



Māori

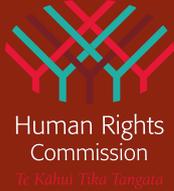
REPRESENTATION
in Local
GOVERNMENT

The Continuing
CHALLENGE



Human Rights
Commission

Te Kāhui Tika Tangata



Contact the Commission

Tāmaki Makaurau – Auckland

Level 4 Tower Centre, 45 Queen Street
PO Box 6751, Wellesley Street
Tāmaki Makaurau Auckland 1141
Waea Telephone 09 309 0874
Waea Whakāhua Fax 09 377 3593

Te Whanganui ā Tara – Wellington

Level 1 Vector Building, 44-52 The Terrace
PO Box 12411, Thorndon
Te Whanganui ā Tara Wellington 6144
Waea Telephone 04 473 9981
Waea Whakāhua Fax 04 471 6759

Ōtautahi – Christchurch

Level 3 Guardian Building, 79-83 Hereford Street
PO Box 1578, Ōtautahi Christchurch 8140
Waea Telephone 03 379 2015
Waea Whakāhua Fax 03 353 0959

Human Rights Commission InfoLine

0800 496 877 (toll free)
Fax 09 377 3593 (attn: InfoLine)
Email infoline@hrc.co.nz
TTY (teletypewriter) 0800 150 111
Language Line and NZ Sign Language interpreter
available.
TXT 0210 236 4253
Website: www.hrc.co.nz

Published October 2010
Aotearoa New Zealand

Contents

Introduction	2
Māori representation in local government	4
Environment Bay of Plenty: how the system works	7
The history	11
Māori representation on the new Auckland Council	19
Survey of local authorities	25
Discussion at the Diversity Forum 2010	33
The future	35
References	37

Introduction

Public discussion about Māori representation in local government has been re-ignited by the government decision not to adopt the recommendation of the Royal Commission on Auckland Governance that there should be three councillors representing Māori on the new Auckland Council.

The Human Rights Commission, in its annual review of race relations, identified Māori representation in local government and an effective voice for Māori in the decisions of the new Auckland Council as being among the top ten race relations priorities for 2010 (Human Rights Commission, 2010, p.5). Unless positive steps are taken, Māori representation in local government will continue to languish well below the proportion of Māori in the population. The decision not to provide for Māori seats on the new Auckland Council was a missed opportunity.

The Royal Commission, in coming to its recommendation, considered the precedent of the Bay of Plenty Regional Council (Environment Bay of Plenty), which has had direct Māori representation since 2004 on the same basis as the Māori seats in Parliament (Royal Commission on Auckland Governance, pp.477-496). The evidence of the council to the Royal Commission was that the system worked well.

Over a period of two days in April, the Commission conducted individual interviews with the Chair of Environment Bay of Plenty, a number of councillors, council managers and iwi representatives. Most were positive about the system of Māori constituencies

and felt it had helped the council to better meet its obligations for Māori participation under the Local Government Act 2002. Some went as far as to say it had transformed the council's relationships with Māori and its way of doing business. Few would want to revert to the previous system. Quotes from them in this discussion paper are from the interviews conducted. The recommendations, however, are the Commission's alone.

Since the passage of the Local Electoral Amendment Act 2002 all councils have had the option of establishing Māori constituencies or wards on the same basis as Environment Bay of Plenty, by resolution of the council challengeable by a poll of all voters. A number of councils have considered the option, but none have taken it up. The Act does not provide for Māori themselves to determine whether they wish to be represented as Māori. Since the first draft of this paper the Commission has conducted a survey to establish how many councils have considered the option and what they decided. The results are included in this report.

This paper now also includes details of the recent private member's bill proposed by Māori Party MP Te Ururoa Flavell seeking to enhance the provisions for Māori representation. The bill was defeated on its first reading in June 2010. Other new material includes an outline of the current provisions for Māori representation among appointed Commissioners to Environment Canterbury, and the discussion on Māori representation at the annual Diversity Forum in August 2010

As a result of the discussion at the Diversity Forum, the Commission now recommends that:

- Analysis of the results of the 2010 local elections should be undertaken to determine the extent of Māori representation
- Iwi should discuss whether or not they want Māori seats on their local or regional council
- The new Auckland Council should proceed to establish Māori seats without further ado, subject to re-endorsement by Auckland iwi
- Discussions should take place between councils and iwi on Māori seats and Māori representation prior to the next representation review (in 2011-12)
- Councils should support the Māori choice
- Environment Canterbury Commissioners should resolve to establish a Māori constituency for Environment Canterbury for the 2013 elections
- There should be further national discussion on improved provision for Māori representation.



Joris de Bres
Race Relations Commissioner
Kaihautū Whakawhanaunga ā Iwi

September 2010

Māori Representation in Local Government

When Māori voters in the Bay of Plenty go to the polls this year to elect their regional council they will do so in the confidence that there will be three councillors to represent them as Māori, just as, in general elections, they know there will be a Member of Parliament to represent them for the Māori parliamentary electorate of Waiariki.

For the past two elections, the thirteen Environment Bay of Plenty councillors have been elected by voters in four general constituencies and three Māori constituencies, producing 10 general constituency councillors and three Māori constituency councillors (Environment Bay of Plenty (d, nd). As with Parliament, everyone has only one vote and the number of councillors is based on the number of people on the electoral rolls. Voters in the Māori constituencies are those who have opted to be on the Māori electoral roll rather than the general roll.

Separate electorate seats in Parliament to represent those New Zealanders choosing to register on the Māori roll have been a “distinctive feature of New Zealand’s democracy” (Parliamentary Library, 2003) for over 140 years. In the Bay of Plenty this feature has been extended to regional local government.

Nowhere else in New Zealand do Māori have the certainty that they will be represented as Māori in local government. The number of Māori elected to local government remains far lower than their proportion of the population: in the 2007 local government elections less than 5% of successful candidates were Māori, although Māori form nearly 15% of the population. Many councils have no Māori members at all (Human Rights Commission, 2008, p.74).

A special act of parliament was required for Bay of Plenty Māori to get the right to vote for regional councillors in their own constituencies. The Bay of Plenty Regional Council (Māori Constituency Empowering) Act was passed in 2001 after an extensive process of public consultation. The Local Electoral Amendment Act 2002 extended the same possibility to other councils, who could resolve to do it by a resolution of the council challengeable by a poll of electors. A number of councils have considered the option since then, but none have taken it up.

