

Presentation by MARK SOLOMON
On the Marine and Coastal Area (Takutai Moana) Bill
Before the Māori Affairs Select Committee
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MIHI

While we respect the mana of every iwi, Ngāi Tahu has a greater stake in this issue than anyone else.

The length of our coastline exceeds 5000 kilometres and the full extent of our coastal zone is more than half of the New Zealand exclusive economic zone.

That is why Ngāi Tahu has been at the forefront of the debate on this issue.

For more than six long years Ngāi Tahu has called for the blight that is the Foreshore and Seabed Act to be removed from New Zealand's law books.

We have fought hard – argued long – mustered our resources – and thrown everything we have at correcting this injustice.

Now we are at a precipice. And, as you have heard, we are significantly angry and frustrated.

But we are not defeated. Along the road there have been huge successes in the delivery of our message.

Our successful submissions to the United Nations to draw attention to the injustices of the 2004 Act were a reward for our dedication.

And then the Māori Party was able to come into government with this issue at the top of their agenda. That led to a Confidence and Supply Agreement that included a commitment to review the Act. That was a highlight.

We felt vindicated when the Ministerial Review Panel upheld the widespread view that the Act was a travesty and needed to be repealed and replaced. The Government's

announcement that it would act on that recommendation was a very significant highlight.

In fact, at the start of this year, Ngāi Tahu was optimistic in the extreme.

But when we saw the detail of the Marine and Coastal Area (Takutai Moana) Bill – our hearts sank.

Had no one heard us?

Had no one heard our stories?

Had no one read our submissions?

Stewart and David have told you their own stories today to illustrate the unfairness of this Bill to Ngāi Tahu. I would also wish to add the story of the Ōtākou families:

At Ōtākou, at the heads of the Otago Peninsula, the generosity of our people ensured the survival of many stranded whalers. Over the years these whalers settled and made our harbours their homes, sometimes even marrying into our families.

As an expression of mana, Ngāi Tahu shared the bounty of the sea, and the bounty of the land. The whalers and other settlers set up their homes and businesses, which were mostly dependent on the mahinga kai that we shared. Jetties, wharves, boat houses and other structures dot the foreshore and seabed of the harbour as a result.

We worked and gathered food among them and around them, still maintaining contact with the land, foreshore and sea but not in an exclusive sense. We forsook exclusivity at that time, because exclusivity was irrelevant to us. What mattered was that we were sharing on the basis of our authority, our mana. Edward Ellison, who some of you know, talks about his pōua and tāua standing on the peninsula, looking out to sea and saying to him “this is all ours”. Sharing the foreshore and seabed did not decrease our relationship with the foreshore and seabed, it enhanced and affirmed our mana.

But under this Bill, those places, and the whānau of Ōtākou won't meet the test of exclusive use and occupation – they are disqualified by reason of their generosity.

And I could hardly leave here today without sharing perspectives from my own papakainga of Kaikōura. Sometime in the mid 1800s, Ngāti Kurī Rangatira Kaikōura Whakatau granted authority for a whaling station to be located in his rohe. That action

shows the authority the whalers knew the chief to have over the foreshore and sea in that area.

This same chief, Kaikōura Whakatau, was involved in negotiations with the Crown for the land Ngāti Kurī sought to have set aside for their use, which contained the sea coast vital for their fishing and mahinga kai. But the Crown refused Whakatau's request for the land from the Kōwhai River to the Conway (Tutae Puta Puta) because the land was already occupied by run holders with the Crown's consent, even though the Crown had not negotiated the sale of the Kaikōura purchase. The problem is that this historical injustice means it is now very difficult for Ngāti Kurī to prove continuous title to contiguous land. And taking our coastal land from us effectively took away from us the option of exercising exclusive use and occupation over our foreshore and seabed.

I could continue around the Ngāi Tahu Takiwā because examples like this abound, and these histories have been well documented in our Tribunal Reports. No doubt, similar stories could be told in many parts of the country.

What galls me is that the submissions we have made on this Bill, the stories Stewart and David and I have told you today are the same submissions Ngāi Tahu made and stories we told the Government when it purported to consult us in 2003; the same submissions we made and stories we told the Select Committee in 2004; the same submissions and stories Te Rūnanga o Ngāi Tahu and the Treaty Tribes Coalition conveyed on our behalf to various organs of the United Nations since 2004; the same submissions we made and stories we told the Review Panel in 2008; and the same submissions we made and stories we told the Attorney-General when he came to our Treaty ground of Ōnuku to consult us in April this year.

Is it any wonder Ngāi Tahu is angry and frustrated? Ours is an anger and a frustration that is only exacerbated by the fact that we are somehow expected to be welcoming the repeal of the Act, even though it is to be replaced by something that will deny Ngāi Tahu rights to just the same extent.

What is before us today is a Bill that would revisit on us the injustices of the past because it is built on tests that exclude us from our rights, based on past injustices.

