

National Issues — An Introduction to Treaty of Waitangi Claims and the Foreshore and Seabed Issues

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A. Treaty of Waitangi Claims

1. Introduction

2. What is a claim?

- (a) Treaty of Waitangi Act 1975
- (b) Principles of the Treaty

3. Historical Claims

- (a) Claims for breaches before 23 September 1992
- (b) Procedure/Duration
- (c) Types of Evidence

4. Contemporary Claims

- (a) Examples – Petroleum/Wai 262 Flora and Fauna/Local Government

5. Settlement of Claims

- (a) Link between Tribunal process and Crown Settlement Policy
- (b) Crown Forests/SOE land
- (c) Office of Treaty Settlements
- (d) Fiscal Envelope/Relativity Clauses

B. Foreshore and Seabed

6. Background

- (a) Customary rights/aboriginal title – not a Treaty of Waitangi Claim
- (b) Ngāti Apa Marlborough Sounds application to Māori Land Court to decide if foreshore and seabed Māori customary land under Te Ture Whenua Māori Act 1993 – translation into legal title
- (c) Case stated to High Court – did the Māori Land Court have jurisdiction to determine whether foreshore and seabed is Māori customary land? Court of Appeal found it did
- (d) Crown response to legislate

(e) No applications heard by Māori Land Court, unclear what outcome would have been

Foreshore and Seabed Act 2004

(a) Numerous problems with Act:

- Territorial Customary Rights test impossible to meet
- Limited role of Māori Land Court – instead High Court
- Non-Māori could apply for Customary Rights Order (CRO) but no basis in law
- Legal Aid not available to applicants
- Negotiations redress same as Treaty Settlement redress

Ministerial Review Panel on Foreshore and Seabed Act 2004

(a) Established March 2009 to answer four questions:

1. What were the nature and extent of the mana whenua and public interests in the coastal marine area prior to the Ngati Apa decision?
2. What options were available to the government to respond to the Ngati Apa decision?
3. Does the Foreshore and Seabed Act 2004 effectively recognise and provide for customary or aboriginal title and public interests in the foreshore and seabed?
4. If not, what options or what are the options to do this?
 - (b) Panel received 580 submissions, 236 oral and the rest in writing. 95% said the Act does not work (85% repeal, 10% substantially amend), only 5% said keep Act.

Review Panel Report released 1 July 2009

Recommended:

- i. Repeal Act
- ii. Interim Act
- iii. National Policy Proposal and/or
- iv. Regional Iwi Proposal

Where to from here?

- (a) Crown comments due end August 20