National Council of
Women of New Zealand
Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04) 473 7623
www.ncwnz.org.nz

9 July 2004 S04.32

Submission to the Special Select Committee on the Foreshore and other Related Sea Matters on The Foreshore and Seabed Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 41 nationally organised societies. It has 33 branches spread throughout the country to which women from some 150 societies are affiliated. The Council's function is to serve women, the family and the community at local, national and international level through research, study, discussion and action. When time permits members are invited, through the monthly "Circular", or be e-mail, to respond to questions on issues under public consideration. In this instance questions on this legislation were circulated, with many of the Branches and nationally organised societies discussing the matter and responding. This submission has been written by the Public Issues Standing Committee based on those comments.

During the collation of comments on this Bill from women throughout the country it became obvious that the following points must be made to reflect the background against which this submission is made:

- The lack of understanding of the issues by the general public
- The entrenched opinions that are often based on misconceptions
- The widespread concern, to the point of fear, for loss of access to the foreshore which had been assumed to be a right for all New Zealanders
- The legal and human rights issues still cause concern as the general public are taking sides, again often in ignorance or incorrect perceptions
- The concern for Maori rights. Many Maori feel that if their titles to the foreshore and seabed cease under this Bill, so should those of other private title holders. Most NCWNZ women support Maori on this issue, and think Maori should be able to use the justice system to assess title rights. If customary title is found to exist it could be subject to public rights of access and recreation and not allowed to be converted to a freehold title.
- The concern that the government may be acting precipitously and in doing so, initiating a new grievance process. Thus destabilising race relations in New Zealand with the potential of further racial acrimony.

Specific Comments:
Part 1, Preliminary Provisions
Clause 3 Purpose
We regret that the government's four guiding principles of *access, regulation, protection and certainty* used in developing the Bill as outlined in the explanatory note, have not actually been included in the Bill itself. NCWNZ feels some unease that these principles are now based on the Crown ownership proposed in this Bill. Crown ownership per se does not have the wholehearted support of members as they feel it does not guarantee certainty in perpetuity.

They also feel the principle of protection should go beyond protection of customary rights and include sustainable environmental management.

Clause 4 Interpretation
Foreshore and seabed
The definition given in the Bill is clear, but does not quite mesh with the Resource Management Act 1991. In the Resource Management Act 1991 there is a definition of coastal marine area which aligns with the foreshore and seabed as defined in this Bill. A separate definition of foreshore in the RMA 1991 is "any land covered and uncovered by the flow and ebb of the tide at mean spring tides….", which could be interpreted as slightly different from "*mean* high water springs". The wording must be consistent, over the landward limits and whether it is "foreshore and seabed" or "coastal marine area".

Some members think that the blanket extension of the foreshore and seabed to include the air space and the water space above the areas described (a) to (c) could lead to much confusion and dissension, even with the given rights of public access.

Some suggested that "other matters" under (e) also needed clarification, eg ownership of the inter-island cables

'territorial customary rights' is defined Clause 28. NCWNZ suggests that the definition should be under Interpretation, either instead of Clause 28, or as well as. This is where people look for definitions of this nature, particularly given the confusion that many have over the term and its usage.

For the same reason, to prevent confusion, the term 'recognised customary activity' and "ancestral connection" should be defined in this clause. If not fully defined here, reference should be made to the explanation of 'ancestral connection' in Clause 39, and 'recognised customary activity' in Clause 42.

Part 2
Public foreshore and seabed
There will remain a lot of anger in the community until everyone is clear that this Bill does not include automatic access from the land abutting the foreshore along the 'line' of mean high water spring. Many assume that 'access' in this instance includes from the landward side. This is a problem when imaginary lines are drawn across the natural systems.

There is also confusion/anger that the Maori freehold title disappears as well as Maori access to the justice system.

Clause 6 Right of Access
NCWNZ agrees with the rights as proposed in this clause. However, we think there will be a need for public education with regard to the need for limits on public access that may be put in place under this Act or under another enactment. For instance some people may need to be reminded that right of access does not always include vehicular access; and that foreshores may have access prohibited during the nesting season to protect endangered birds.

Clause 9 Jurisdiction of High Court
This clause sets up a new jurisdiction, but relates only to non-Maori claims. However a large majority of NCWNZ members felt that whatever was put in place should be one system to be used by all, whether it remain with the Maori Land Court which be given this additional role, or whether all claims are heard under this new High Court jurisdiction.

Several members queried how many would be able to access this system because of the costs involved.

