

# The Treasury

## Release of Submissions: Mixed Ownership Model Consultation with Māori

### Release Document

March 2012

[www.treasury.govt.nz/publications/reviews-consultation/mixed-ownership/submissions](http://www.treasury.govt.nz/publications/reviews-consultation/mixed-ownership/submissions)

Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under the following section of the Official Information Act, as applicable:

[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, an [1] appearing where information has been withheld in a release document refers to section 9(2)(a).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

# 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](http://www.treasury.govt.nz/mixed-ownership-consultation)

## 1 Contact Details

*I am responding (please complete one):*

### As an individual

<b>Your name</b>	Carwyn Jones
<b>Your iwi affiliation</b>	Ngati Kahungunu
<b>Address</b>	[1]
<b>Email address</b>	

### On behalf of an organisation

<b>Your name</b>	
<b>Organisation you represent</b>	
<b>Address</b>	
<b>Email address</b>	

## 2 Submission

**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?

The Treaty of Waitangi reaffirms the right of Maori communities to exercise tino rangatiratanga over their freshwater and geothermal resources. This includes rights, and corresponding obligations, to protect, preserve, control, regulate, use, and develop those resources.

Maori have not willingly sold either their tino rangatiratanga or control over freshwater and geothermal resources.

**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?

There must not be a partial privatisation of any power generating State Owned Enterprises (SOEs), or the passing of any new legislation for such a purpose, or the removal of a section 9 type clause until a compromise is negotiated with Maori.

The partial sale of the power generating SOEs will:

- make the prospect of securing section 27B resumption of any of the assets of the power generating companies highly unlikely.
- Maori will continue to have no or no adequate redress for their freshwater and geothermal claims.
- The pool of assets and range of potential remedies practically available to the claimants will be reduced.

Removing from any new Act governing the 51% of power generating companies, the protection that section 9 of the SOEs Act brings, is prejudicial to Maori. It directly removes the legislative requirement for the Crown to act in accordance with the Principles of the Treaty of Waitangi in respect of that remaining shareholding and consequently reduces the prospects and the potential enforceability of any relief recommended by the Waitangi Tribunal or other courts in present or future cases.

However, simply transporting the words of section 9 into the new legislation will not provide effective protection of Maori rights. Treaty obligations must continue to apply to the companies themselves, no matter who the shareholders are, if the Crown is to sell down its shareholding and its ability to exercise control over these companies in a way that is consistent with Treaty principles.

**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?

In order to effectively protect Maori rights and interests, any alternative formulation of the Crown's obligations would need to recognise the following:

All available land or interests in land which are used or have been used for or in connection with the generation or transmission of hydro-electricity or geothermal electricity and are memorialised under section 27B of the SOE Act 1986 should be returned to Maori.

Maori also require compensation for past use of freshwater and geothermal resources, compensation for loss or rights or the ability to profit from economic use of those freshwater and geothermal resources (for example power production) and payment for future use of the proprietary interest in those freshwater and geothermal resources.

Amendments need to be made to the Resource Management Act 1991 and any other relevant legislation required to provide for future Maori rangatiratanga and control over freshwater and geothermal resources.

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

Power generating SOEs should be retained in Crown hands, and should not be sold/privatised until such time as Maori claims are resolved or Maori otherwise agree and are satisfied with the protections offered by the Crown.

I would also like to register my objection to the process of consultation that has been undertaken on this issue. In short, it does not look like good faith consultation – it has been rushed with consultation hui over only a week giving no time to discuss the issue with whanau. It is unacceptable that there were no hui in places like Taranaki or Te Tau Ihu. I do not think that it meets the kind of standards for consultation that are set out in the UN Declaration on the Rights of Indigenous Peoples, which this Government claims to endorse.

#### **All submissions will be publicly available**

The Government will publicly release your submission, a summary of submissions and a list of the names of submitters, on The Treasury's website: [www.treasury.govt.nz/mixed-ownership-consultation](http://www.treasury.govt.nz/mixed-ownership-consultation).

#### **Your name will be made publicly available as part of your submission when it is released**

Your contact details will be removed from your submission before it is posted on the website, recorded in the summary of submissions or released under the Official Information Act 1982 (OIA).

If you do not wish your name in your submission to be released, please clearly state this in your submission or tick the option below:

I request that my name be removed from my submission before it is released and that it is recorded as 'anonymous' in the summary of submissions.

If there is particular information in your submission that you wish to remain confidential, please clearly indicate this and explain your reasons for wanting the information kept confidential.

The Treasury is subject to the OIA and copies of submissions sent to The Treasury will normally be released in response to an OIA request from a member of the public. If your submission is subject to an OIA request, The Treasury will consider your confidentiality request in accordance with the grounds for withholding information outlined in the OIA. You can view a copy of the OIA on the New Zealand Legislation website: [www.legislation.govt.nz](http://www.legislation.govt.nz).

The Privacy Act 1993 governs how The Treasury collects, holds, uses and discloses personal information about you which is contained in your submission. You have the right to access and correct this personal information.

Submissions can be sent by email to [mixed-ownership-consultation@treasury.govt.nz](mailto:mixed-ownership-consultation@treasury.govt.nz) or by post to:

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The deadline for receipt of submissions is **5pm on Wednesday 22 February 2012**. Late submissions will not be considered.