The Royal Commission on Auckland Governance considered Māori representation when making recommendations on the composition of the new Auckland Council (Royal Commission on Auckland Governance, pp.477-496). Its report took note of the electoral arrangements for the Bay of Plenty Regional Council and similar ones that existed briefly for the Auckland Regional Council from 1986 to 1989. It recommended that two Māori members should be elected to the new Auckland Council by voters registered on the parliamentary Māori Electoral Roll and, in addition, one councillor should be appointed by a Mana Whenua Forum to represent the interests of mana whenua in the region.

There was widespread public support for this proposal in Auckland, but the Government rejected it, opting instead for the establishment of a statutory Māori Advisory Board. The Royal Commission’s recommendation remains the first occasion since 2001 that a proposal to establish Māori seats has been supported by a government appointed body.

In the Bay of Plenty the existence of the Māori seats on the regional council is not a big issue and is positively supported by most councillors. The Chair of the council, John Cronin, says: "The system works well for us. It has been a catalyst for an improved relationship between the Council and Māori." In a media release in August 2009 he noted: "Our Māori constituency councillors have participated across the whole of the council, not just on Māori issues. They do a good job both as councillors and presenting Māori issues, and carry out the same duties as any of the other councillors." Earlier, he has said: "The Maori seats are unique in NZ Local Government. We at ENVBOP are proud of them, and of our Maori members. They have proven their worth both to Maori and non-Maori. They appear have given to Maori a sense of sense of participation and a sense of belonging in the democratic process that they did not appear to have before. The Bay of Plenty Regional Council is a richer democracy for their participation (cited in Bennett, 2008)".

Chief Executive Bill Bayfield says having the Māori constituency seats is "a huge strength" and brings "significant savings" in council operations. "Having Māori at the decision making table means the council is always informed and always equally engaged. Māori councillors bring their networks, their constituency issues and the pulse of their communities". He describes it simply as "good business practice". The direct engagement of Māori and general constituency councillors in decision making "provides councillors with opportunities for personal development".

Strategic Policy Manager Mary-Anne McLeod notes that the Māori Councillors "have an

interest in everything the Council does and everything that is important to the region, and besides being on the Council's Māori Committee they provide a Māori perspective on other Council committees. It's just the way we do things here." Māori Policy Manager Kataraina Belshaw sees "a lot of value" in the Māori constituencies and the Māori Committee, which have increased the level of interaction between the Council and tangata whenua. "Tangata whenua defend the seats vigorously. The system gives them a voice at the highest levels of decision-making and they rely on the Maori Councillors to influence the Council, which they are definitely doing."

There are some councillors who disagree with the present provisions to varying degrees. Councillor Andrew von Dadelszen says he is "opposed in principle to separate Māori representation but in practice it works very well. We have learnt to respect each other, and both councillors and staff have learnt a lot. The council is now very inclusive of iwi and that is a good thing. But while it is working well in the Bay of Plenty, with a Māori population of around 25%, it should not be seen as a panacea for all. For regions like Northland and Gisborne (with high Maori population ratios) it might also be appropriate. But for the likes of Auckland with just 10%, and many of these with tribal affiliations outside the Auckland region, I don't think it is appropriate. Now that we have these seats it would be damaging to take them away in the short term. With the completion of the treaty settlement process I would like to think that within ten years they would no longer be required."

Councillor Ian Noble, who has been on the council since 1989, continues to oppose the Māori constituencies, but says that “once they are elected they are regional councillors, and once they’re in the room their opinion deserves to be sincerely thought through.”

Councillor Karen Summerhays is very positive about the increased representation of Māori on the council and the contribution made by the Māori constituency councillors, but she feels that the loss of the Māori vote from the general constituencies reduces the potential support for candidates in general constituencies promoting issues of common concern to Māori and non-Māori alike, such as environmental issues; it also does not encourage candidates standing for the general seats to consider Māori issues when making their election promises. She notes that the Royal Commission on

Auckland Governance in effect addressed this concern by proposing that a number of councillors be elected at large in addition to councillors representing Māori and general constituencies, and that in parliamentary elections voters on both rolls have a party vote in addition to their electoral vote. While neither of these options is necessarily transferable to smaller regional or local council settings, she believes a way should be found to addressing the issue.

Māori councillors are strongly supportive of the arrangements. Councillor Tai Eru says “Māori should be sitting at the table as of right as mana whenua. At least our voice is heard and that is really important.” Councillor Raewyn Bennett says the system is “going well” and “I really don’t know how Māori got represented before and can see how they missed out. Others try but they haven’t got that depth of understanding or

commitment to Māori issues. I would not stand in a general seat for the same reasons.” In a personal submission to the Royal Commission on Auckland Governance she said: “If people other than Māori are interpreting Māori culture through the provisions in the Acts which say “to have regard to Maori” opinions, this is akin to patronising and an affront to Māori. Whilst there have been very good non-Māori advocates in these roles, allowing this to continue, is politically and culturally disempowering of Māori and is a human rights injustice.”

Councillor Tipene Marr says: “Māori Standing Committees don’t work, they are just decorations to make it look like the Council is listening to Māori. We have to be at the table. We the Māori Councillors at EBOP have earned the respect of most of the Pākehā Councillors. We inform them about the Māori perspective, what Māori are thinking, not what the papers and TV try to screw around to sell papers, the biased view.”

Māori in the region are also strongly positive. Te Awanui Black of Ngāti Pukenga says: “It is vitally important for tangata whenua to be there in their own right, and the best place is at the governance level.” In comparison to the iwi’s dealings with the other territorial local authorities in the region, “access to decision-making is a lot easier” and Māori representation “has influenced the way the council operates”. He sees it as “a means to influence in a very positive way with a flow-on benefit back to the community as a whole.”

Huikakahu Kawe, Chair of Ngāti Ranginui, “totally endorses” the arrangements. He says that for iwi “it’s the start of a journey; we’ve still got a long way to go”.

Environment Bay of Plenty: How the system works

Brian Dickson, Chief Executive of Ngai Te Rangi, supports the arrangements “absolutely 100%”. “We’ve seen how it was before and how much more acknowledgment there’s been since. Before, we didn’t have the ear or understanding of councillors. Today the Māori councillors are constantly moving through their constituencies looking at Māori issues and Māori needs.” Ngai Te Rangi Resource Management Unit Manager Dee Samuel lists among the positive results of Māori representation the council’s support for the iwi harbour management plan for Tauranga Moana, assistance in the hearings process, a stronger Regional Policy Statement through direct iwi involvement, and a stronger process for consultation with iwi and hapū.

Anthony Olsen of Tuwharetoa ki Kawerau says “In a perfect world Māori representation would be dealt with in the mainstream, but it’s not. The Māori seats are necessary on the regional council, partly because one third of the population is Māori, one third of the land is owned by Māori and the proportion is rising through the Treaty settlement process. Even among non-Māori it is generally accepted that Māori representation is a good thing.” He says he is “100 per cent supportive” of the arrangements, and “the optimum would be for them to flow through to the district councils”. “There is a will on the part of the iwi to be a strong economic partner, to be a positive contributor to the Bay of Plenty economy and to share the benefits with everyone.”

