Submission to the Justice Select Committee on:

Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

15 October 2024

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

1. Introduction

1.1. The CTU acknowledges that Te Tiriti o Waitangi is the founding document of Aotearoa New Zealand, and we all have a collective responsibility to positively give effect to Te Tiriti in our work.

1.2. Te Tiriti o Waitangi establishes a special relationship between the Crown and Māori. Any Government decision-making on significant taonga such as the takutai moana must ensure that Māori interests are heard and supported throughout the policy-making process.

2. Submission

2.1. The CTU strongly opposes this Bill amending the Marine and Coastal Area (Takutai Moana) Act.

2.2. This Bill is another example of rushed and ideologically driven law-making from the coalition government. It is yet another departure from responsible policymaking as evidenced by:

2.2.1. **A lack of genuine engagement**. Despite advice on the importance of genuine engagement at all steps of the policy development process, the Government has opted for expedited timeframes to push through law change significantly impacting the rights of Māori without any meaningful consultation with those impacted.

2.2.2. The Crown's Treaty relationship requires them to hold a high standard of engagement. This means involving Māori in the policy-making process from the start (in this context, engaging Māori on whether there is any issue at all to be solved), not simply presenting them with rigid proposals already in train.

2.2.3. **A failure to take a transparent and evidence-based approach** in developing this law change. The justification for this Bill is ideologically driven and not based on evidence. The Government has not shown a significant evidential basis for the need for the

amendments it is proposing, nor that there is a significant problem that needs to be addressed.

2.2.4. **Official advice being ignored or otherwise dismissed**. Both in relation to matters of substance and process. This failure has compounded the issues of poor engagement and the lack of evidence-based processes. This is a further departure from good law-making processes.

2.2.1. **Destruction of property rights**: The proposed Bill has the intention of quashing common law property rights that have been recognised and upheld by the courts as being possessed by Iwi. In stripping the property rights of Māori this Bill is inconsistent with Te Tiriti o Waitangi and its English version, as both documents affirm in unequivocal terms the inviolability of the rights of Māori to possess and preserve the resources they hold. The amendment is also inconsistent of the Human Rights Act 1993 and the Bill of Rights Act 1999 in targeting the property rights of Māori, this is deeply concerning, especially from a government that champions the property rights of others.

2.3. These factors on their own are more than enough reason to have this Bill scrapped at the select committee stage.

2.4. However, these procedural and substantive failures also represent a fundamental failure to give positive effect to Te Tiriti o Waitangi. We note and support the finding of the 'Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report' of the Waitangi Tribunal which outlined that this poor law-making process amounts to a gross breach of Te Tiriti o Waitangi.

2.5. We also echo the comments of the Tribunal that continuing the course on this Bill will significantly endanger the Māori-Crown relationship.

2.6. Finally, this Bill makes it nearly impossible for many hapū and iwi to have their customary marine rights recognised, as the legislative requirements fail to consider tikanga based relationships and the interruptions of use and access to the marine and coastal areas that have been caused by generations of colonisation and land theft by the Crown.

2.7. On this basis we strongly urge that this Bill does not proceed. We would wish to provide an oral submission in support of this written submission at the earliest opportunity.