Clause 10 No jurisdiction of Maori Land Court to consider existing claims for customary title.
This clause does not allow claims that are already in the system if the application relates to an area of the foreshore and seabed and seeks a vesting order or the investigation or determination of the status of any land, to be heard. This appears to remove basic rights of appeal. This is seen by many to be against the principles of *Agenda 21*, chapter 26: 26.3 (a) (v) 'Development and strengthening of national dispute-resolution arrangements in relation to settlement of land and resource-management concerns'.

Clause 11 Public foreshore and seabed vested in the Crown
Given the sell-off of Crown Assets by the government, NCWNZ is most concerned that the ownership is, under this Bill, invested in the Crown and can be sold by a simple Act of Parliament. NCWNZ suggests some form of caveat such as any bill presented to Parliament to sell off any portion of the foreshore or seabed must be a conscience vote with a two thirds majority of those voting. A public referendum was also proposed instead of an Act of Parliament.

NCWNZ urges changes to the Bill so that the Crown is seen to be trustee on behalf of the public, rather than 'owner', and that there is special recognition of the Maori as indigenous people. The responses we received generally support the earlier concept of 'public domain', rather than Crown ownership.

Some members have also expressed concern that the Crown will take over all foreshore and seabed titles currently held by local authorities. The impression is that such areas tend to be the developed ones, such as marinas. It appears the local authorities could lose their investment and income.

Members would also like another clause vesting ownership in an entity which could replace the Crown, should New Zealand become a republic.

Clause 12 Public foreshore and seabed not to be alienated
(2) This subclause undermines all the professed good intentions, by permitting the alienation or other disposal, of the public foreshore and seabed by a special Act of Parliament. It immediately opens up the possibility of sale. We recommend this subclause be deleted

Clause 20 Ownership functions to be carried out by Minister
NCWNZ has reservations about the concept of the Minister of Conservation having sole charge of ownership functions. If given sole charge there must be rigorous audit processes put in place.

The majority of members agreed that there should be at least one other minister involved. One suggestion was the Minister of Maori Affairs, so that the rights of the indigenous people were recognised. One branch suggested the Minister of Conservation, Minister for the Environment and Minister of Maori Affairs. Another branch suggested a cross-party commission.

If the Minister of Conservation is to be in charge of ownership responsibilities, adequate funding to carry out this additional work must be made available from the government.

Clause 21 Access to areas of public foreshore and seabed may be prohibited or restricted
21(7) Members felt that if a restriction or prohibition of access is decided by the Minister of Conservation, the Department of Conservation should be responsible for the notices, rather than Regional Councils.

Part 3
Provisions relating to Maori Land Court and orders it may make, and
Part 4
High Court jurisdiction in relation to customary rights orders
NCWNZ suggests no changes in these two parts in detail should they be retained. However we re-iterate that our members are in favour of one system to deal with all claims. Either system would provide an inclusive forum, rather than the divisive forum of two systems determined by race.

Part 5
Amendments to Resource Management Act 1991
Clause 100 Vesting of reclaimed land
Land reclaimed after the commencement of this Bill can only be leased from the Crown. As reclaimed land is not foreshore as it is above mean high water spring, it should be vested as under Section 355 of the Resource Management Act 1991, and the change mooted in this clause deleted.

Part 6
Provisions relating to public foreshore and seabed register, recognition agreements, and other matters

Subpart 2 – Recognition agreements

Clause 111 Agreements to recognise ancestral connection
This allows the Ministers (the Minister of Maori Affairs and the Minister in charge of Treaty of Waitangi negotiations) to enter into an agreement with a group of Maori to recognise the ancestral connection that the group has with a specified area of the public foreshore and seabed. This appears to give unlimited powers to the Ministers and sidesteps the High Court/Maori Land Court process and could easily result in misuse and misunderstandings.

Clause 112 Agreements to recognise territorial customary rights
See above comments clause 111.

The need for these two clauses is not clear to NCWNZ members and could create further uncertainty in the general public. If needed for Treaty settlements this must be advertised.

Conclusion:
As worded by one of NCWNZ branches: NCWNZ strongly urge the Government to take more time for consultation. We feel there is no need to push through this legislation and nothing would be lost and a lot could be gained by much more discussion and education. There will be no consensus until all New Zealanders understand the concept and lose their fear of loss of access on the one hand, or the presumed, or actual, loss of rights on the other. This is a major issue which has been simmering away under the surface for many years and to rush legislation through Parliament and risk upsetting the majority of the country seems foolhardy to say the least.

NCWNZ thanks you for the opportunity to comment on this important Bill and we look forward to hearing what other submitters have to say.

Beryl Anderson
National President

Queenie Ballance
Acting Convener, Public Issues Standing Committee