These tests are totally unacceptable to us.

You stand as the last group able to rectify this injustice.

I want to read a motion that was passed by Ngāi Tahu Whānui just nine days ago at our annual meeting and celebration – the Hui-ā-Tau.

“Ngāi Tahu Whānui consider the fundamental objective of the replacement framework should be to recognise and provide for the expression of mana over the foreshore and seabed, and that this should be reflected in clear statutory terms.

Ngāi Tahu will not support any proposal that does not achieve this.”

We urge every member of this Committee to take a stand against this Bill, in its current form.

Not to do so will mean being named for posterity as being complicit in this injustice.

So many times I have stood to say these things: to state our case, to run our arguments, only to find out later that my words have not been listened to. I can only hope that the things our people have said to you today might have made more of an impression.

For all the commitment iwi have made to participating in these processes – including through the Iwi Leaders’ Group – politics appears to have won the day. The appeasement of the majority has been given priority over the doing of what is right.

So, with the greatest of respect, I ask you please open your ears and hear us.

While we acknowledge the efforts of the Government and, in particular, the Māori Party in recognising the injustice of the 2004 Act, we will not be shaken in our view that this Bill is a mistake. And a dreadful mistake at that. We believe, after much research and consideration, that the long-standing rights and interests of Ngāi Tahu in relation to the foreshore and seabed will be no more capable of being recognised and upheld under this Bill than they were under the Act. Yet those rights are as real, as important to us, and as deserving of recognition as those of any other iwi in the country.

We ask you to not repeat a past injustice.

The Ngāi Tahu bottom line is that, unless the tests set out in the Bill are amended so that we – and other iwi – have some realistic chance of meeting them in respect of the areas of greatest significance to us, the Bill will represent no material improvement to the 2004 Act and it should not proceed.

Let me put this another way: our issue with the tests lies in the “exclusive use and occupation” concept in particular – that requirement that negates the rights of most iwi based on accidents – or black spots of history – such as raupatu, and our own tikanga

of manaakitanga (hospitality and sharing) which would seem to have done us great harm.

It guts me to think that we must be punished, not once, but twice for our decision to share the bounty of our foreshore and seabed.

I find it outrageous that the government should be proposing to punish us again – for our generosity – for sharing the bounty of the sea, and the bounty of the foreshore – that we should be declared as having broken our exclusive use and occupation, that we should be declared as having forfeited our rights.

We are disqualified by reason of our generosity.

What the Crown is overlooking, is that we were sharing on the basis of our authority – our mana. But this Bill treats our mana as irrelevant. Under it, our fate will turn on tests that judge Ngāi Tahu rights against Colonial acts, wrongs and injustices. We will be at the mercy of a judge or future Minister as to how they assess the consequences of a history the Crown has already acknowledged is wrong and apologised for.

We do not think this is fair.

In our written submission on the Bill, Te Rūnanga o Ngāi Tahu has addressed a number of other areas in which the Bill requires improvement. In particular, we have focused in those submissions on:

- The ‘no ownership’ regime, which we believe represents only a symbolic, not a substantive, alternative to explicit Crown ownership. Te Rūnanga would strongly prefer to see foreshore and seabed held jointly by the Treaty partners, with both of those partners actively involved in decision-making;
- The awards provided for under the Bill equate to far less than freehold title and are really just a minimal version of instruments that have been developed in Treaty settlements or foreshore and seabed negotiations conducted under the 2004 Act; and
- Even if the tests weren’t such as to make the whole regime irrelevant to most iwi and hapū, the High Court processes for customary title and rights applications will exclude those iwi and hapū because they will be expensive, drawn-out and adversarial. The option of direct negotiations with the Crown will not mitigate the harshness of the regime, as it will be open only to those iwi and hapū which the Crown is satisfied could meet the tests set out in the Bill.

We trust the Committee will be responsive to these points.

We take comfort from the fact that the Ngāi Tahu view is in accord with that of the great majority of iwi. Along with them, we reject the idea that we should accept this Bill, because it is the best available in the current political environment.

If our kaumātua had taken that advice, the Ngāi Tahu Settlement would never have come to pass.

We've been told to trust in the process but our kaumātua trusted in the process of the land sales and we were rendered landless for seven generations as a result.

Make no mistake – Ngāi Tahu do not want to return to grievance mode. It is just over 12 years since we transitioned into a “new age of co-operation” with the Crown, though that settlement.

But, if it takes another generation or more to rectify the injustice of the 2004 Act, we would rather our mokopuna took up the journey following in the million footsteps we all took to Parliament in 2004, rather than shouldering the burden of a history that alleges Māori support for a 2011 Act that is equally as unjust.

As I said in an article to our whānau in *Te Karaka* magazine, if the tests are not changed, we will see the government over the generations...we will wait. We will keep this alive and wait.

But first we ask you to do what is right and rectify this Bill. If you cannot, then you should send it back to Parliament marked “F” ... for Fail.