

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

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.

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

[1]

From: [1]
Sent: Tuesday, 21 February 2012 9:58 a.m.
To: Mixed Ownership Consultation
Subject: Submission: Mixed Ownership Model Consultation
Attachments: SubSOEpriv1202.docx

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):

As an individual

| | |
|-----------------------------|---------------------------|
| Your name | Robert Gordon Tait |
| Your iwi affiliation | Tauiwi |
| Address | [1] |
| Email address | |

On behalf of an organisation

| | |
|-----------------------------------|--|
| Your name | |
| Organisation you represent | |
| Address | |
| Email address | |

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 right of Maori communities, affirmed in The Treaty of Waitangi, to exercise tino rangatiratanga over their “taonga katoa” which includes freshwater and geothermal resources.

The rights, and corresponding interests, to protect, preserve, control, regulate, use, and develop those resources.

The right not to have their rights under the Treaty abrogated by the Crown or anyone else. The Crown has a duty and an obligation to be a good partner.

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?

Section 9 of the SOEs Act offers at least limited protection to Maori rights and interests. It applies a legislative requirement that the Crown act in accordance with the principles of the Treaty of Waitangi. It must be retained or replaced with an even stronger requirement on not only the Crown but also other shareholders.

Section 9 ensures that the Crown does not neglect or act against the rights and interests of Maori.

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?

Possibly, but not by removing the requirements of Section 9. Section 9 has been tested in the courts; there exists a body of case law and precedent to support its application. Alternatives are likely to result in a piecemeal approach to legislation dictated by the whim or changing policies of the Crown and without proper consultation in good faith with te iwi Maori and possibly to the detriment of Maori rights and interests under the Treaty of Waitangi.

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

- ❖ All rights or interest in land which is or has been used for, or in connection with, the generation or transmission of electricity and memorialised under section 27B of the SOE Act 1986 should be safeguarded in any new legislation.
- ❖ Maori have rights and interests in compensation for the past use of freshwater and geothermal resources, also for loss of rights or the ability to profit from economic use of those resources (for example power production) and in payment for future use of the proprietary interest in those freshwater and geothermal resources.
- ❖ Amendments will be needed to the Resource Management Act 1991 and any other relevant legislation to ensure Maori rangatiratanga and control over freshwater and geothermal resources in the future.

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 not sold or privatised until Maori claims are resolved or Maori agree and are satisfied with the protections offered by the Crown.
- ❖ Furthermore, remember this saying:
Hutia te rito o te harakeke, kei whea te korimako e koo? Ka rere ki uta, ka rere ki tai. Kii mai koe ki au, he aha te mea nui i te ao? Maaku e kii atu, he tangata, he tangata, he tangata! (If you pluck out the centre shoot of the flax, where will the bellbird sing? It will fly inland, it will fly seawards. If you ask me what is the most important thing in the world, I will reply, People, people, people!)
The ideology that is directing this issue is primarily economic and pays little or no regard to the rights and interests of all the people of Aotearoa.
- ❖ The time frame for consultation has been ridiculously short for such an important matter and calls into question the Crown's good faith.
- ❖ The advertising of hui has been inadequate.

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.

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.

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 or by post to:

FreePost Authority No.126395
Mixed Ownership Model: Consultation with Māori
Commercial Transactions Group
The Treasury
PO Box 3724
Wellington 6140

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