

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.

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

1 Contact Details

I am responding (please complete one):

As an individual

Your name	*Judith Mary Mitchell
Your iwi affiliation	Ngāti Toa
Address	[1]
Email address	

On behalf of an organisation

Your name	
Organisation you represent	
Address	
Email address	

2 Submission

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

I believe that the Government should be consulting with Māori and with all New Zealanders about whether they want these partial asset sales at all. Throughout this consultation and in this very consultation paper, the Government seems to be trying to limit the terms of the debate over the partial sale of taxpayer-owned assets to look at section 9 and 27-B. In my view, this is neither in the spirit of the partnership envisioned under the Treaty nor is it good governance or 'kawanatanga' in terms of the population as a whole. When the Government is proposing doing something as major as partially selling off New Zealanders' rights to their assets, and particularly when we are talking about an essential service like electricity, the Government should be consulting properly with Māori and with all New Zealanders. **I suggest that we should have a genuine public debate, followed by a referendum, on the question of whether both Māori as treaty partners and New Zealanders as a whole want to partially sell their state assets at all, and if so, what kinds of assets.**

In my view and the view of our whanau, the Government does not have a mandate to sell or partially sell this country's assets. The sale of state assets was only one of many policies that the National Government campaigned on, and *even if* that 47% of voters who voted for National solely because they wanted to sell off our country's assets and not for any other reason. In my view, **It is dishonest to claim a mandate for a specific policy, particularly one that affects an essential service, based only on one general election result.**

The consultation process was rushed, narrowly focussed and inadequate:

- Just 10 consultation hui were held to cover the entire country, making it very difficult for people living outside of these ten areas to participate. There were just two hui, one in Christchurch and one in Invercargill, to cover the entire Te Wai Pounamu! What about Nelson, Blenheim, the West Coast, Dunedin, Kaikoura – where large numbers of Māori live? The spread of hui in the North Island was similarly poor. There were no hui held in Taranaki or Te Urewera, where large concentrations of Māori live and where some of the worst government actions against Māori have taken place. None were held in places like Taupo, Masterton, and the The Kapiti coast.
- **All ten of the consultation hui took place during the day on weekdays, when most people were working.** For example, the Wellington hui, which took place on a Wednesday, from 3.30-5.30pm, in a Te Puni Kokiri office in the central city. How were Maori living and working in outlying areas, such as the Kapiti Coast, Porirua, and the Hutt Valley, supposed to attend that hui?
- **The consultation was focussed on the narrow question of what to do with section 9, with the Government presenting three options, not one of which was attractive.** AS NOTED EARLIER, IT IS NOT IN THE SPIRIT OF THE TREATY TO LIMIT THE TERMS OF THE DEBATE IN THIS WAY, and this can't be called 'consultation', because **consultation involves considering the full range of options that are available, not coming with pre-determined ideas.** The Government should be consulting with Māori over whether they want the partial sales at all, and if so, the full range of available options, including retaining section 9 in relation to the privatised shareholdings, or, if not retained, compensation for Maori.
- **The Government is failing to live up to the standard set out in the United Nation's Declaration of the Rights of Indigenous Peoples – despite having signed up to that Declaration.** Article 19 of that Declaration states that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them'. The Government has not consulted with our 'representative institutions' – it has instead held a hurried, smattering of meetings in random locations around the country at times when most people are working. It most certainly has not even attempted to obtain 'free, prior and informed consent' – because it has limited the terms of the debate from the outset.
- **As well as not meeting the standard for consultation set out in the Declaration of the Rights of Indigenous Peoples, the Government is not even meeting the standard of consultation that it has set for Māori.** The Office of Treaty Settlements requires Māori groups seeking a mandate from their own people to negotiate or sign a deed of settlement to: organise hui covering all the main areas where their people live, advertise the hui at least two weeks ahead in local and national newspapers, hold at least some of the hui on weekends, fully inform those attending of all the options available, have independent observers attend the hui, and finally, hold a ballot (including postal ballot), on what

option tribal members want to pursue. In contrast, the hui over the proposed partial sale of electricity companies was rushed, poorly advertised, not held in many key areas where Māori reside, held on week-days, did not have an independent observer, and no ballot was taken.

In my opinion, with regard to the 51% shareholding retained by the State, there is no reason and no excuse for the Government to drop the section 9 provision from the original SOE Act. In fact, the way that the Government has conducted this proposed sale of taxpayer-owned assets to date, without a mandate and with minimal and narrow consultation, suggests that the section 9 provision is more needed than ever.

Those are my main submissions on this matter. I will now respond to those very narrowly-focussed questions posed in the submission form.

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?

Currently, via the reference to Treaty principles in section 9 of the SOE Act, Māori have the right to:

- 1. Work in partnership with the Government to manage and make decisions about state-owned assets such as electricity companies** (this is because the Treaty promised both governance or kawanatanga to the Crown and rangatiratanga, or tribal authority, to Māori) .
- 2. Retain our natural resources and cultural treasures ('o ratou taonga katoa') , including rights to the water that the currently state-owned electricity companies have permits and rights to use** (because while apparently 'no-one owns water', clearly some have more rights to it than others, and we're saying that Māori have rights that haven't been properly considered).
- 3. Sufficient resources to guarantee our well-being.**
- 4. Be consulted, which, if approached with the good faith anticipated by the Treaty, would mean being given adequate time to consult, being given an opportunity to shape the changes rather than commenting on three mean little options, and actually being listened to.**

None of these fundamental Treaty rights are in any way protected by section 27 A-D, which is aimed only at protecting land for use in the settlement of historical Treaty claim, and doesn't pertain to wider Treaty principles at all.

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?

If section 9 is not carried over to the 49% share-holding that is being sold off, then in so far as those 49% of interests is concerned, they wouldn't be protected at all. For the remaining 51% of shares retained by taxpayers, if section 9 was retained, all the rights I referred to in question 1, and other rights envisioned by the Treaty, would be retained for that portion of the share-holding.

The point is, that if the Government sells of 49% of assets, it will also be selling off 49% of the Treaty rights Māori have in those SOEs. And its proposing doing this firstly without having identified what rights Māori may have in respect of water, secondly without having offered Māori any kind of compensation for the proposed removal of their Treaty rights for the privatised portion, and thirdly, after having carried out a rushed, and inadequate consultation process. In my view, that is unacceptable.

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?

No – I don't think that the Crown's Treaty obligations can be, or should be, re-worded, para-phrased, or specified, and certainly not without extensive, genuine consultation with Māori and non-Māori. The current reference to Treaty 'principles' allows for an ongoing flexibility of interpretation and negotiation, both of which I believe are necessary given the ambiguity around the English and Māori texts. If the Government attempted to create new 'principles' or wording, and even if it did this in proper consultation with Māori, I think its likely that these principles would later become a source of dissatisfaction or bitterness among Māori.

Thank you for considering my submission, Nāku noa,

[1]

Judith Mitchell, Māpua.

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:

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Wellington 6140

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