

Foreshore and Seabed Act (Repeal) Bill

Member's Bill

Explanatory note

The purpose of this Bill is to repeal the Foreshore and Seabed Act 2004. That Act overrode the property rights, and thus the human rights, of Māori, and has been strongly opposed by them. There is no good reason for treating Māori differently under the law in this area in terms of the protection of their property rights. They are entitled at least to the equal protection of the law. Indeed, the history of Māori land alienation is such that, if anything, their property rights are owed more, not less, protection. It is proposed to return to the position prior to the passage of the Act, and restore the decision of the Court of Appeal in the *Ngati Apa* case in June 2003, by expunging the Foreshore and Seabed Act in its entirety.

Part 1 concerns the repeal of the Foreshore and Seabed Act 2004. That is achieved by *clause 4*. It also consequentially repeals the Resource Management (Foreshore and Seabed) Amendment Act 2004. *Clause 5* makes consequential amendments to a number of other enactments as required to return to the position at law prior to the enactment of the Foreshore and Seabed Act 2004.

Part 2 (clauses 6 to 18) restores, as part of that process, provisions in the Foreshore and Seabed Endowment Revesting Act 1991, which was repealed in its entirety by the Foreshore and Seabed Act 2004.

Tariana Turia

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Foreshore and Seabed Act (Repeal) Act **2006**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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3 Purpose

The purpose of this Act is to repeal the Foreshore and Seabed Act 2004 in order to return to the position at law prior to the enactment of that Act.

Part 1

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Repeal of Foreshore and Seabed Act 2004

4 Foreshore and Seabed Act 2004 repealed

- (1) The Foreshore and Seabed Act 2004 (2004 No 93) is repealed.
- (2) The Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) is consequentially repealed.

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5 Consequential amendments to other enactments

- (1) The Acts specified in the Schedule are amended in the manner indicated in that schedule.
- (2) Regulation 10(2)(h) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (SR 2003/153) is revoked.

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Part 2

Provisions relating to foreshore and seabed endowment reversion

- 6 Interpretation**
- In this Part, unless the context otherwise requires,— 5
- Chief Surveyor** has the same meaning as it had in the Survey Act 1986
- foreshore** means such parts of the bed, shore, or banks of the sea or a river as are covered and uncovered by the flow and ebb of the tide at mean spring tides 10
- Harbour Board** or **board** means any Harbour Board that was constituted before 3 October 1991, whether under the Harbours Act 1950 or any other enactment
- local authority** has the same meaning as it had in the Local Government Act 1974; and includes any municipal corporation, borough council, county council, catchment board, river board, or similar body that was constituted before 3 October 1991 15
- Minister** means the Minister of Conservation
- successor** means the regional council or other local authority that was, by virtue of Part 2B of the Local Government Act 1974, the owner of foreshore or seabed formerly vested in a Harbour Board or a local authority 20
- Treaty of Waitangi (Te Tiriti o Waitangi)** has the same meaning as **Treaty** as defined in section 2 of the Treaty of Waitangi Act 1975. 25
- 7 Treaty of Waitangi**
- All persons exercising functions and powers under this Act must have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). 30
- 8 Application of Part**
- (1) This Part applies to all land that—
- (a) was formerly alienated from the Crown and vested in a Harbour Board or a local authority, whether by or under the authority of any enactment or otherwise; and 35