The Māori constituencies

The Māori constituencies were established by the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001. The Act (Part 1, s6) prescribes the formula for calculating the number of Māori members of the council as follows:

$$mmm = \frac{mepr}{mepr + gepr} \times nm$$

where nmm is the number of Māori constituency members, $mepr$ is the Māori electoral population of the region, $gepr$ is the general electoral population of the region and nm is the proposed number of members of the Council.

If the number of Māori constituency members so calculated includes a fraction, the fraction is disregarded unless it exceeds a half. The number of general constituency members is determined by subtracting from the proposed number of members of the Council the number of Māori constituency members.

By this means, the democratic principle of one person one vote is preserved across the Māori and general constituencies.

The Act (Part 1, s6) further requires that in setting the boundaries for Māori constituencies, regard must be had to:

- (a) the need for the ratio of members to population in each Māori constituency to be similar (if more than 1 Māori constituency for the region is proposed); and
- (b) the boundaries of any existing Māori electoral district; and
- (c) communities of interest and tribal affiliations.

Based on the number of voters on the Māori Electoral Roll in the Bay of Plenty region, there are three Māori constituencies – Mauao in the western Bay of Plenty, Kohi, in the eastern Bay of Plenty, and Okurei, in the central/south Bay of Plenty (Environment Bay of Plenty (e), nd). The constituencies all fall within the Waiariki Māori electoral district and broadly match different tribal areas. They also largely coincide with local government boundaries – Mauao includes the Tauranga City Council and Western Bay of Plenty District Council areas, Okurei the Rotorua District Council, and Kohi the Whakatane, Opotiki and Kawerau District Councils. Each constituency elects one Māori councillor.

There are four general constituencies – Tauranga (which elects four councillors), and Rotorua, Western Bay of Plenty and Eastern Bay of Plenty (which elect two councillors each). The total number of councillors is thus 13 – three Māori and 10 general (Environment Bay of Plenty (a), nd).

There have been two local government elections using this system – in 2004 and 2007 – and the next election is due in October this year. Current Māori councillors are Raewyn Bennett (Mauao, elected unopposed), Tipene Marr (Kohi) and Tai Eru (Okurei). Tai Eru, previously both a general and a Māori constituency Councillor at different times, was appointed to fill the vacancy created by the tragic death of elected Councillor Hawea Vercoe in 2009.

In the 2007 election, votes received by successful candidates averaged around 13,000 in Tauranga, 7,500 in Rotorua, 5,000 in the Eastern Bay of Plenty, 3,000 in the Western Bay of Plenty and 1500 in the two Māori constituencies that were contested (Environment Bay of Plenty,

2007). While the number of votes for the two Māori candidates were lower than for other councillors, this is partly due to the fact that each Māori constituency only has one councillor. When adjusted for the number of voters/seats in each constituency, the appropriate comparison is closer to Tauranga 3,250, Rotorua 2,500, Eastern BOP 2,500, Western BOP 1,600 and the two Maori constituencies, 1,500. The voter turnout was highest in the urban centres, and lowest in the Western BOP and Māori constituencies. Voter turnout generally in 2007 was low at 42% (Environment Bay of Plenty, 2008, p.22).

Once elected, the Māori councillors have the same roles and responsibilities as other councillors, and serve on a range of council committees. Councillor Raewyn Bennett, for example, chairs the council's Policy and Planning Committee.

A representation review conducted by the Council and the Local Government Commission in 2007 resulted in changes to constituency boundaries, a reduction in the number of general councillors by one and retention of the three Māori constituencies.(Environment Bay of Plenty, 2008).

The Māori Committee

The Māori Committee is one of the standing committees of council, and its purpose is to:

- consider governance issues relating to the principles of the Treaty of Waitangi and Council's legislative obligations to Māori ; and
- oversee Council's work to build the capacity of Māori to contribute to Council's decision-making processes.

Its roles are to:

- monitor Council's compliance with its obligations to Māori under the Local Government Act 2002 and the Resource Management Act 1991
- facilitate tangata whenua input into Council's policy development and implementation work
- provide tangata whenua inputs on community outcome matters for the Bay of Plenty region
- develop processes to enhance Māori capacity to contribute to Council's decision-making processes
- support iwi/hapū to prepare management plans
- develop and oversee processes for Council to receive iwi/hapū management plans, and
- provide advice to Council on effective consultation mechanisms and processes for Māori
- advise the Council, Iwi and government departments on Treaty and Foreshore and Seabed settlements (Environment Bay of Plenty (b), nd).

The Treaty settlement role has currently assumed particular significance because negotiations are occurring on seven Treaty claims in the region.

The Māori Committee was established in 2006. Membership currently includes all three Māori councillors, but it is chaired by one of the other councillors, Robin Forde, and also includes councillor Malcolm Whitaker and, ex officio, Council Chair John Cronin. Other councillors are free to attend and some do. Committee meetings are held on marae throughout the region, and standing orders are flexibly applied to encourage maximum participation by Māori.

The council does not have a Māori advisory or liaison committee or an iwi and hapū forum. In contrast to many other councils, its Māori Committee looks outward to the people and meets in the community, rather than being an advisory group of the community looking inward to the council. The Māori Committee, comprising both Māori and general councillors, is able to discuss and mediate issues and bring them to the council representing both perspectives. Iwi representatives generally do not see the need for a separate advisory group or forum since Māori are directly represented at the council table and they have good access to the Māori Committee through its practice of meeting on marae.

Chief Executive Bill Bayfield notes: "I believe the arrangement in the Bay with three Māori Councillors allows the Māori committee to become the Councillors' link to iwi. We didn't anticipate that when we set up the committee but it has evolved into that role and done it very well."

The Māori Policy Unit

The Māori Policy Unit is part of the Council's Strategy Development Group. It is led by Māori Policy Manager Kataraina Belshaw and has three Māori Policy Officers, based in Rotorua, Tauranga and Whakatane. The Unit's work includes:

- assisting hapū and iwi to develop iwi resource management plans
- providing advice to staff on Māori engagement, iwi dynamics, Treaty settlements and national and local Māori issues
- supporting the Māori standing committee
- maintaining a Māori contact directory and
- supporting hapū and iwi initiatives to help build capacity and capability (Environment Bay of Plenty (c), nd).

