

A PRIMER ON MAKING WRITTEN SUBMISSIONS TO THE MINISTERIAL FORESHORE AND SEABED REVIEW PANEL

INTRODUCTION:

Nearly five years on from the hikoi which brought thousands of people to Wellington to protest against the then proposed foreshore and seabed legislation a Committee has been established to review that legislation.

The Committee of course only has the power to make recommendations which the government may then choose to ignore but it does provide an opportunity for our people in particular to put forward alternatives to the legislation which remains such a fundamental breach of tikanga and Te Tiriti o Waitangi.

The Terms of Reference for the Committee allow for hui and submissions and the following Primer has been produced in the hope it will help people prepare any statements they might wish to make.

- Moana Jackson

WHO CAN MAKE A WRITTEN SUBMISSION?

Any individual, whānau, hapū, Iwi or other organisation can make a submission.

You need to state who you are making the submission on behalf of and give a contact address.

DOES THE SUBMISSION HAVE TO HAVE A SPECIAL HEADING?

The submission needs to be headed

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

WHERE DOES THE SUBMISSION NEED TO BE SENT?

It can be posted to:

Foreshore and Seabed Review
Freepost 224164
PO Box 180
Wellington 6140

OR

Emailed to:
foreshorereview_submit@justice.govt.nz

HOW MANY COPIES OF THE SUBMISSION HAVE TO BE SENT?

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WHAT IS THE CLOSING DATE FOR WRITTEN SUBMISSIONS?

Tuesday 19 May, 2009.

WILL THERE BE A CHANCE TO MEET WITH THE COMMITTEE?

Yes.

Oral submissions can be made at any of the hui being held around the motu.

Either register your interest on the review website (<http://www.justice.govt.nz/ministerial-review/>) or register at the hui on the day.

The schedule for hui is as follows:

APRIL

Bluff	Monday 20 April, 10am-1pm	Te Rau Aroha Marae
Invercargill	Monday 20 April, 7pm-9pm	Civic Theatre
Christchurch	Tuesday 21 April, 10am-1pm	Rehua Marae
Christchurch	Tuesday 21 April, 7pm-9pm	Christchurch Town Hall
Wellington	Wednesday 22 April, 7pm-9pm	Riley Centre, Wellington High School
Wellington	Thursday 23 April, 10am-1pm	Pipitea Marae
Hamilton	Friday 24 April, 10am-1pm	Rangiowhia Marae
Hamilton	Friday 24 April, 7pm-9pm	Waikato Stadium
Maketu	Monday 27 April, 10am-1pm	Whakaue Marae
Tauranga	Monday 27 April, 7pm-9pm	Tauranga Racecourse
Tokomaru	Tuesday 28 April, 1:30pm-4:30pm	Pakirikiri Marae
Hastings	Wednesday 29 April, 10am-1pm	Omahu Marae
Napier	Wednesday 29 April, 7pm-9pm	Taradale Town Hall

MAY

Auckland	Thursday 7 May, 7pm-9pm	Aotea Centre
Auckland	Saturday 9 May, 10am-1pm	Orakei Marae
Moerewa	Friday 15 May, 10am-1pm	Otiria Marae
Whangarei	Friday 15 May, 7pm-9pm	Barge Show Grounds Events Centre
Waitara	Saturday 16 May, 1:30pm-4:30pm	Owae Marae
Whanganui	Sunday 17 May, 10am-1pm	Putiki Marae
Whanganui	Sunday 17 May, 7pm-9pm	Whanganui Racecourse
Blenheim	Tuesday 19 May, 10am-1pm	Omaka Marae

WHO IS ON THE MINISTERIAL REVIEW PANEL?

The Ministerial Foreshore and Seabed Review Panel has three members: Justice Eddie Taihakurei Durie (Chair), Hana O'Regan, and Richard Boast.

WHAT SHOULD THE SUBMISSION CONTAIN?

The Submission may be as brief or as long as you wish, and may be introduced with a pepeha, and with hapu or whanau information etc.

It should clearly state whether you reject or support the Foreshore and Seabed Act 2004.

It also needs to contain specific references to sections in the Act with brief explanations about why you reject or support them, or what changes you want made to them.

DOES MY SUBMISSION HAVE TO COVER EVERYTHING IN THE ACT?

No.

You may just want to make a general statement or recommendation. For example you could suggest that the whole Act should be repealed or you could just focus on one or two Sections of the Act.

HOW MANY SECTIONS ARE THERE IN THE ACT?

The Act has 103 sections and two schedules.

WHAT ARE SOME OF THE KEY PARTS OF THE ACT?

The Act has a number of Parts and some key sections.