- (b) at 3 October 1991, either—
- (i) was foreshore or seabed, and was vested in a local authority (whether as a successor or otherwise); or
 - (ii) was land that has been reclaimed from the sea unlawfully. 5
- (2) Nothing in this Part applies to—
- (a) any freehold interest in any foreshore or seabed that,—
 - (i) at any time before 3 October 1991, had been sold or otherwise disposed of for valuable consideration by the Harbour Board or local authority in whom it was then vested; or 10
 - (ii) immediately before 3 October 1991, had been subject to an agreement in writing for the sale or other disposal of that interest for valuable consideration; or 15
 - (b) any land that, in its natural state or as a result of a lawful reclamation, is no longer covered and uncovered by the flow and ebb of the tide at mean spring tides; or
 - (c) any land that— 20
 - (i) is comprised and described in any of certificates of title 6C/1393, 31B/990, 31B/991, and 34A/785 (all Wellington Registry); or
 - (ii) is described in paragraph (g) or paragraph (t) of clause 2 of Schedule 2 of the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987; or 25
 - (iii) is comprised and described in any of certificates of title 3B/65, 3D/261, 3D/262, and 4C/1100 (all Marlborough Registry). 30
- (3) For the purposes of this section, land is deemed to have been alienated from the Crown and vested in a Harbour Board or a local authority if the original legal authority concerned—
- (a) set apart the land as an endowment for the Board or local authority; or 35
 - (b) granted the land to the Board or local authority; or
 - (c) endowed the land in the Board or local authority, or vested the land in the Board or local authority as an endowment; or

- (d) vested or transferred the fee simple of the land in or to the Board or local authority, without requiring the Board or local authority to pay a sum of money, give a security, or provide some other form of consideration for the vesting or transfer; or 5
- (e) was of the kind described in any of **paragraphs (a) to (d)** and imposed any trusts, reservations, restrictions, or conditions; or
- (f) was expressed in such a way as to achieve any of the effects described in any of **paragraphs (a) to (e)** or any combination of them. 10

9 Foreshore and seabed revested in the Crown

Subject to **section 10**,—

- (a) all of the vestings of land to which this Act applies are revoked; and 15
- (b) all of the land to which this Part applies is revested in the Crown as if it had never been alienated from the Crown and free from all subsequent trusts, reservations, restrictions, and conditions.

10 Saving of existing authorities, agreements, and rights 20

(1) Subject to this section,—

- (a) every lease, licence, permit, consent, or other authority granted by a Harbour Board or a local authority (whether as a successor or otherwise); and
- (b) every agreement in writing by such a Board or local authority to grant a lease, licence, permit, consent, or other authority; and 25
- (c) every right within the meaning of **rights** as defined in section 2 of the Port Companies Act 1988 that has been transferred to a port company within the meaning of that Act, in accordance with a port company plan under that Act,— 30

that was, immediately before 3 October 1991, in effect in respect of any land to which this Part applies continues, to the extent to which it is lawful, to have effect in respect of that land according to its tenor. 35

- (2) The Minister is authorised to execute on behalf of the Crown any instrument or other document that is required to be executed by the Crown in respect of any land to which this Part applies.
- (3) The Minister may take all such proceedings as may be necessary to enforce any condition in any such lease, licence, permit, consent, or other authority as if the Minister had granted that authority. 5
- (4) Property that is fixed to, or under or over, any land to which this Part applies remains owned, subject to any other Act, by the person who owned it immediately before 3 October 1991, and, where the property is owned by any person other than the Crown, the owner— 10
- (a) has reasonable access to the property; and
- (b) may, after giving reasonable notice to the nearest office of the Department of Conservation, remove the property. 15
- (5) Nothing in **subsection (4)** limits or affects any lease, licence, permit, consent, other authority, agreement, or right continued in force by **subsection (1)**. 20

11 Provisions relating to existing certificates of title

- (1) Every existing certificate of title in respect of any land revested in the Crown by this Part that is not subject to any current registered lease or registered licence must, on the request of the Minister and without further authority than this subsection, be cancelled by the appropriate District Land Registrar. 25
- (2) Where the certificate of title for any such area is subject to such a lease or licence, the appropriate District Land Registrar must, on the request of the Minister and without further authority than this subsection, make any necessary endorsements on the certificate of title, and the certificate of title thereafter enures in the name of Her Majesty the Queen in right of New Zealand for the purposes of this Part until the expiration or sooner determination of the lease or licence, and must then be cancelled by the District Land Registrar. 30 35
- (3) Were the Minister makes any request under **subsection (1) or subsection (2)**, the Minister must also—

- (a) produce the duplicate of the certificate of title concerned to the District Land Registrar for cancellation or endorsement, as the case may require; or
- (b) certify that the duplicate is unavailable by reason of loss or damage. 5

