



# Peace Movement Aotearoa

PO Box 9314, Wellington. Tel (04) 382 8129, <pma@xtra.co.nz>, www.converge.org.nz/pma

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## The government's proposals for the foreshore and seabed

In June 2003 the Court of Appeal ruled that Maori customary title to foreshore and seabed had never been legally extinguished and could be investigated by the Maori Land Court. The government's response was to say they would intervene in the legal process, and introduce legislation to make the foreshore and seabed 'public domain'.

At three national meetings, and the government's 'consultation' hui, Tangata Whenua have totally rejected the government's proposals.

So have a considerable number of non-Maori people who see the government's reaction as reflecting a colonial mind set which is simply not acceptable in this day and age.

This paper outlines some of the reasons for our opposition and provides links to more information.

### Why are we opposed to the proposals?

- they are scare mongering and divisive by implying that Tangata Whenua will restrict public access to beaches unless 'public domain' legislation is introduced;

- they fail to acknowledge that since 1840 it has been private owners, exploitative commercial enterprise and government agencies, rather than Iwi and Hapu, who have denied public access to the foreshore and seabed. Tangata Whenua have not excluded others, provided wahi tapu are respected and natural resources are not damaged or depleted;

- they are a clear breach of Article II of the Treaty of Waitangi which reaffirms to Iwi and Hapu the Tino Rangatiratanga of their lands, all their possessions and everything they hold precious. If the proposed legislation goes ahead, it will be an extraordinary breach and dishonouring of the Treaty of Waitangi by the Crown;

- they are fundamentally discriminatory because the Crown has had no apparent difficulty in allowing the sale of land adjacent to the foreshore and seabed to private and foreign ownership in the past. Yet the prospect of Iwi and Hapu authority, held prior to European settlement and reaffirmed in the Treaty of Waitangi, being confirmed by the courts appears to be intolerable to the government;

- they are also discriminatory because of the different treatment being proposed for those who have private ownership of seabed and foreshore or adjacent land - negotiation and possibly compensation, as compared with the approach to customary title - confiscation and extinguishment;

- they breach domestic law (the NZ Bill of Rights Act and the Human Rights Act) and international human rights conventions and standards (including the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Civil and Political Rights).

If the proposed legislation is introduced, a massive injustice will have been done, and a source of substantial conflict and justified grievance into the future will have been created. The NZ government will face international condemnation as the Australian government did over their attempts to extinguish indigenous title.

### Is this a peace issue?

Yes it is. Any injustice creates social conflict and is thus a peace issue. This is particularly the case when it occurs in the context of historical and continuing oppression. Consider for example the comments of the Waitangi Tribunal in The Taranaki Report, WAI 143, on the ongoing process of colonisation:

*"If war is the absence of peace, the war has never ended in Taranaki, because that essential prerequisite for peace among peoples, that each should be able to live with dignity on their own lands, is still absent and the protest over land rights continues to be made."*

*"Through war, protest, and petition, the single thread that most illuminates the historical fabric of Maori and Pakeha contact has been the Maori determination to maintain Maori autonomy and the Government's desire to destroy it. The irony is that the need for mutual recognition had been seen at the very foundation of the State, when the Treaty of Waitangi was signed."*

While the WAI 143 Report was focussed on Taranaki, those words apply to the experience of Tangata Whenua around the country - and have particular resonance today given the government's foreshore and seabed proposals.

### **Is this a Maori versus non-Maori issue?**

No it is not, although government and other politicians are portraying it that way. This is an issue of justice. Even the government-released analysis of the submissions on their proposals includes statements which show that many non-Maori do not support the government's plans:

*"Many respondents were strongly opposed to the four principles, including almost all Maori and many non-Maori."*

*"Many were concerned that the principles and related proposals had been developed without the participation of Maori and accordingly represented a very mono-cultural perspective on the issues and possible solutions."*

*..."many non-Maori considered that the principles and related proposals constituted a major breach of the Treaty of Waitangi".*

### **Are there positive ways forward?**

Yes of course. While the mainstream media reported the complete rejection of the government's proposals at every one of their 'consultation' hui last year, what has not been reported is that Iwi and Hapu around the country have proposed ways to resolve the foreshore and seabed issue. The government has not considered any alternatives to their own proposals.

For example, at the hui last year and the Waitangi Tribunal hearings in January 2004, Hapu and Iwi representatives have said that covenants of access and non-saleability, consistent with tikanga, could be negotiated in their respective areas - this would guarantee both public access and local ownership. In contrast, under the proposed legislation the government could sell the foreshore and seabed by an Act of Parliament - this would be easy for a majority government to arrange, and provides little guarantee for the future.

A fair and long-lasting resolution on the foreshore and seabed will not be achieved by the government's current proposals. The best way forward lies within a broad-based process of constitutional change in which the government negotiates with Tangata Whenua as equal parties to the Treaty of Waitangi. To do anything less will

reveal government talk of 'partnership' as a hollow sham.

The foreshore and seabed debate could have been an excellent opportunity for non-Maori people to really think about the issues of colonisation, to learn more about the history of this country, and to move towards an understanding of why Tangata Whenua are so outraged and distressed by the government's proposals.

It could have been an excellent opportunity for a positive commitment to be made by the government to work with Tangata Whenua and other New Zealanders to genuinely honour the Treaty of Waitangi, for the benefit of us all.

Tragically it seems that, except at an individual level where some have used this debate to better inform themselves, these opportunities will not be taken. Government politicians do not seem inclined towards seeking a just and durable solution - in a Memorandum to the Waitangi Tribunal on 17 February, the Crown Law Office said the foreshore and seabed legislation is likely to be introduced to parliament towards the end of March.

By reacting as they did to the Court of Appeal ruling, and by perpetuating rather than dispelling misinformation, government politicians created the climate in which Don Brash and others now feel free to openly express racist and socially divisive views.

This is a particularly crucial time for people of good will to be working constructively for a peaceful future for Aotearoa / New Zealand - the foreshore and seabed policy could still be scrapped, please do whatever you can to make that happen.

### **Where you can get more information**

Information on the government's proposals; the paper detailing the basic human rights breached by the foreshore and seabed policy; and a range of articles, alerts, statements, and submissions by Pakeha and Maori groups and individuals are on-line at [www.converge.org.nz/pma/fsinfo.htm](http://www.converge.org.nz/pma/fsinfo.htm)

**No raupatu in our time!** is a campaign by Pakeha who are opposed to the government's foreshore and seabed proposals. Information about the campaign and why the word 'raupatu' is used in relation to the proposals is on the web page above.

If you don't have Internet access, you can get paper copies of information on the foreshore and seabed from Peace Movement Aotearoa, PO Box 9314, Wellington.