



Methodist Church Te Hahi Weteriana - Methodist Public Issues

SUBMISSION ON FRESH WATER REFORM APRIL 2013

DRAFT

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Tena Koutou - Greetings

This is a brief submission on Fresh Water reform

Methodist Public Questions is a network of the Methodist Church, Te Hahi Weteriana o Aotearoa. The church has outreach contact with approximately 200,000 people, and a Public Issues network of about 500 people engaged with public issues.

Members of the church are made up of the constitutive synods of the Methodist Church: Te Taha Maori and Tauwi which is comprised of Sinoti Samoa, Vahefonua Tonga, Wasewase ko Viti kei Rotuma e Nui Siladi and Pakeha. There are ecumenical groups associated with the Network as well.

Public Issues has engaged with Environmental organizations as well as church networks, and attended RMA and Freshwater Consultation meetings and Hui, to compile this submission. We are cognizant of the Land and Water Reform reports and recommendations

Warm regards

Betsan Martin
Co-ordinator, Methodist Public Issues

Fresh Water Reform 2013

Methodist Public issues appreciated the provision of a consultation process throughout the country, with both meetings and hui to enable engagement in the proposed changes from all interested groups.

We note the short time frame given for engaging with the water proposals, which make it very difficult to gather information to engage adequately.

In putting together this submission Public issues refers to the Ministry for Environment *Freshwater reform 2013 and beyond*, and is mindful of the **Land and Water Forum Reports**, the **Waitangi Tribunal Freshwater Interim Report** and **Supreme Court** decision on the NZ Māori Council appeal against the sale of Mighty River Power (SC 98/2012)

Public Issues identifies a number of issues we consider that need to be taken into account.

Collaboration

In principle we fully support the proposals for collaboration. Indeed this is a hallmark of sustainable governance and management.

The provisions for collaboration are well articulated. Given the conditions of capability and acknowledged resource intense requirements for collaboration we would like clarification of how this deliberative process will be funded.

While collaboration is proposed as optional, we would prefer to see this offered as a phased in process for all Councils.

We point out a major contradiction between these welcome proposals for collaboration, and the reduction of public engagement signalled in the RMA reforms. The RMA needs to have provision for collaboration on water as well as for resource decisions.

The land and Water Forum (LAWF) proposals included that hearing panels appointees should be independent and have expertise in Environmental law and judicial matters. We support this recommendation.

Managing Quantity and Quality limits.

Public Issues has sought advice on various aspects of the reforms, but is only able to comment on selected proposals. Here we note the importance of the quantity and quality issue to inform allocation decisions.

The Land and Water Forum recommended an accounting and registry system that is consistent across regions, publicly identifies allocation of water takes and transfers, and includes protection of intellectual property and propriety information.

Public Issues supports the provisions for fresh water accounting to support decision-making for the use and allocation of freshwater.

Iwi/Māori as Treaty partners

The Methodist church has experience of systems to structure and express Treaty partnership, and supports provisions to structure and implement Treaty partnership agreements and obligations in local and central government. The document notes recognition of Iwi/Māori as the Treaty partner which is backed up with the statutory requirement for involvement (p. 24). This is alongside requirements for involvement of other key stakeholders. These provisions in Chapter 4, and in other parts of the proposals prevaricate between Iwi as Treaty partners and as stakeholders amongst others.

Similarly on p. 32 Iwi/Maori are included alongside community interests, signalling a weak position rather than a well structured and consistent structural provision for Iwi/Māori in decision-making that reflects a Treaty partnership.

We would like to see a clear and consistent position of Iwi/Māori as Treaty partners with provisions for engagement in decision making that ensures Treaty principles are adhered to. This includes proper resourcing for engagement.

Duration of Consents

The new provisions for 20 year renewable consents effectively tie up water for commercial use. This needs to be further reviewed in consideration of Iwi/Māori interests and out of consideration for changing climate conditions, especially droughts.

Waitangi Tribunal Claim re Interests in Fresh Water

There is no reference to the Waitangi Tribunal Freshwater claim and the potential implications of recognition of Māori interests in fresh water, despite publication of an interim Waitangi Tribunal report.

Although the Government will want to press ahead with the RMA Reforms (on which Public Issues has submitted) with corresponding reforms to implement changes in water management, we wish to record that Methodist Public Issues has an a priori regard for Treaty justice and that governance of fresh water must be in line with settlements of Iwi/Māori interests in water.