Case study: “There is much that can be learnt”

A case study published by the Department of Internal Affairs in 2009 concluded that “There is much that can be learnt from the example provided by Environment Bay of Plenty” (p.36):

“Environment Bay of Plenty has shown a lot of leadership in promoting and establishing ways of strengthening Māori engagement in council processes and decision-making. There are a number of mechanisms which have been developed to facilitate Māori engagement and strengthen Māori capacity which build off strong relationships and mutual goodwill between Māori and EBOP.

The establishment of the Māori constituency seats is a key mechanism utilised to facilitate Māori input and participation into council. While council and Māori acknowledge its practical effect in giving Māori a voice at the decision-making table, they also recognise that the Māori seats are a symbol of the validation and respect of Māori as tangata whenua.

While the Māori seats are the flagship mechanism for facilitating Māori participation, it is the support mechanisms which have been put in place to ensure effective engagement with Māori at all levels which give substance to the relationship. Without these mechanisms the Māori seats would be severely restricted in their ability to bring about effective engagement with Māori.

There appear to be several factors which are important to successful engagement

practices between Māori and local government:

- The council demonstrating its commitment to Māori and the Treaty of Waitangi through their actions and not just their words;
- The establishment of Māori electorate seats guaranteeing Māori representation on council;
- The council recognising that Māori participation and engagement needs to be taking place at all levels of council;
- The council trying different approaches that strengthen Māori participation such as the ‘roving’ Māori Committee;
- The council listening to what Māori have to say, responding and following up on any required action;
- Strong leadership from council and Māori which is driving a collaborative approach. Also strong formal and informal relationships between the leadership of each party;
- Recognition that relationships with Māori are diverse and dynamic which require multiple approaches that continue to evolve and develop;
- Continual monitoring and review of engagement and relationship initiatives to measure the effectiveness of specific approaches and inform future planning. (Department of Internal Affairs, 2009, p.34-36)”.

The history

The lack of Māori councillors on the Bay of Plenty Regional Council, despite Māori constituting 28% of the population in the region, prompted the Council's Māori Regional Representation Committee to propose in 1996 that the Council establish Māori seats similar to the Māori seats in Parliament. A joint Māori-Council working party was established to consider the issue. (Environment Bay of Plenty (d), nd). The working party proposed the promotion of a local bill through Parliament to provide for the establishment of a Māori constituency (based on the Māori Electoral Roll) to elect three councillors. The Council called for public submissions. Some 760 written submissions were received in favour of the proposal and 252 against (Trapski, 1998).

The council appointed Judge Peter Trapski as an independent commissioner to conduct hearings and to provide a report. Judge Trapski reported in 1998 that "in general, the submissions reflected a very strong desire of Māori to proceed with the proposal (ibid, p.3)." He listed arguments both for and against:

"Views from those who were in favour of the proposal may be summarised as:

- The partnership role under the Treaty of Waitangi dictates that Māori should be provided with an elected voice on Council.
- There is no Māori representation amongst the political members of the Council.
- There would be better communication between all parties.
- Māori issues and concerns would be given more consideration.
- Active participation of iwi at all levels of governance should be supported.
- No matter how well intentioned, a Pakeha cannot be a Māori at heart.

- The majority of natural resources are owned by tangata whenua.
- Māori hapū and iwi should be given the confidence to participate.
- It is the only effective method to guarantee Māori representation.
- It provides an imaginative opportunity for justice (ibid, p.4)."

The major argument in support of the proposal was that none of the Council's existing 11 seats are occupied by Māori, despite strong Māori population in the Bay of Plenty.

Those who were against the proposal said:

- There is nothing to stop Māori standing for Regional Council.
- Councillors should stand on their own merits.
- The basis of democracy would be undermined.
- New Zealanders should be treated equally.
- The present system seems fair and democratic.
- It will create another area of conflict.
- We are one land and one people.
- We want to keep the costs of local government down.
- It will promote separateness; will lead to apartheid.
- The proposal is racist and extraordinarily divisive (Trapski, 1998, p.5).

Judge Trapski considered the various arguments against the proposal and said that:

It seems to me that however we regard democracy personally, the council in considering the proposal ought to be guided by the fact that since 1867 the delivery of democratic government in New Zealand has been effected by a system in which there have been Māori electorates, and seats in the House of Representatives reserved specifically for

people who enrol on the Māori roll. I suggest that Council must further be persuaded by the fact that this situation was reviewed in 1986, by a Royal Commission, the Royal Commission on the Electoral System, and that it regarded Māori seats “as an important symbol to Māori people of their special status as the indigenous people of New Zealand”. Far from recommending the abolition of those Māori seats, the Royal Commission considered that four seats were inadequate to ensure proper Māori representation (ibid, p.6).

Judge Trapski further quoted the Royal Commission as follows:

Although they were not set up for this purpose, the Māori seats have nevertheless come to be regarded by Māori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi. To many Māori, the seats are also a base for the continuing search for more appropriate constitutional and political forms through which Māori rights (mana Māori in particular) might be given effect. It is because of this that many Māori who opt to go on the General roll continue to support the retention of the Māori seats. It is in this context that Māori views concerning the seats should be understood.

These principles constitute what we believe to be the conditions under which an important minority might reasonably expect to enjoy a just and equitable share of political power and influence in a decision making system which is subject to the majority principle and over which the political parties hold sway (ibid, p.6-7).

The passage of the Electoral Act 1993, which provides for the continuation of Māori seats and the determination of their number by the

proportion of voters on the Māori Electoral Roll, is described by Judge Trapski as “Parliament’s declaration concerning the way in which democracy is delivered in New Zealand (ibid, p.7).” He said that the Bay of Plenty proposal “appears to be in total conformity with that declaration, and may therefore be regarded as constitutionally sound and democratic.” He said that the proposal “would give Māori no more voting power than the general population. Like everyone else, Māori will only have one vote (ibid, p.8).”

Judge Trapski recommended that the council should continue to promote the establishment of a Māori constituency, based on his conclusions that:

1. For whatever reason, the fact is that in some places 16% of the population in the Bay of Plenty, and in others, up to 58% of that population, clearly perceive that they are unrepresented at the Council table.
2. Adoption of the proposal would deliver to Māori the same voting rights as others. Their electoral rights would be no greater than those afforded to any other voter in the region and I can see no way in which the proposal would enable Māori to “outvote” the other members of the regional council as a block. The proposal would in my view not disadvantage anyone.
3. The proposal is in line with the delivery of the democratic process in New Zealand, and in conformity with New Zealand’s constitutional principles (Trapski, p.8-9).”