12 Minister may apply for new certificates of title

- (1) The Minister may cause a plan of survey of any land revested in the Crown by this Part to be made by a licensed cadastral surveyor and approved by the Chief Surveyor, and lodge it for deposit at the office of the appropriate District Land Registrar. 10
- (2) On or after the deposit of a plan of survey approved by the Chief Surveyor, the District Land Registrar must, despite anything in the Land Transfer Act 1952, issue to Her Majesty the Queen in right of New Zealand for the purposes of this Part, free of charge, a certificate of title under that Act in respect of the area to which the plan relates. 15
- (3) Where a new certificate of title is issued for the purposes of this Act, the District Land Registrar must cancel any other certificate of title in respect of the area concerned or partially cancel that other certificate of title, as the case may require. 20
- (4) The District Land Registrar must record against every such new certificate of title the order of priority of any registered leases or registered licences in respect of the area concerned.
- (5) Nothing in this section prevents the Minister applying in accordance with the provisions of the Land Transfer Act 1952 25 for the issue of a new certificate of title in respect of any area revested in the Crown by this Part.

13 Foreshore and seabed to be land of the Crown

- (1) All land that—
 - (a) either— 30
 - (i) is foreshore and seabed within the coastal marine area (within the meaning of the Resource Management Act 1991); or
 - (ii) was foreshore, seabed, or both, within the coastal marine area (within the meaning of that Act) on 35 the 1st day of October 1991 and has been re-

- claimed (whether lawfully or otherwise) on or after that date; and
- (b) is for the time being vested in the Crown, but for the time being is not set aside for any public purpose or held by any person in fee simple,— 5
- is land of the Crown to which this section applies and must be administered by the Minister; but the provisions of the Land Act 1948 do not apply to such land.
- (2) All land of the Crown to which this section applies must be held by the Crown in perpetuity and must not be sold or otherwise disposed of except— 10
- (a) pursuant to the Resource Management Act 1991; or
- (b) by the authority of a special Act of Parliament; or
- (c) by a transfer to the Crown, where the land will not be land to which the Land Act 1948 applies. 15
- (3) Subject to **subsection (4)**,—
- (a) the Minister has and may exercise, in relation to land of the Crown to which this section applies, all the functions, duties, and powers that the Crown has as owner of the land; and 20
- (b) in exercising such functions, duties, and powers, the Minister must manage all land of the Crown to which this section applies so as to protect, as far as is practicable, the natural and historic resources of the land.
- (4) Nothing in this section derogates from the Forest and Rural Fires Act 1977 or the Resource Management Act 1991. 25
- (5) The provisions of this section apply despite anything in **section 8**.
- (6) In relation to land of the Crown to which this section applies, nothing in this section limits or affects— 30
- (a) any agreement to sell, lease, licence, or otherwise dispose of that land that had been entered into before 25 November 1994, where the disposal had not been completed before that date; or
- (b) any interest in that land held by any person other than the Crown. 35

14 Accretions occurring on foreshore or seabed vested in the Crown or local authority

- (1) This section applies if—
- (a) any works are executed on any foreshore or on the seabed, under the authority of any Act; and 5
 - (b) in consequence of the works, any foreshore or seabed that—
 - (i) is immediately adjacent to the works; and
 - (ii) is vested in the Crown or in any local authority— becomes raised in height, whether gradually or imperceptibly or otherwise, so as to be above instead of below the line of high-water mark at mean spring tides; and 10
 - (c) the raising of the foreshore or seabed referred to in **paragraph (b)** does not take place under the authority to execute the works. 15
- (2) Despite any enactment or rule of law to the contrary, the foreshore or seabed so raised continues to be vested in the Crown or the local authority (as the case may be).
- (3) Any raised foreshore or seabed that continues to be vested in the Crown under this section may be dealt with under this Part; and the provisions of the Land Act 1948 do not apply to that foreshore or seabed while it is vested in the Crown under this section. 20
- (4) Without limiting anything in **subsection (3)**, the Minister may dispose of any raised foreshore or seabed referred to in that subsection under section 355 of the Resource Management Act 1991; and, in that case, that section 355 applies with any necessary modifications. 25
- (5) In this section, a reference to works that are authorised includes a reference to any land reclaimed from the foreshore or seabed under the authority of any Act. 30

