

Mixed Ownership Model Submission Form

The Government welcomes your feedback on this consultation document, particularly the questions set out below.

You can make a submission by using this form, which is also available electronically at www.treasury.govt.nz/mixed-ownership-consultation

1 Contact Details

I am responding (please complete one):

On behalf of an organisation

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2 Submission

Summary of our submission

Peace Movement Aotearoa does not support the partial privatisation of state owned assets for a number of reasons, including those outlined in this submission.

We have serious concerns about this consultation with regard to:

- the unseemly haste with which it has been conducted;
- the lack of proper negotiation with hapu and iwi;
- the statements from various government politicians pre-empting its outcome; and
- the decision to go ahead having apparently already been made regardless of what is said during the consultation.

We consider the process is seriously deficient with respect to the Treaty of Waitangi (the Treaty), Section 9 of the State Owned Enterprises (SOE) Act, and with the government's obligations under international law.

We recommend that any alteration to the SOE Act be put on hold until:

- a process of full and proper negotiation with hapu and iwi has been held;

- pending claims before the Waitangi Tribunal covering land and resources that will be affected by the mixed ownership model are resolved to the satisfaction of the hapu and iwi involved; and
- fundamental constitutional issues relating to the relationship between tino rangatiratanga and kawanatanga are similarly resolved.

We have an additional concern that is not specifically covered by this consultation, namely the proposal to remove mixed ownership model companies from the ambit of the Ombudsmen Act and the Official Information Act.

Thank you for your attention to our comments, and we would appreciate the opportunity to speak to our submission should the opportunity arise.

Question 1: What rights and interests, if any, do Māori have in the Mixed Ownership Model Companies that are not protected by the section 27A-D memorials regime, or by other legislation?

While ultimately it is up to hapu and iwi to determine which of their rights and interests are not adequately covered by the provisions of the SOE Act and other legislation, from our perspective as a mainly Pakeha organisation it is obvious that successive governments have failed to protect - or even acknowledge the full extent of - the guarantee of the continuance of tino rangatiratanga in the Treaty. As a consequence, there are many Maori rights and interests that are not protected in legislation.

Question 2: How would any rights and interests identified in question 1 be protected by continued application of section 9 of the State-Owned Enterprises Act 1986?

The protection of rights and interests, and the means by which they should be protected, is a matter for full and proper negotiation with hapu and iwi, not for a “consultation” conducted with little notice, that may not have included all hapu and iwi, and that will apparently have little effect on the outcome.

Our concerns about the consultation process are outlined below in Additional Comments, section A.

Question 3: Could any rights and interests identified in question 1 be protected by an alternative, more specific, formulation of the Crown's obligations under the Treaty?

The full protection of the rights and interests of hapu and iwi will not occur until:

- a process of full and proper negotiation with hapu and iwi has been held;
- pending claims before the Waitangi Tribunal covering land and resources that will be affected by the mixed ownership model are resolved to the satisfaction of the hapu and iwi involved; and
- fundamental constitutional issues relating to the relationship between tino rangatiratanga and kawanatanga are similarly resolved.

Additional comments: Please insert any other comments you wish to make on this consultation document.

A. Concerns about the consultation process

We have serious concerns about this consultation with regard to:

- the unseemly haste with which it has been conducted;
- the lack of proper negotiation with hapu and iwi;
- the statements from various government politicians pre-empting its outcome; and
- the decision to go ahead having apparently already been made regardless of what is said during the consultation.

The unseemly haste with which this consultation has been conducted is clearly evident from the timeline: the consultation announcement was made on 27 January 2012, less than a fortnight before the first consultation hui was held on 8 February. The consultation document was not available until 1 February, a week before the first hui. The deadline for written submissions is only twenty-one days after the consultation document was released.

Ngati Kahungunu, the third largest iwi, was left off the initial consultation hui list.

With such short notice and only ten consultation hui, it is difficult to see how all hapu and iwi could have been involved.

We consider the process is seriously deficient with respect to the Treaty, Section 9 of the SOE Act, and with the government's obligations under international law.

The repeated statements from various government politicians indicating that the decision to go ahead with the SOE privatisation has apparently already been made regardless of

what is said during the consultation, illustrate it is clearly not even a proper consultation, let alone the negotiation that the Treaty requires.

We note in this regard that Section 9 of the SOE Act requires the Crown to act consistently with the principles of the Treaty - such principles are said to include good faith and partnership, active protection, and a principle of redress. None of these have been met by this consultation process.

In addition, the government has not met its obligations under international law with regard to the minimum standards of behaviour expected of states in their relationship with indigenous peoples.

The expectation that states will obtain the free, prior and informed consent of indigenous communities in relation to decisions that affect their lands, resources, rights and interests has been outlined by, among others, the Committee on the Elimination of Racial Discrimination in General Recommendation 23 (1997) when describing how state parties should meet their obligations in relation to the International Convention on the Elimination of all Forms of Racial Discrimination, and the Committee on Economic, Social and Cultural Rights in General Comment 21 (2009) in relation to state party obligations under the International Covenant on Economic, Social and Cultural Rights - New Zealand is a state party to both of those instruments.

Free, prior and informed consent requires the government to approach hapu and iwi with an open mind as to the possibilities on any decision that may affect their lands, resources, rights and interests - not with a pre-determined agenda where the underlying decision, privatisation of state owned assets, has already been made.

Furthermore, we draw your attention to the recommendation by the Committee on the Elimination of Racial Discrimination in 2007 that the government:

“should ensure that the Treaty of Waitangi is incorporated into domestic legislation where relevant, **in a manner consistent with the letter and the spirit of that Treaty. It should also ensure that the way the Treaty is incorporated, in particular regarding the description of the Crown’s obligations, enables a better implementation of the Treaty.**” (Concluding Observations of the Committee on the Elimination of Racial Discrimination: New Zealand, CERD/C/NZL/CO/17, para 14, our emphasis).

We suggest that this recommendation is a good starting point for how the government should proceed - both the letter and the spirit of the Treaty require negotiation with the parties to it, not an over hasty process with a pre-determined outcome. Any new legislation must, as the Committee stated, enable better implementation of the Treaty.

In this regard, if the government does proceed with privatisation of state owned assets, there is no good reason why third parties cannot also be obliged to act in accordance with the Treaty - that would certainly be consistent with developments in international law relating to the rights of indigenous peoples.

B) Recommendations

We recommend that any alteration to the SOE Act be put on hold until:

- a process of full and proper negotiation with hapu and iwi has been held;
- pending claims before the Waitangi Tribunal covering land and resources that will be affected by the mixed ownership model are resolved to the satisfaction of the hapu and iwi involved; and
- fundamental constitutional issues relating to the relationship between tino rangatiratanga and kawanatanga are similarly resolved.

C) Additional concern

We have an additional concern that is not specifically covered by this consultation, namely the proposal to remove mixed ownership model companies from the ambit of the Ombudsmen Act and the Official Information Act. If, as has been stated, the government will retain a majority shareholding in any privatised SOE, there is no justification for this and the provisions of both Acts must therefore be included in any new legislation.