The Council accepted Judge Trapski’s recommendation. The Bay of Plenty Regional Council (Māori Constituency Empowering) Bill

was drafted in early 1999 and introduced to Parliament in September 2000. Janine Hayward notes in her report for the Crown Forestry Rental Trust, *The Treaty Challenge: Local Government and Māori* (2002), that the Bill was “subject to intense scrutiny and debate in the House and in the media. Key opponents to the Bill, and their objections to it, were soon apparent. Generally, opposition to the Bill called it undemocratic, patronising to Māori, and divisive for New Zealand (p.26).” Hayward quotes Māori MP, Mita Ririnui, who was most closely associated with the Bill, summarising opposition to the Bill at its third reading as follows:

This bill has been subject to the most vigorous and vicious attacks from the most senior and long-serving members of Parliament. It has been described as racist, as separatist, and as a form of apartheid by members of the Opposition, despite Judge Peter Trapski’s finding that the bill does conform to the delivery of the democratic process in Aotearoa and that it does conform to our constitutional principles. The Justice and Electoral Committee also received advice from the Ministry of Justice that the bill is not in breach of the Human Rights Act (Hayward, 2002, p.26).

Hayward quotes ACT MP Ken Shirley as warning that “the only outcome from this is polarisation and social disharmony (ibid, p.26)”, and National MP Warren Kyd as saying:

We are one nation of people; we have many things in common. We have different languages, different cultures in many ways, and different religions, perhaps. In many things we are different, but when it comes to the vote, to the government of this country, to matters of war and peace, we have to be one people. Countries that are not become divided and divisive (ibid, p.30).

Other MPs are quoted as follows:

National MP Georgina Te Heuheu:

Two matters in my view, go to the heart of this bill, both of which I feel are designed to test our resolve to ensure that democracy, a word that we are so ready to fling around this House, works well in our country. The first is the endeavours to reconcile majoritarian democracy with minority rights. Both Britain and Spain, which run very vigorous democracies, have had to deal with this issue in respect of minority constituencies, and are doing well. In seeking to reconcile such interests it is no answer, in my view, for the majority to knock down a proposal because of some perceived damage to democracy. After all, that becomes tyranny of the majority over the minority. That might be the case in other countries, but it is not the case in New Zealand, and it ought never to be (ibid, p.31).

Labour MP Parekura Horomia:

No one should compare this bill, which offers Māori in the Bay of Plenty an opportunity to participate and contribute proactively in local government, with what the indigenous people of South Africa suffered under apartheid. Members of other parties have said that. It is shameless and disturbing that in this modern world and modern day people still want to throw around and pontificate the old colonised notions of what is good for Māori and what is bad for Māori. We do know what is good for us. We want a better life for our people. We want to accelerate our development on all fronts. We know that the local authority’s rules and legislation impinge on the daily lives of our people. These are different times (Hayward, 2002, p.31-32).”

Labour MP Dover Samuels:

The constitutional right of Māori to elect Māori members in specific Māori electorates came from this Parliament. Our people out there in the constituencies, in the regional and district councils, ask for nothing more or less than the right to be able to exercise their democratic right in exactly the same way that we do in this House (ibid, p.33).

Parliament passed the act in October 2001. Despite the dire predictions of some members about the prospect of racial division, Environment Bay of Plenty councillors and iwi seem largely to consider that the law has improved relationships and lessened division.

Local Government Electoral Amendment Act 2002

The Local Government Electoral Amendment Act 2002 extended the option of Māori wards or constituencies to all regional councils and territorial local authorities. As a result of the amendment, section 19Z of the Local Electoral Act 2001 provides that a territorial authority may resolve that its district be divided into one or more Māori wards, and any regional council may resolve that its region be divided into one or more Māori constituencies, for electoral purposes. The council must notify the public of their right to demand a poll of all voters on the question. The resolution takes effect for the next two triennial elections and continues thereafter subject to any further resolution or poll demanded by voters.

Local Electoral (Repeal of Race-Based Representation) Amendment Bill

In 2006, the National MP for Bay of Plenty, Tony Ryall, drafted a private member's bill, the Local Electoral (Repeal of Race-Based Representation) Amendment Bill, which was drawn from the

ballot and introduced to the House. In speaking to his bill, Tony Ryall said:

The bill that I have moved and am debating tonight is a bill designed to repeal those provisions of local government law that provide for separate Māori wards and constituencies in local authorities. At present the Local Electoral Act provides for an option of separate Māori wards and constituencies at district and regional council level, and the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001 mandates such seats in that region. If this bill passes, it will repeal the provisions of the Local Government Act that allow there to be separatist race-based legislation, or race-based seats on councils ... and also remove the provisions of that Act in respect of the Bay of Plenty Regional Council. The outcome will be that there will be no racially based electoral representation in local government.

When the previous Government brought in legislation to provide for separate race-based wards in local government, the Labour Party hailed it as some sort of brave new world. Since that time not one local community has chosen to set up separate race-based seats—not one local council has chosen to have separate race-based seats. The provisions are unused, and they are already antiquated. They are not necessary, and they are divisive. Those communities that even considered having separate Māori representation soon found a complete lack of support in their communities for it, from all groups in the community, and they also found those seats divisive and completely unnecessary.

The National Party view, which we enunciated in our election policy at the last election, is that race-based representation is no longer needed in New Zealand, either at a

parliamentary level or a local government level. We believe that it is divisive (New Zealand Parliamentary Debates (Hansard), p.6773).

In the ensuing debate, Māori MP Pita Sharples responded that:

...the fatal flaw in Mr Ryall's logic is that he has mistaken representation of tangata whenua as representation based on race rather than as a Treaty right ... Section 19 of the Local Electoral Act 2001, which relates to the ability of the councils to establish Māori wards or constituencies, is an important model of the Treaty in action in our contemporary times ... I have to wonder why the constitutional significance of tangata whenua, which was recognised in the provision for Māori wards and constituencies, has been relegated to being about the race card...

The Māori Party believes that population-based Māori seats in local body councils represent the absolute minimum in terms of meeting Treaty obligations. I commend the Bay of Plenty Regional Council for being the first council to make such seats a reality. We believe that the Treaty partners—Māori and the Crown—should be pursuing opportunities to debate new forms of governance and other means by which we may share political power. Democracy is more than one person, one vote. Democracy is to be actively involved in the matters of one's nation and community (New Zealand Parliamentary Debates(Hansard), p. 6777).

The Bill failed to proceed beyond its first reading.

Local Electoral (Māori Representation) Amendment Bill

In 2010, the Member's Bill of the Māori Party MP for Waiariki, Te Ururoa Flavell – the Local Electoral (Māori Representation) Amendment Bill – was drawn from the ballot and introduced into the House. The bill proposed to remove voluntary provisions for Māori representation in local government and instead require all territorial authorities and regional councils to establish Māori wards and constituencies. The bill also proposed a new formula to that already contained in the Local Electoral Act 2001 for calculating the number of Māori seats. The new formula would be calculated from total population data as opposed to electorate population data. The reason given for this change was that 40 per cent of the Māori population is under 18 years and is therefore excluded from representation under the current formula ('General Policy Statement', Local Electoral (Māori Representation) Amendment Bill).