15 Other Acts affected

The provisions of this Part have effect notwithstanding the provisions of the Land Transfer Act 1952 or any other enactment or rule of law relating to land. 35

16 Part not to render the Crown liable for civil wrong

Nothing effected or authorised by or under this Part—

- (a) is to be regarded as making the Crown guilty of a civil wrong; or
- (b) is to be regarded as— 5
 - (i) placing the Crown in breach of any contract, deed, agreement, or other instrument having effect in respect of any land to which this Part applies; or
 - (ii) assigning to the Crown any liability of any local authority under any such contract, deed, agreement, or instrument; or 10
- (c) is to be regarded as placing the Crown or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any land or any other property. 15

17 Amendment to Conservation Act 1987

The Conservation Act 1987 is amended by inserting the following item in Schedule 1 in its appropriate alphabetical order: 20
“Foreshore and Seabed Act (Repeal) Act **2006: Part 2**”

18 Control of dogs

Nothing in this Part derogates from the provisions of Part 5C of the Conservation Act 1987, which provides for the control of dogs and which authorises the declaration as either a controlled dog area or an open dog area of any part or parts of any land managed or administered under this Part by the Minister. 25

Schedule
Consequential amendments

s 5(1)

Conservation Act 1987 (1987 No 65)

Section 26ZS(1)(a) and (ab): Repeal and substitute:

“(a) **Part 2** of the Foreshore and Seabed Act (Repeal) Act **2006**.” 5

Crown Minerals Act 1991 (1991 No 70)Section 2(1): Repeal the definition of **public foreshore and seabed**.

Section 2(2)(b): Repeal.

Fisheries Act 1996 (1996 No 88)

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Section 89B: Repeal.

Section 186ZB: Repeal.

Forest and Rural Fires Act 1977 (1977 No 52)

Section 2(1): Omit from paragraph (a) of the definition of **fire safety margin**, “section 9A of the Foreshore and Seabed Endowment Revesting Act 1991” and substitute “**section 13** of the Foreshore and Seabed Act (Repeal) Act **2006**”. 15

Section 2(1): Omit from paragraph (a)(v) of the definition of **State area**, “section 9A of the Foreshore and Seabed Endowment Revesting Act 1991, so far as it is saved by section 30(2) of the Foreshore and Seabed Act 2004” and substitute “**section 13** of the Foreshore and Seabed Act (Repeal) Act **2006**”. 20

Section 2(1): Repeal paragraph (a)(va) of the definition of **State area**.

Hauraki Gulf Marine Park Act 2000 (2000 No 1)

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Schedule 1: Repeal the item “Foreshore and Seabed Act 2004” and substitute “Foreshore and Seabed Act (Repeal) Act **2006** (Part 2)”.

Local Government Act 1974 (1974 No 66)

Section 345(1A): Repeal.

**Maori Commercial Aquaculture Claims Settlement Act 2004
(2004 No 107)**

Section 60: Repeal.

Public Works Act 1981 (1981 No 35)

Section 2: Omit from the definition of **Government work** “(except the public foreshore and seabed)” and substitute “(except land to which **section 13** of the Foreshore and Seabed Act (Repeal) Act **2006** applies)”.

Repeal the definition of **public foreshore and seabed**.

Section 52(1)(b): Omit “public foreshore and seabed” and substitute “foreshore or seabed owned by the Crown”.

Section 52(3)(b): Omit “public foreshore and seabed” and substitute “foreshore or seabed”.

Resource Management Act 1991 (1991 No 32)

Section 2(1): Repeal the definitions of **access rights, adverse effects assessment, adverse effects report, board, customary rights order, foreshore and seabed reserve, holder, management plan, public foreshore and seabed, and recognised customary activity**.

Section 6(g): Repeal.

Sections 17A and 17B and the heading before section 17A: Repeal.

Section 28(e): Repeal.

