

Foreshore and Seabed Review
Ministry of Justice
PO Box 180
Wellington

19th May 2009

Submission on review of Foreshore and Seabed Act

May I heartily commend the Ministry on undertaking a review of the Foreshore and Seabed Act of 2004. Ever since that legislation was passed, I felt that a major injustice was being done to Maori. At the time I joined the hiko through Auckland City to Bastion Point and was impressed by the large turnout and the strong feelings that were evident regarding the unfair nature of the Act.

My concern at the time was that the Act was disregarding a number of clauses of the Treaty of Waitangi and that it breached human rights protected in both our domestic legislation as well international law. It removed the possibility of common law recognition of the full extent of Maori title and rights in foreshore and seabed areas. It has since been pointed out that alternatives to the legislation which would not have discriminated against hapu and iwi were neither considered nor explored by the 2003/04 government.

With this submission I humbly suggest that the Act be repealed, to be replaced with something that fully respects the rights of Maori. The ongoing deliberations should reflect what Maori want and I trust that the Maori Party is able to participate in that process and put forward its own wishes and requirements. If that were to occur, I believe we would be able to achieve a situation in which the foreshore and seabed areas would belong to hapu and iwi, rather than to the Crown. I would further assume that the wishes expressed by the Waitangi Tribunal would be honoured, as referred to in their statements covering "the full restoration of te tino rangatiratanga over the foreshore and seabed". Future legislation should aim at confirming Maori ownership of the foreshore and seabed unless the Maori themselves have indicated a willingness to give up that ownership.

May I please also point out that the time constraint of six weeks put on the review panel is totally unrealistic. If the review process has been initiated in an attempt to mitigate the effects of the 2003/2004 negotiations that were already rushed through at that time, then six weeks means that an even tighter timeframe has been established. The intention behind the current review should allow for hapu and iwi to be consulted and it is simply not possible to compress those consultations into a six-week period. The Waitangi Tribunal's first recommendation about the foreshore and seabed specified 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." Rushing the legislation through runs the grave risk of continuing to do injustice to our indigenous kinfolk.

The history of our country and the bicultural understanding we have with those who inhabited the country before pakeha arrived owe us the need to tread carefully when encroaching on territory that is closely connected with local hapu and iwi. Over the years the government of the day has frequently failed to take due consideration of Maori interests. I hope the review panel takes this opportunity to get things right in consultation and agreement with today's Maori.

I wish to be heard in support of this submission if hearings are being held in Auckland.

Oliver Hoffmann