It was deemed that the proposed bill was subject to a section 7 report by the Attorney-General as to whether it limited the right to be free from discrimination contained in the New Zealand Bill of Rights Act 1990. After reviewing the bill, the Attorney-General concluded that it limited the right to be free from discrimination by appearing 'to discriminate against non-Māori because the proposed formula for calculating the number of Māori seats would lead to disparity in representation between Māori wards or constituencies and general wards or constituencies' (Report of the Attorney-General on the Local Electoral (Māori Representation) Amendment Bill, p 2).

The report included tables outlining the estimated effect of the bill on the composition of territorial authorities and regional councils. The 'current Māori seats' column indicates how many Māori seats a council would have under the current LEA formula not how many Māori seats it actually has.

Territorial Authority Area	Total Seats	Māori seats	
		Current	Proposed
Total	789	101	172
Far North District	9	3	4
Whangarei District	13	2	4
Kaipara District	8	1	2
Rodney District	12	1	2
North Shore City	15	1	1
Waitakere City	14	1	2
Auckland City	19	1	2
Manukau City	17	2	3
Papakura District	8	2	3
Franklin District	12	1	2
Thames-Coromandel District	8	1	2
Hauraki District	13	2	3
Rangitikei District	11	2	3
Manawatu District	10	1	2
Palmerston North City	15	2	3
Taranua District	8	1	2
Horowhenua District	10	1	3
Kapiti Coast District	10	1	2
Porirua City	13	2	3
Upper Hutt City	10	1	2
Lower Hutt City	12	1	3
Wellington City	14	1	1
Masterton District	10	1	2
Carterton District	8	0	1
South Wairarapa District	9	1	1
Waikato District	13	3	4
Matamata-Piako District	11	1	2
Hamilton City	12	2	3
Waipa District	12	1	2
Otorohanga District	7	1	2
South Waikato District	10	2	4
Waitomo District	6	2	3
Taupo District	10	2	3
Western Bay of Plenty District	12	2	3

Tauranga City	10	1	2
Rotorua District	12	3	5
Whakatane District	10	3	5
Kawerau District	8	4	5
Opotiki District	6	3	4
Gisborne District	14	5	7
Tasman District	13	1	1
Nelson City	12	1	1
Marlborough District	13	1	2
Kaikoura District	7	1	1
Buller District	10	1	1
Grey District	8	0	1
Westland District	10	1	2
Hurunui District	9	0	1
Waimakariri District	10	0	1
Christchurch City	13	1	1
Selwyn District	11	0	1
Ashburton District	12	1	1
Timaru District	10	0	1
Mackenzie District	6	0	0
Waimate District	8	0	1
Wairoa District	6	3	4
Hastings District	14	3	4
Napier City	12	2	3
Central Hawke's Bay District	8	1	2
New Plymouth District	14	1	3
Stratford District	9	1	1
South Taranaki District	12	2	3
Ruapehu District	11	3	5
Wanganui District	12	2	3
Chatham Islands Territory	8	3	5
Wairaki District	10	0	1
Central Otago District	10	0	1
Queenstown-Lakes District	10	0	1
Dunedin City	14	1	1
Clutha District	14	1	2
Southland District	12	1	2
Gore District	8	0	1
Invercargill City	12	1	2

Regional Authority Area	Total Seats	Māori seats	
		Current	Proposed
Total	135	16	27
Northland Region	8	2	3
Auckland Region	13	1	2
Waikato Region	12	2	3
Bay of Plenty Region	13	3	4
Hawke's Bay Region	9	2	3
Taranaki Region	11	1	2
Manawatu-Wanganui Region	12	2	3
Wellington Region	13	1	2
West Coast Region	7	0	1
Canterbury Region	14	1	1
Otago Region	11	0	1
Southland Region	12	1	2

Speaking in support of his bill in the House on 18 June, Flavell referred to provisions in the Local Electoral Act 2001, and the Local Government Act 2002. He also drew on the Treaty of Waitangi and Article 18 of the Declaration on the Rights of Indigenous Peoples, which states that indigenous peoples have the right to participate in decision-making in matters which affect their rights. He said:

What we are talking about here is the Treaty partner, the indigenous people of this land, being marginalised by limited representation and participation. When we talk about tangata whenua, we are not just talking about a community of interest or key stakeholders; we are talking about signatories to Te Tiriti o Waitangi. ... Māori representation is the first step towards building a Treaty-based partnership with local Māori. (New Zealand Parliamentary Debates (Hansard), pp 11793-4).

In the ensuing debate, National MP Chester Borrows said:

National will be opposing [the bill] ... from a position where, much as it would be happy for councils to utilise the powers they currently

have to decide to have specific Māori seats, it does not believe this should be legislated for. A community should decide whether to have Māori seats, not the Government. (New Zealand Parliamentary Debates (Hansard), p 11795).

Labour MPS spoke in favour of sending the bill to select committee, 'to see where it goes'. (New Zealand Parliamentary Debates (Hansard), pp 11796, 11798).

Green MP David Clendon indicated his party's support for the bill and noted:

It is well know that participation in local body elections in New Zealand is low ... Māori participation is lower still. The evidence is before us in the Bay of Plenty that improved participation from guaranteeing Māori seats does bring [a] richer democracy This bill is an opportunity to spread that richer democracy throughout the country. (New Zealand Parliamentary Debates (Hansard), p 11800).

A motion to read the bill for the first time did not pass.

Māori representation on the new Auckland Council

Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010

Following a government review of Environment Canterbury in 2009 and early 2010, known as the Creech Report, the government passed new legislation to temporarily replace Environment Canterbury's 14 elected councillors with seven commissioners. The commissioners began work on 1 May 2010. The commissioners are required to improve relations with Canterbury's 10 territorial councils, to build on the work of the Canterbury Water Management Strategy and to meet all the statutory obligations of the Resource Management and Local Government Acts to consult with the Canterbury community.

The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 provided that the new commissioners 'will act as the Council's governing body until new elected members come into office following the next election.' The Act stipulates that the 2010 elections for Environment Canterbury members will not be held, and the commissioners are likely to hold office until the next triennial election in 2013. Section 14 of the 2010 provides that commissioners must have collective knowledge and expertise in certain matters, which include 'tikanga Māori, as it applies in the Canterbury region.' In consultation with Te Runanga o Ngāi Tahu, this led to the appointment of Donald Couch as an Environment Canterbury commissioner. Mr Couch is, among other things, a Trustee, Ngāi Tahu Ancillary Claims Trust and Rapaki Trustee (appointed by the Māori Land Court), and was until recently Deputy Kaiwhakahaere, Te Runanga o Ngāi Tahu.