Section 28A(b): Omit “; or”.

Section 28A(c): Repeal.

Section 29(1)(ga): Repeal.

Section 33(2): Omit “board of a foreshore and seabed reserve,”.

Section 35: Omit “; and” from subsection (2)(d) and repeal subsection (2)(e).

Section 35(5)(jb) and (6): Repeal.

Section 37B(d): Repeal.

Section 38(3): Omit “1 or more” and substitute “either or both”.

Section 38(3)(c): Repeal.

Section 58(ga) and (gb): Repeal.

Section 61(2A)(b): Repeal.

Section 62(1)(b)(ii): Repeal.

Resource Management Act 1991 (1991 No 32)—*continued*

Section 64A(4A): Repeal.	
Section 66(2A)(b): Repeal.	
Section 74(2A)(b): Repeal.	
Sections 79A and 79B: Repeal.	
Section 82A: Repeal.	5
Sections 85A and 85B and the heading before section 85A: Repeal.	
Section 94B: Omit “Subsections (2) to (4)” and substitute “Subsections (2) and (3)”.	
Section 94B(4): Repeal.	
Section 94D(4): Repeal.	10
Section 104(3)(c)(i): Omit “section 107A or”.	
Section 107(3)(c)(iv): Repeal.	
Sections 107A to 107D: Repeal.	
Section 119(6)(a): Omit “section 107A or”.	
Section 119(6)(d): Repeal.	15
Section 237A(1)(b): Repeal and substitute:	
“(b) show as vesting in the Crown—	
“(i) such part of the allotment in the coastal marine area as adjoins an esplanade reserve shown as vesting in the territorial authority; or	20
“(ii) such part of the allotment in the coastal marine area as is required to be so vested as a condition of a resource consent—	
if such vesting of land in the Crown has the written agreement of the Minister of Conservation.”	25
Section 239(3)(a): Omit “Foreshore and Seabed Act 2004” and substitute “Foreshore and Seabed Act (Repeal) Act 2006 ”.	
Section 293A: Repeal.	
Section 309(4) and (5): Repeal.	
Section 332(1)(c): Omit “; or” and repeal section 332(1)(d).	30
Section 333(1A): Repeal.	
Section 354(3): Omit “the Foreshore and Seabed Endowment Revesting Act 1991 or the Foreshore and Seabed Act 2004” and	

Resource Management Act 1991 (1991 No 32)—*continued*

substitute “**Part 2** of the Foreshore and Seabed Act (Repeal) Act **2006**”.

Section 355(3): Omit “Without limiting section 355AA, the” and substitute “The”.

Section 355(4)(ab): Repeal. 5

Sections 355AA and 355AB: Repeal.

Clause 2(c) of Schedule 1: Repeal.

Clause 3(1)(d) of Schedule 1: Omit “; and” and repeal clause 3(1)(e).

Clause 5(4)(f) of Schedule 1: Omit “; and” and repeal clause 5(4)(g).

Clause 20(4)(f) of Schedule 1: Omit “; and” and repeal clause 20(4)(g). 10

Schedule 4: Repeal.

Schedule 12: Repeal.

Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 (1977 No 28)

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Insert the following section after section 6A:

“6B Bed of territorial sea and internal waters vested in the Crown

Subject to the grant of any estate or interest therein (whether by or pursuant to the provisions of any enactment or otherwise, 20
and whether made before or after the commencement of this Act), the seabed and subsoil of submarine areas bounded on the landward side by the low-water mark along the coast of New Zealand (including the coast of all islands) and on the seaward side by the outer limits of the territorial sea of New Zealand are deemed to be and always to have been vested in the Crown.” 25

Te Ture Whenua Maori Act 1993 (1993 No 4)

Section 4: Repeal the definition of **land** and substitute:

“**land** includes Maori land, General land, and Crown land.”. 30

Section 43(7): Repeal.

Te Ture Whenua Maori Act 1993 (1993 No 4)—*continued*

Section 72(1): Omit “(other than proceedings under the Foreshore and Seabed Act 2004)”.

Section 98(3)(c) and (3A): Repeal.