

Foreshore and Seabed Act Review - Terms of Reference

Having regard to the Relationship and Confidence and Supply Agreement between the National Party and the Māori Party (16 November 2008) to undertake a review of the Foreshore and Seabed Act 2004, the Ministerial Panel ("Panel") is asked to provide independent advice on:

- a) What were the nature and extent of the mana whenua and public interests in the coastal marine area prior to *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643
- b) What options were available to the government to respond to the Court of Appeal decision in *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643
- c) Whether the Foreshore and Seabed Act 2004 effectively recognises and provides for customary or aboriginal title and public interests (including Māori, local government and business) in the coastal marine area and maintains and allows for the enhancement of mana whenua
- d) If the Panel has reservations that the Foreshore and Seabed Act does not provide for the above, outline options on what could be the most workable and efficient methods by which both customary and public interests in the coastal marine area could be recognised and provided for; and in particular, how processes of recognising and providing for such interests could be streamlined

The Panel will also need to consider how these processes will integrate with legislation that regulates the coastal marine area.

In undertaking this work the Panel will:

- Consider the approaches in other Commonwealth jurisdictions to recognise and provide for customary and public interests in the coastal marine area;
- Consider the submissions by the public and other publicly available reports made to the Fisheries and other sea-related Legislation Committee in 2004 on the Foreshore and Seabed Bill and the Waitangi Tribunal's 2004 Report on the Crown's Foreshore and Seabed Policy; and
- Undertake consultation with Māori and the general public through a series of public meetings and hui.

The Panel is encouraged to invite key commentators to speak to it and will receive written submissions.

The Ministry of Justice will provide secretariat support to the Panel.

The Ministerial Panel is to provide a written report to the Attorney-General addressing these matters by no later than Tuesday 30 June 2009.

Ministerial panel members

CHAIR - HON JUSTICE EDWARD (EDDIE) TAIHAKUREI DURIE

Born to Aorangi marae of Ngati Kauwhata and Te Hiiri o Mahuta marae of Ngati Rangatahi. He is of Ngati Raukawa and Rangitane.

Justice Durie graduated with a BA, LL.B from Victoria University of Wellington in 1964. He was a partner in the firm of Murray, Dillon, Gooch & Durie in Tauranga from 1965 to 1974. He has received Honorary Doctorates from Victoria University of Wellington, Massey University and Waikato University. He was appointed a judge of the Māori Land Court in 1974 and Chief Judge of the Court from 1980 to 1998. In 1980, he became Chairman of the Waitangi Tribunal, a position he held until 2002. In 1998 he was appointed to the High Court in Wellington and took up a position in the Law Commission in July 2004 until 2007. In the 2008 New Year's Honours list, he was made a Distinguished Companion of the New Zealand Order of Merit.

RICHARD BOAST

Mr Boast is an associate professor at Victoria University specialising in natural resources law, property law, Māori legal issues and legal history. He has appeared before the Waitangi Tribunal several times, both as counsel and as an expert witness. He has written specialist reports for the Waitangi Tribunal on geothermal issues, foreshore and seabed claims, and the history of Māori land alienation.

He has authored or co-authored books and articles in the areas of natural resources law, New Zealand legal history, and the law relating to the Treaty of Waitangi, including *A New Zealand Legal History* (2004) and *Foreshore and Seabed* (2005). His new book on the legal history of Maori land alienation, *Buying the Land, Selling the Land* was published in 2008. He is involved in a research project to locate and publish early New Zealand case law, including the decisions of the Māori Land Court.

HANA O'REGAN

Kāi Tahu, MA with Distinction, University of Otago

Hana O'Regan was raised in Wellington in a family immersed in Māori Treaty and identity politics. She has an undergraduate degree with a double major in Māori Studies and Political Science from the Victoria University of Wellington. Upon graduating Hana lectured at the University of Otago for four years in Māori language, creative writing and the Treaty. Hana graduated with a Masters of Arts in 1997. The topic of her thesis, *Māori tribal identity development*, became the basis of her book *Ko Tahu Ko Au – Kāi Tahu Tribal Identity*, (2000).

In 1997 she headed the Māori language programme at Christchurch Polytechnic Institute of Technology before taking up the position of Head of School in 2000. After four years at the Polytechnic Hana took up the position of Manager of the Māori Language Unit of the Ngai Tahu tribal organisation where she helped develop and lead the tribal language strategy. She returned to the Polytechnic as Dean of Te Puna Wānaka, the new Faculty of Māori in 2006.

Hana has been a Board member of The Maori Language Commission – Te Taura whiri i te Reo Māori since 2003.