As a result of this Act, the current Environment Canterbury effectively has dedicated Māori representation. It is unclear whether this will continue when elections for the council are next held in 2013.

The Royal Commission on Auckland Governance

The Royal Commission on Auckland Governance considered the governance and representation arrangements for Māori on the proposed Auckland Council, "recognising that Māori constitute a unique community of interest with special status as a partner under the Treaty of Waitangi (chapter 22 s.2)." It noted that Māori constitute approximately 11% of Auckland's total regional population, falling into two broad categories – mana whenua Māori, who have ancestral rights to occupy the Auckland region or part of it; namely their tribal rohe, and non-mana whenua groups or taura here Māori, who do not identify with any of the mana whenua groups in the Auckland region. They may identify with iwi or hapū whose tribal rohe are elsewhere in New Zealand, or they may not have any particular tribal affiliations. They are sometimes loosely referred to as "urban Māori". In the Auckland region, taura here greatly outnumber mana whenua Māori, with the largest groups being Ngāpuhi (50,040), followed by Ngāti Porou (13,215), Te Rarawa (6,843) and Tūhoe (5,685), with a further quarter of urban Māori not identifying with any iwi at all (Royal Commission on Auckland Governance, chapter 22 s.10).

The Commission noted that according to tikanga Māori, mana whenua status brings with it special responsibilities, in particular:

- manākitanga: a sacred obligation to care for all people within your rohe, including taura here and non-Māori
- kaitiakitanga: a sacred obligation to protect Papatuanuku (the Earth Mother) within your rohe (ibid, chapter 22 s.14).

It quoted a submission from Te Whānau o Waipareira Trust which saw the distinction between mana whenua and taura here as follows:

We make a clear distinction in regard to Mana Whenua rights over Resource Management Act consultations to which we have never interposed.

We reserve absolutely the right and status to assert our rights on matters touching health, welfare, education, justice and the economy in the event local Government impacts on these matters. The distinction between our rights and those of Mana Whenua rely solely on Mana Whenua ancestral rights predicated on matters arising from that ancestral entitlement.

Mana Whenua rights do not besmirch or remove our rights and our status as Māori under the Treaty of Waitangi (ibid, chapter 22 s.15).

The Commission noted that the Local Government Act 2002 makes it clear that it is the Crown, not local government, that is a party to the Treaty and has direct obligations to Māori as a result, but that “nonetheless, local authorities must also take certain steps in order to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi (ibid, chapter 22.s.18).”

“Specifically, the Local Government Act 2002 requires local authorities to

- ensure they provide opportunities for Māori to contribute to decision-making processes (section 14(1)(d))
- establish and maintain processes to provide opportunities for Māori to contribute to decision-making processes (section 81(1)(a))
- consider ways in which they can foster the development of Māori capacity to contribute to decision-making processes (section 81(1)(b))
- provide relevant information to Māori (section 81(1)(c))

- where an option involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other tāonga (section 77(1)(c)). (ibid, chapter 22 s.19).”

The Commission also examined the optional provision in the Local Electoral Act 2001 for Māori representation on regional councils and territorial local authorities and noted that “currently, none of the eight councils in the Auckland region has Māori wards or constituencies. In 2008, both Manukau City Council and Waitakere City Council considered and rejected the establishment of Māori wards in their areas (ibid, chapter 22 s.28).” It noted that two Māori seats had previously been provided for on the Auckland Regional Council through the Local Government Amendment (No 2) Act in 1986, but that this was repealed without being implemented as part of the 1989 local government reforms.

There were three dominant themes in Māori submissions to the Royal Commission:

- the need to recognise and uphold the Treaty of Waitangi
- the desire for guaranteed representation on Auckland’s governance structures, and
- discussion as to whether seats should be reserved specifically for mana whenua and or taura here representatives (ibid, chapter 22 s41-43).

The Commission was told that guaranteed representation meant “seats at the decision-making table, not merely a presence on non-binding advisory committees (ibid, chapter 22 s50)” and the point was made that “Māori are currently under-represented on all of Auckland’s governance structures, from the ARC to territorial authorities and community boards.

The percentage of Māori amongst those elected to local authorities is low by comparison with the percentage of Māori in the local population (ibid, chapter 22 s51).” It was argued that “the under-representation of Māori was not a result of Māori failing to stand for election but was instead attributed to the inability of many Māori candidates (particularly if they were perceived to have an overtly Māori agenda) to secure election by a non-Māori majority. The effectiveness of the Māori vote has also been weakened by low Māori voter turnout in local elections (ibid, chapter 22 s52).”

The Commission concluded that Māori should have a certain number of specific, safeguarded seats at the regional level, “consistent with the spirit and intent of the provisions in the Local Government Act 2002, which require local authorities to consider ways in which they can provide opportunities for Māori to contribute to decision-making processes, and require them to establish and maintain processes for Māori to contribute to decision making (ibid, chapter 22 s56).” It said that “the best way of ensuring that Māori have an opportunity to contribute to decision making is to provide them with seats at the decision-making table. The Local Government Act 2002 already provides local authorities with the option of establishing specific seats for Māori, but this is not mandatory at present (ibid, chapter 22 s57).”

In the Commission’s view, the key reasons for establishing safeguarded Māori seats relate to

- the special status of mana whenua of the Auckland region, and their obligations of kaitiakitanga and manākitanga
- the special status of all Māori as partners under the Treaty of Waitangi (ibid, chapter 22 s58).

The fact that Māori constitute a certain (under-represented) percentage of the population is also

relevant, but of lesser importance – there are many minority groups in the Auckland region in this position. The Commission does not believe, therefore, that the number of Māori seats on the regional entity should be linked to fluctuations in the number of Māori as a proportion of the total population over time. In fact, having specific, safeguarded seats for Māori may become even more important if the percentage of Māori as a proportion of total population declined over time. In that case, Māori candidates would be even less likely to be voted in as part of the general election process (ibid, chapter 22 s59).

In other words, the Commission’s primary reason for making these recommendations is to give effect to obligations under the Treaty of Waitangi. General considerations of equity and fairness of representation also come into play, but to a lesser extent (ibid, chapter 22 s60).

Having considered various ways in which Māori representation could best be provided for, the Commission recommended that:

- Two Māori members should be elected to the Auckland Council by voters who are on the parliamentary Māori Electoral Roll.
- There should be a Mana Whenua Forum, the members of which will be appointed by mana whenua from the district of the Auckland Council.
- The Mana Whenua Forum should
 - appoint a representative to be a councillor on the Auckland Council (ibid, chapter 22 s71)
 - through its representative on the Auckland Council, advise the Auckland Council on issues of relevance to mana whenua (ibid, chapter 22 s72)
 - appoint the members of Watercare’s Māori Advisory Group (ibid, chapter 22 s79).

