

The Review of the Foreshore and Seabed Act 2004

Submission by the New Zealand Centre for Political Research

Summary of Key Points:

1. The timeframe of 20 working days for submissions on the Review is scandalously short for a matter of such constitutional significance – it should urgently be extended by a further two months.
2. The New Zealand Centre for Political Research strongly opposes any changes to the Foreshore and Seabed Act 2004 – the law should remain unchanged.
3. The NZCPR strongly opposes the Government's suggested reforms.

1. The timeframe of 20 working days for submissions on the Review is scandalously short for a matter of such constitutional significance – it should urgently be extended for a further two months.

On behalf of over 5,600 people (names and addresses can be viewed on the NZCPR website here: http://www.nzcpr.com/petition_fandsb_view.php) who supported an on-line petition to extend the submission date for the Foreshore and Seabed Review, I would like to request that the deadline for submissions be extended by two months to June 30th 2010. Please note that copies of the full details of those people who had signed the NZCPR's petition as at midnight on April 29th, was sent to the Prime Minister and the Attorney General in support of a formal request for an extension of the deadline.

The proposals for the reform of the Foreshore and Seabed Act 2004 that are outlined in the Government's Review document are a matter of huge constitutional significance for New Zealand. Such is their importance that the public should be engaged in the review process to the fullest possible extent. Unfortunately, while iwi have been kept in the loop by Cabinet, the wider public are largely unaware of the profound changes that are being proposed. In fact, with the foreshore and seabed review being launched just before the long Easter break, people have had only 20 working-days to find out about the review, locate the documentation, try to understand the proposals, and prepare submissions. Given the lack of publicity about the review and the fact that most people don't even know that the review is going on, this timeframe is far too short for a matter of such national importance.

I am aware that other groups are also requesting that the submission deadline be extended - I'm sure that most people would agree that on matters of great constitutional significance, it is absolutely crucial that sufficient time is allocated to enable the wider public to become fully engaged in the process. 20 working days cannot under any circumstances be justified as a reasonable time frame for a constitutional matter of this magnitude. Another two months would enable people to not only better understand the complex proposals that the government has put forward, but also to put in meaningful submissions.

In light of the announcement this morning that the Minister of Energy and Resources Gerry Brownlee and the Minister of Conservation Kate Wilkinson have extended the public submission period on the Stocktake of Schedule 4 of the Crown Minerals Act by three weeks from the proposed deadline of 5.00pm on Tuesday 4 May 2010 to Wednesday 26 May 2010, I would urge that the Attorney General to look favourably on our request for a two month extension for submissions on the Foreshore and Seabed Review given the greater significance of the changes being proposed and the almost total lack of publicity surrounding this review.

2. The New Zealand Centre for Political Research strongly opposes any change to the Foreshore and Seabed Act 2004

In spite of its controversial genesis, the Foreshore and Seabed Act 2004 is working well. It should not be changed. The vast proportion of New Zealanders are quite content with the law as it stands.

While the government has a confidence and supply agreement with the Maori Party that includes a review of the law, the only justification for a law change is if there is widespread discontent. In spite of the Minister's claims that significant numbers of New Zealanders are unhappy with the law as it stands, that is not the case at all. The only real discontent surrounds a minority group with a strong vested interest in gaining access to the public resources of the foreshore and seabed for their own private gain. As a result of the advocacy of the Maori Party, their expectations of winning effective ownership of the public foreshore and seabed has been raised. The problem is that satisfying their needs will result in the effective privatisation of the foreshore and seabed – an unacceptable outcome that will be to the detriment of all other New Zealanders.

The point is that under British common law the ownership of the foreshore and seabed was vested in the Crown. The Maori Land Court had no jurisdiction over the foreshore and seabed. That situation was validated by the decision of the Court of Appeal in the 90 Mile Beach case in 1963. The fact that the Ngati Apa Court of Appeal decision in 2003 overturned that finding and caused the Labour Government to legislate in favour of Crown ownership means that those Maori who would like to claim ownership of the foreshore and seabed are effectively in no different a position today from the situation that they have been in since 1840. It is unconscionable that the government could legislate to the detriment of the majority of New Zealanders on the basis of raised expectations of a lucrative windfall gain by private Maori interests.

3. The NZCPR strongly opposes the Government's suggested radical reforms.

The NZCPR strongly opposes the detail of the Government's suggested reforms. In particular in an age of judicial activism, inserting new political constructs such as "public domain/takiwa iwi whanui" and "customary title" into the law exposes the public to ongoing litigation as vested interest groups seek advantage through legal challenge. In fact, when asked about customary title in a recent interview on TV3's the Nation, the Attorney General confirmed the problem: "There is absolutely no law on customary title in New Zealand, it's a very vague concept". Using such "vague" concepts risks the development of a new grievance industry at a time when New Zealand was looking forward to the end of all such practices.

The NZCPR strongly opposes the fact that under the Government's suggested reforms, entitlements to the foreshore and seabed could be determined by negotiation with a Minister of the Crown rather than through legal challenge in the Courts. Enabling New Zealand's rich public foreshore and seabed resource to be traded away at the behest of politicians exposes the public to gross political exploitation and uncertainty, not to mention on-going disputes and litigation.

The NZCPR believes the powers given to private Maori interests assuming control over the foreshore and seabed are also excessive. The right of veto with no right of public challenge and the assumption of powers greater than that of Parliament in some instances, elevates Maori to a status greater than all other New Zealanders creating an apartheid system that is totally unacceptable in modern day New Zealand.

There are also matters relating to the treatment of public infrastructure – roads, cables, pipes and other structures that lie within the foreshore and seabed area - that have not been clearly defined in this proposal and could be identified as lucrative avenues for “rent seeking” by groups demanding property rights over the foreshore and seabed. The protection of such infrastructure in a way that ensures it will remain forever free from exploitation is a crucial matter that needs real clarification as the suggestions in the review document provide no reassurances that such protection will be provided.

The NZCPR has identified four areas of concern but the review is full of them. We cannot support any of the recommendations and believe that changing the law to enable the foreshore and seabed to be effectively privatised by Maori interests is a matter that the government has no mandate to even consider. If National and the Maori Party decide to go down this divisive and indeed racist path – against the wishes of the vast majority of New Zealanders – then the only democratic option would be to put the proposition to a binding referendum at the next election.