Some of those sections are outlined below, with some of the objections that our people have to them.

Your submission could use or adapt those objections, or you may raise other issues that may be especially relevant to you or your roopu.

WHAT IS THE PURPOSE OF THE ACT?

Section 3 states that the object of the 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 whānau, hapū, and Iwi with areas of the public foreshore and seabed.

Section 4 (a) gives effect to the object of the Act, by “vesting the full legal and beneficial ownership of the public foreshore and seabed in the Crown”.

Commentary –

Sections 3 and 4 (a) are the main reason our people have been objecting to the whole foreshore issue because they take away our tino rangatiratanga over the foreshore and seabed.

They extinguish the Māori rights to the foreshore and seabed that are recognised in tikanga, in Te Tiriti o Waitangi, and the common law.

By referring to “public foreshore” the Act excludes areas that are already privately owned, most of which are in non-Maori hands.

In other words this means that the rights of Māori are taken away, while the property rights of non-Māori are not.

The Act’s purpose clearly breaches Article Two of the Treaty as well as the standard common law rules about property rights etc. It also breaches the rights we have always had according to tikanga. It is an unjust raupatu.

By protecting non-Maori but not Maori rights the Act also breaches international human rights norms such as the Convention on the Elimination of All forms of Racial Discrimination.

CAN THE SUBMISSION SAY WHO RAISED OBJECTIONS TO THESE BREACHES?

Yes.

It is not just our people who have objected to these provisions.

Even before the legislation was passed the Waitangi Tribunal recommended that the Crown have a further ‘conversation’ with our people about the legislation.

Many experts from Iwi gave evidence to the Tribunal about the tikanga pertaining to the foreshore and all agreed that the then proposed legislation was in breach.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) also raised concerns about the purpose of the legislation.

CERD is the committee of international experts appointed to look at breaches of the Convention. It is a very important committee within the UN and indeed in the whole field of international human rights law.

IF THE CROWN NOW HAS THE FORESHORE CAN IT SELL IT?

Yes.

Section 14 states that “no part of the public foreshore and seabed may be alienated or otherwise disposed of (except) by a special Act of Parliament”.

Commentary –

The Crown has said that needed to take the foreshore because it was worried Maori would sell it. However Section 14 clearly gives the Crown a right to sell it through a “special Act of Parliament”.

Maori experience of the large-scale asset sales of the 1980’s and 1990’s caused concern among Māori that the Crown could quite easily do this again.

HAS THE CROWN ACTUALLY SOLD PARTS OF THE FORESHORE?

Yes.

Since the Foreshore and Seabed Act has been passed, the government has auctioned off areas of the seabed along the west coast from South Auckland to Whanganui, under the Crown Minerals Act 1991, for mineral and petroleum exploration.

The first of these licenses was issued on the 21 February 2005 which suggests that the sale was actually being negotiated even before the Act was passed.

The sale was conducted in secrecy without any consultation with mana whenua.

DOES THE ACT RECOGNISE ANYTHING FOR MĀORI?

Essentially it only allows a complicated process to negotiate or claim certain ‘rights’ but it is worth remembering that

1. The rights only exist *after* the Crown has taken the foreshore and seabed. In a sense it could therefore be argued that they are phantom rights in something our people no longer have.

2. It presumes that the crown has an overarching right of ownership of the foreshore and seabed.
3. It does not allow Maori to argue for our rights in tikanga, the common law, or under Te Tiriti.

Instead it creates a new process that is unfair and effectively delivers nothing in the sense that any 'rights' it delivers are actually granted by the Crown and essentially subject to it.

SHOULD THE SUBMISSION SUGGEST ALTERNATIVES?

Yes.

It is important that we suggest a better model or set of ideas if we can.

There are lots of options such as

1. Suggesting that the Crown recognise Māori rights in return for which Māori guarantee access to the foreshore and seabed.
2. Not accepting the Crown claim to overall ownership of the foreshore and seabed and suggesting instead that rights to the Foreshore and seabed are inherent in Māori. This model would require the Crown to prove its claim, not Māori.

SUMMARY :

In spite of the detail of the Act and whatever 'rights' or 'redress' it purports to offer, the fact remains that it takes away the foreshore and seabed from Maori.

After 1840 most of the other whenua was of course confiscated under various laws but Maori rights in the foreshore and seabed were never actually extinguished. By default the Treaty was in fact honoured and the common law respected.

The Act confiscated what little Maori have left.

It also mocks the politicians' comments about "one law for all" by creating a dishonest law that clearly reduces Maori rights and status to a lesser position.

Other papers by Moana Jackson on the foreshore and seabed are online at <http://www.converge.org.nz/pma/moana.htm>