The Freshwater reforms 2013 and beyond document states that Treaty settlement provisions will have priority (p. 26). However it is suggested that these are not adequately anticipated.

The RMA and Fresh Water discussion documents do acknowledge issues of Māori exclusion:

Iwi/Māori rights and interests are sometimes not addressed and provided for, or not in a consistent way. Current arrangements do not always reflect their role and status as Treaty partners. As a result, some iwi/Māori concerns which could be addressed through a better freshwater management system are dealt with through Treaty settlements, while other iwi continue to feel excluded from management processes. (*Freshwater reform 2013 and beyond* p. 19).

We note that the recent appeal to the Supreme Court was in respect of the legality of the sale of Mighty River Power in respect of Maori interests. It did not address Iwi/Maori interests in water per se. The Supreme court decisions on the NZ Māori case re the Sale of State Assets is not a decision about water interests. Page 45 of the Supreme Court Decision refers to established recognition of Māori/Iwi interests in water and states:

the Deputy Prime Minister relied on the existing framework for Treaty settlements and the initiatives underway to review the regulation of freshwater (including through the Waitangi Tribunal inquiry) as part of the Crown's overall and ongoing response to the Treaty claim.

This decision also refers to an expectation that Māori/iwi water interests will be dealt with through the regulatory provisions of the local authorities and the RMA . For example p. 54:

The Waitangi Tribunal described the ownership interest guaranteed by the Treaty in terms of use and control. In large part, this may be more directly delivered through changes to the regulatory system, augmented by specific settlements, as Crown policy proposes.

Regulation of water use and control is under review by the Crown and the settlements have indicated the willingness of the Crown to consider extension of Maori authority in connection with specific waters. There may be some ownership interests insufficiently addressed by regulatory reform, but the significance of the interest needs to be assessed against the opportunities under consideration for real authority in relation to waters of significance.

Further reference to regulatory reform as the means to address Māori interests are in para 138:

More importantly, it is difficult to see that “shares plus” would produce reparation that would be more beneficial to Maori aspirations in relation to water¹⁴⁸ than can be achieved by regulatory reform and associated settlements.

A proviso precedes this reference (para 136 C), that:

There may be some ownership interest insufficiently addressed by regulatory reform, but the significance of the interest needs to be assessed against the opportunities under consideration for real authority in relation to waters of significance.

The Supreme Court gives an indication of the nature of Māori interests in water (para 141) as follows:

Given these circumstances and the wider context now provided in legislation for recognition of Maori authority in relation to waters (discussed in what follows), we consider that the Crown was justified in suggesting that protection of Maori in the waters comes close to the memorialisation protection put in place for land.

With these indications we consider there needs to be far more careful attention to projected provisions for Iwi/Māori interests

National Objectives Framework, RMA and Water Reforms

In the Public Issues RMA submission we opposed the deletion of intrinsic and amenity values (along with stewardship and ecological values) from the RMA on the basis that these give substance to the purpose of the Act. These identified values provide a reference point for decision-making .

We refer to Chapter 5 on National Objectives and that these are intended to provide

environmental outcomes for fresh water. Regarding Water Conservation Orders as a mechanism for protecting fresh water bodies, on page 32, outstanding intrinsic and amenity values are described as the reference for protection, yet these are values to be deleted from the RMA. We again make the point that the values of Sections 6 and 7 of the RMA be retained to provide consistency with provisions for the Water framework.

Water and Climate Impacts

The extra-ordinary drought this 2013 summer in Aotearoa NZ brings to our attention the necessity of considering climate impacts in fresh water planning and consenting. The situation of Poroti Springs in the news this week highlights the malfunctioning of consents with regard to tangata whenua. The priority given to commercial interests in water through consents, and especially 35 year consents, and the exclusion of tangata whenua from decisions about water quality highlight the over-riding of Iwi/Maori interests in water that can occur in Councils jurisdictions.

The depletion of waters in New Zealand rivers during this drought highlights the need for a revision of water reforms to take into account projected climate impacts. This includes water extraction and discharge policies which need to be framed to ensure river and water ecosystem health under more severe climatic stresses.

Conclusion

In conclusion Public Issues affirms support for matters of long term care, stewardship and responsibility for the governance and management of water, including full regard for Iwi/Māori interests.

The church speaks for ethical commitments appropriate to our times and context, and is pleased to contribute to decision-making on fresh water.

We look forward to continuing engagement as further decisions are considered on fresh water governance and regulation at the local authority level.

With respect



Betsan Martin for

Methodist Public Issues