



7 March 2011

Chris Finlayson
Attorney-General
Parliament Buildings
Wellington

Dear Attorney

Marine and Coastal Area (Takutai Moana) Bill

The New Zealand Law Society has noted:

- (a) the Maori Affairs Select Committee's Report (by majority) recommending passage of the Marine and Coastal Area (Takutai Moana) Bill without amendment;
- (b) the appended list of possible amendments prepared by officials in light of submissions received;
- (c) your subsequent public statement of 9 February 2011 that you intend introducing amendments to the Bill (presumably by way of Supplementary Order Paper) on its return to the House; and
- (d) that one such amendment will be to require that negotiated agreements concerning customary marine title be given effect through legislation.

The Society is concerned that the foreshadowed process of introducing significant amendments by way of the SOP procedure will remove the opportunity for pre-legislative scrutiny of these amendments. There are two specific concerns:

Proposal for Parliamentary and public scrutiny of agreements recognising customary marine title

The Society submitted to the Committee (inter alia) that there be a full and publicly available statement of reasons for the recognition of customary marine title.¹ In the Society's view this was and remains essential to public confidence in the process. This is because the legislation will set a statutory test for the existence of customary interests, and any "negotiation" will necessarily be about whether that test has been met. (In this regard such "negotiations" will differ, say, from those involved in the resolution of more general historic Treaty claims, which are then put to Parliament in the form of "settlement" bills.)

The Society considers that the text of the proposed amendment that would accomplish this foreshadowed objective will be very important. It invites you to make the proposed amendment

¹ New Zealand Law Society submission dated 24.11.10, paragraphs 176-189.

publicly available in advance of its introduction to the House so that there is opportunity for the Society to comment further before the amendment is finalised.

The officials' list of proposed amendments

The Society makes a similar request in respect of all the further proposed amendments. In the ordinary course, amendments proposed by a Select Committee would be in the Bill as reported back and therefore available for public scrutiny, and for such further input as may be made before debate in the House resumes.

The Society would be very pleased to work with your officials so that its comments are available to them, and to you, as the proposed amendments are finalised. Communication with the Society's Law Reform Committee may be made through the Committee Secretary, Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / ph 04 463 2912).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Temm', is centered on the page. The signature is written in a cursive style with a large, looping initial 'J'.

Jonathan Temm
President