Foreshore and Seabed Review
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9 May 2009

A Submission on the Foreshore and Seabed Act 2004 to the Ministerial Foreshore and Seabed Review Panel.

Tena koutou,

I am writing to submit that I reject the Foreshore and Seabed Act 2004 because it is unjust, discriminatory and racist, and because it is an act of land confiscation. I am a young pakeha woman, writing as an individual.

Tests and procedures are not appropriate

I do not believe the tests and procedures in the Foreshore and Seabed Act 2004 are appropriate. Even if an applicant is successful, all they acquire are some limited, so-called 'rights,' defined, determined and awarded by the Crown. In actual fact is the Crown has taken the foreshore and seabed; allocating 'rights' is a farce.

The requirement for hapu and iwi to prove that a customary right existed in 1840, and has been exercised substantially uninterrupted, in the same manner since that time, is in itself a colonial requirement. First, culture shifts and evolves over time. Second, this test ignores the impacts colonisation has on the ability of Maori to exercise their rights.

The Act should be wholly repealed

I believe the Foreshore and Seabed Act 2004 should be repealed. In explanation, I will detail my opposition to sections 3 and 4(a).

> **Section 3: Object**
> The object of this Act is to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders in a way that enables the protection by the Crown of the public foreshore and seabed on behalf of all the people of New Zealand, including the protection of the association of whanau, hapu, and iwi with areas of the public foreshore and seabed.
>
> **Section 4: Purposes**
> (a) vesting the full legal and beneficial ownership of the public foreshore and seabed in the Crown

These sections extinguish Maori rights to the foreshore and seabed. The foreshore and seabed belonged to Maori and had done for generations. This was re-affirmed in the

Treaty of Waitangi (Article 2, both versions). The Foreshore and Seabed Act broke the Treaty of Waitangi, in yet another instance of confiscation. Such theft through legislation was disgraceful in the 19th century, and that it reoccurred in the twenty-first is appalling. The Act has simply generated more equally justified grievances.

The Act is racist; it discriminates against Maori. While Maori land was taken by the Crown, the part of the foreshore already owned by a small number of individuals (including off-shore owners) was not. This was a breach of domestic human rights legislation and international human rights norms (such as the Convention on the Elimination of All Forms of Racial Discrimination).

Many, many thousands of people opposed this legislation. Bodies such as the Waitangi Tribunal, the United Nations Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples also reported their concerns.

Management of coastal areas

I am alarmed at the sale of areas of the seabed since the passing of the Act. Awarding prospecting licenses – in secrecy - under the Crown Minerals Act is, to my mind, utterly contrary to any claims the Crown has made of holding the foreshore and seabed 'on behalf of all the people of New Zealand.'

Further considerations

The Foreshore and Seabed Act 2004 created another injustice now and for future generations. Alternatives to such knee-jerk, racist legislation were not considered. This was despite the massive mobilisation of Maori (and others) across Aotearoa. Instead politicians played a slander game in the media.

From now on, the process must be based on the assumption that Maori have the rights to the foreshore and seabed, rather than an assumption of Crown ownership. As the Waitangi Tribunal said, '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.' (WAI 1071: Report on the Crown's Foreshore and Seabed Policy, Waitangi Tribunal Report 2004, p. 138).

The restraints put on the Review Panel by the terms of reference risk making the review as much of a travesty as the original process. It is of the utmost importance that the panel speaks with hapu and iwi directly.

Possible alternatives

The raupatu that has occurred since colonisation had not encroached most of the foreshore and seabed – until the Foreshore and Seabed Act 2004. Until this piece of

legislation, the rights recognised by tikanga, te Tiriti o Waitangi ,and the common law were, by default, upheld.

In the months leading up to the passing of the Act, iwi and hapu representatives at the government's 'consultation' hui, the Waitangi Tribunal hearings, and in other forums, said that covenants of access and non-saleability, consistent with tikanga, could be negotiated in their respective areas. Iwi and hapu continue to develop models for positive ways forward, and it is these that the Review should listen to.

I submit that the Foreshore and Seabed Act should be repealed, and the rights of Maori to the foreshore and seabed upheld.

Thank you for taking the time to consider my submission.

Yours sincerely,

Frances Mountier