ways to mitigate the discriminatory effects of the Foreshore and Seabed Act was also recommended by the UN Committee on the Elimination of Racial Discrimination in 2005 and 2007.^[4]

It was clear during the presentations from "nationally significant interest groups" (which, incidentally, did not include hapu and iwi) in Wellington on 6 and 7 April, that the Panel is looking for a framework to provide an alternative to the Foreshore and Seabed Act - hapu and iwi are developing models for positive ways forward, and these must be supported.

It is essential that this time round a just and durable resolution is reached - while the government may consider it politically expedient to rush through this Review, that is only likely to result in a further travesty of justice.

Further, you could refer to the wider context in which the foreshore and seabed legislation occurred - the ongoing failure of successive governments to honour the Treaty and the associated need for constitutional change to give full effect to its provisions. Ultimately there is no other way to ensure that the rights of Maori are fully respected and protected from the whims of the government of the day.

3) Where you can get more information

In addition to the links referred to above, the Foreshore and Seabed Act 2004 Ministerial Review main page is at <http://www.justice.govt.nz/ministerial-review> The Ministry of Justice foreshore and seabed page is at <http://www.justice.govt.nz/foreshore>

The Foreshore and Seabed Act is at <http://www.legislation.govt.nz/act/public/2004/0093/latest/DLM319839.html>

The Foreshore and seabed index page at <http://www.converge.org.nz/pma/fsinfo.htm> has links to reports, articles, alerts, statements, speeches, media releases and media reports from 2003 onwards. Submissions on the foreshore and seabed policy (2003) and on the Foreshore and Seabed Bill (2004) are at <http://www.converge.org.nz/pma/fssubs.htm> - please note that due to some web sites being revamped since then, and the government's online submissions archive being removed, some of the links on these two pages no longer work.

WAI 1071: Report on the Crown's Foreshore and Seabed Policy, Waitangi Tribunal Report 2004 at <http://www.waitangi-tribunal.govt.nz/reports/view.asp?ReportID=838C5579-36C3-4CE2-A444-E6CFB1D4FA01>

UN Committee on the Elimination of Racial Discrimination: Decision on NZ Foreshore and Seabed Act 2004, March 2005, is at <http://www.converge.org.nz/pma/fs110305.htm> and Concluding Observations on New Zealand, August 2007, is at <http://www.converge.org.nz/pma/CERD71-Obs.pdf> (comments on the foreshore and seabed legislation are in paragraph 19, p 4)

'Mission to New Zealand', Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, March 2006, at <http://www.converge.org.nz/pma/srnzmarch06.pdf>

More recent publications:

A primer on making written submissions to the Ministerial Foreshore and Seabed Review Panel, Moana Jackson, April 2009 at <http://www.converge.org.nz/pma/mjfsa09.htm>

Presentation to the Ministerial Review Panel: Foreshore and Seabed Act 2004, Peace Movement Aotearoa, April 2009, at <http://www.converge.org.nz/pma/fsrpma0409.pdf>

Combined NGO feedback on the government's draft Universal Periodic Review report: Indigenous peoples' rights and the Treaty of Waitangi, March 2009 at <http://www.converge.org.nz/pma/fbtow09.pdf>

Combined NGO submission to the UN Human Rights Council for the Universal Periodic Review of New Zealand: Indigenous peoples' rights and the Treaty of Waitangi, November 2008 at <http://www.converge.org.nz/pma/towupr09.pdf>

NGO Briefing Material for the UN Committee on the Elimination of Racial Discrimination, 31 July 2007, at <http://www.converge.org.nz/pma/CERD71-NGOBrief.pdf> and (for an overview summary) NGO response to state party statements, 2 August 2007, at <http://www.converge.org.nz/pma/CERD71-NGOResponse.pdf>

The five Treaty focussed parallel reports to the UN Committee on the Elimination of Racial Discrimination (submitted in May 2007):

- Aotearoa Indigenous Rights Trust at <http://www.converge.org.nz/pma/CERD71-AIRT.pdf>

- Collective of Iwi in Tai Tokerau (Ngapuhi, Te Rarawa, Ngati Kahu and Ngati Kahu ki Whaingaroa) at <http://www.converge.org.nz/pma/CERD71-CITT.pdf>

- Maori Party at <http://www.converge.org.nz/pma/CERD71-MaoriP.pdf>

- Peace Movement Aotearoa: Report at <http://www.converge.org.nz/pma/CERD71-PMA.pdf> and Annex 1 (copy of submission to the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, November 2005) at <http://www.converge.org.nz/pma/CERD71-PMA1.pdf>

- Treaty Tribes Coalition: the Hauraki Maori Trust Board (representing the 12 iwi of Hauraki), Ngati Kahungunu Iwi Incorporated, Ngai Tamanuhiri, and Te Runanga o Ngai Tahu, at <http://www.converge.org.nz/pma/CERD71-TTC.pdf>

References:

^[1] WAI 1071: Report on the Crown's Foreshore and Seabed Policy, Waitangi Tribunal Report 2004, p 139

^[2] As above, p 138 ^[3] As above, pp 139-140

^[4] UN Committee on the Elimination of Racial Discrimination: Decision on NZ Foreshore and Seabed Act 2004, March 2005, and Concluding Observations on New Zealand, August 2007 (comments on the foreshore and seabed legislation are in paragraph 19, p 4)