

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	Ria Bond
Your iwi affiliation	Nga Puhi - Ngati Hine
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 treaty is an acknowledgement of Maori existence, of our prior occupation to this land and that the intent is that Maori presence would remain and be respected. This is an agreement between the various Maori Tribal representatives' and the Queen. Known as the 'Treaty of Waitangi'

The main area's of principals to the treaty for me on this issues are Protection, Participation, duty to consult.

I understand that the State Owned Enterprises, or SOEs, are companies that are completely owned by the Crown and Ministers designated as shareholders. The Government's plan is to sell up to 49% of the shares in each of these four energy companies which means partial privatization

At the moment, the legislation governing these companies is the State Owned Enterprises Act, which includes a Treaty principles provision. Section 9 of the State Owned Enterprises Act states which reads

"Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi."

The Government has pre decided it will take the four energy companies out of the area known of the State Owned Enterprises Act and create if needed none or new legislation that will regulate these companies, this only applies to the 49% of partial privatisation. So, s9 would no longer apply. My question is what; protection for Treaty principles would be included in the new legislation? The Government consultation document asks whether people want to keep s9, have a new Treaty clause, or have no Treaty clause at all.

I oppose this movement by the government as this direction is being used as a short term band Aid to a Global issue, we are not the only country in debt, and to suggest this sales will generate a 2% dividend is and has no economic value to New Zealand in the long term. Historically already assets have been sold by governments only to be bought back and tax payers having to foot the bill as the assets have not been looked after ie our Railway's.

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?

I understand the importance of s9 it has important history for us. This was the first Treaty principles clause to come before the Court of Appeal; it gave us the landmark New Zealand Maori Council case in 1987. The inclusion of a legislative provision such as s9 gives Treaty principles an overarching guarantee.. In that case, the Court of Appeal found that the Government of the day could not go ahead with the transfer of land to these new State Owned Enterprises, without first setting up protection that ensure Maori claims would not be prejudiced, claims that had not been heard at that point were later determined to be well-founded, the Government ought not to be able to just say "Yes, you have a legitimate right to that land, but we can't give it back to you because someone else owns it now well they own this portion anyway. This is a consistent theme of the case law, that the Government must ensure that it does not act in a way which will make it impossible for it to fulfill its Treaty obligations.

Section 9 is the only part of the SOE Act that is relevant to Maori rights!

Furth more Section 9 is important because it sets out the obligation to comply with Treaty principles, although it doesn't provide the 'how to' by which Maori land rights and claims to land are protected. The actual protection is constructed by sections 27A-27D. These sections provide the Waitangi Tribunal with specific powers to recommend SOE land or former SOE land be bought back by the Crown to be used for

Treaty settlements.

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?

I believe section 27A-D are not sufficient to protect Maori Rights! This specifically relates to claims to land, but Treaty principles relate to much more than just land. The Government is planning to transfer these sections into the new legislation, but without an equivalent of s9, there would be no direct legal obligation on the Government to act consistently with the principles of the Treaty of Waitangi with regard to the governance of these companies.

Also s9 does not provide sufficient protection. It places obligations on Government, which may be fine while these companies are still 100% Government owned and controlled, but in selling down its shareholding, the Government is giving up some of its control to third parties who have no Treaty obligations. In that situation it will clearly be more difficult for the Government to fulfill its own obligations. That transfer of shares and control should therefore be completed in a way that is consistent with the principles of the Treaty. The Government could keep selling down its shareholding in the future and s9 would become virtually worthless. Section 9 is the obligation, but there needs to be some form of protection guarantee set in place before these sales to happen. That has been the consistent message from the courts in these situations. Perhaps one option might be to ensure that the companies themselves take on the Treaty obligation. But there may be other ways in which Maori rights can be protected and provided for.

While there may be rights to land involved, in relation to the operation of these energy companies there are also significant questions around water rights. Now, the Treaty of course talks about tino rangatiratanga and if we were to translate that into Pakeha rights language, I think, in relation to natural resources such as water it would certainly include rights and obligations to protect, preserve, control, regulate, use and develop those resources.

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

I feel the government's consultation lacked natural justice therefore due process for me where one removes my rights to natural justice has occurred. I feel that the Government consultation process was not in a good faith consultation - no camera's were allowed in Q&A time in Invercargill, it was very rushed, with consultation over in less than a week, a region had only two days to make a submission on this issues, some of the discussion only focused on a limited part of this whole issue, and I don't feel this has met the standards that are set out in the UN Declaration on the Rights of Indigenous Peoples, which this Government claims to endorse, and signed.

I call for the government to continue consultation and this matter should not be decided upon before a 18 month public consultation process has occurred.

Ria Bond

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