Local Government (Auckland Council) Bill: Select Committee report

The government did not include the Royal Commission's recommendations for Māori representation in the Local Government (Auckland Council) Bill introduced to parliament in 2009. The Auckland Governance Legislation Committee Select Committee (including a special sub-committee on Māori representation), having considered public submissions, reported that:

"A large number of submitters recommended ensuring Māori had representation in some form under the new governance structure. Many argued that Māori representation should be guaranteed as of right because of the principles of the Treaty of Waitangi and the special status of tangata whenua, or in order to remain consistent with the provisions of the Local Government Act 2002, which provide for Māori input into decision-making at the local level. While there was substantial support for Māori representation on the Council by way of reserved seats, there was no consensus on whether this representation should be specifically for mana whenua, or for tangata whenua as a whole, and whether the seats should be reserved on the Auckland Council or local boards. There was some support for representation in other forms, such as an advisory body, committee, or forum.

While we acknowledge that some form of Māori representation, advocacy, or partnership would be valuable within the Auckland governance structure, the majority of us believe that it is up to the people of greater Auckland to decide what shape this representation should take, and whether representation should be for tangata whenua, mana whenua, or both. Such representation could, for example, be provided in the committee membership of the Auckland

Council. The majority of us therefore urge the Auckland Council to carefully consider establishing Māori representation should there be community support for this move. The majority of us note that current provisions in the Local Electoral Act 2001 provide a mechanism by which the Auckland Council could seek to provide for Māori representation. However, the majority of us believe that the question of whether the existing legislation provides adequate opportunities for Māori representation in local government is an issue of national significance, extending beyond Auckland. Resolving this issue should therefore be considered in that context rather than through this piece of legislation (Auckland Governance Legislation Committee Report on Local Government (Auckland Council) Bill, 2009, p.9) ."

Dissenting Reports

Labour, Green and Māori Party Select Committee members presented minority reports which stated:

Labour Party

Labour believes there should be Māori seats on the new Auckland Council. Like Parliament itself and the Bay of Plenty Regional Council, these seats should be allocated on the basis of the number of Māori on the Māori roll... Under Labour's plan there would be at least two Māori seats in Auckland. But it could be more. The number of Māori seats will depend on how many Māori there are on the Māori roll in the Auckland region. The region itself still hasn't been defined, and won't be until 1 March 2010. Much will depend on the final boundaries. Also Māori are a young population, so demographics are in their favour. Labour will also be introducing further amendments to ensure statutory recognition of mana whenua in Auckland Council (ibid, p.23).

Green Party

The lack of provision for Māori representation on the new Council is an abrogation of our responsibilities within the Treaty relationship, and flies in the face of submissions made by a vast majority of Aucklanders, Māori and tau iwi alike (ibid, p.29).

Māori Party

The Māori Party cannot support this bill as reported back from the Auckland Governance Legislation Committee because it does not provide for Māori representation in the governance structure of the proposed Auckland Council.

At the first reading of the bill the Māori Party raised a number of points in support of dedicated Māori seats: that it was a specific recommendation of the Royal Commission on Auckland Governance; that it was consistent with current provisions in the Local Government Act 2002; and that dedicated Māori seats uphold the partnership relationship established between Māori and the Crown through the Treaty of Waitangi, including the partnership established with the mana whenua of the Auckland region.

This position has been underscored by the public submissions received by the Auckland Governance Legislation Committee examining the Local Government (Auckland Council) Bill, with the report noting that substantial support was received for reserved seats for Māori.

Flying in the face of this support, the committee has elected not to recommend that the bill provide for Māori seats on the proposed Auckland Council. The Māori Party is extremely disappointed with this decision. It calls into serious question the fundamental basis of the parliamentary democratic process that is to reflect decision-making “of the people, for the people”.

The decision of the committee also calls into serious question the commitment and understanding it has for the Treaty of Waitangi. The result of their failure to uphold the nation’s constitutional foundations, current law, and the wish of the people, will result in legislation that is not only in breach of the Treaty of Waitangi, but that is as short-sighted as it is discriminatory. It is short-sighted because it fails to acknowledge the reality of what Māori have to offer at the governance table for a “greater” Auckland region, and it is discriminatory because it denies recognition of the status of Māori as a people—a right recognised in every international human rights instrument developed in international law since the end of World War Two.

We do not agree that the committee was prevented from making a recommendation for dedicated Māori seats due to a lack of consensus on how Māori representation might be best expressed. The submissions received from mana whenua were consistent with one another and proposed a path forward that both acknowledged their status as mana whenua and included all Māori living in the Auckland region, consistent with tikanga Māori.

We also do not agree with the committee’s view that the issue of Māori representation on the Auckland Council is best resolved through the Local Electoral Act 2001. Considerable time and funds have already been spent on canvassing public opinion (3,537 submissions were received by the Royal Commission on Auckland Governance, and 2,538 submissions by this committee), resulting in strong support for the establishment of Māori seats. In light of this, the committee’s decision to recommend that yet more time and money be spent on seeking the views of electors in the Auckland region is illogical and fiscally irresponsible.

Justice should be the guiding ethical ideal for Parliament, and its members and committees, including the courage to create new laws to set new and just precedents to resolve enduring issues of concern to the nation—as was done in the previous Parliament in repealing section 59 of the Crimes Act. Instead, the opportunity to set a new, just standard for the recognition of mana whenua and Māori in governance arrangements has been bypassed.

The report of the committee is unjust, improper, and politically motivated. The bill signals an enduring and profoundly disturbing fear of sharing decision-making with Māori as provided for in the Treaty of Waitangi (Auckland Governance Legislation Committee Report on Local Government (Auckland Council) Bill, 2009, p.30- 32)."

Proposal for a Statutory Māori Advisory Board

The Bill was passed without making provision for Māori representation. The subsequent Local Government (Auckland Law Reform) Bill provided "arrangements for a Board to promote issues of significance for mana whenua and Māori for Tamaki Makaurau." In June 2010, this bill was divided into three: the Local Government (Tamaki Makaurau Reorganisation) Amendment Bill, the Local Government (Auckland Council) Amendment Bill and the Local Government (Transitional Provisions) Bill. All three were subsequently passed on 14 June 2010.

The provisions relating to the establishment of a statutory Māori Advisory Board are now contained in sections 81-9 of the Local Government (Auckland Council) Amendment Act 2010. The purpose of the board is to "promote cultural, economic, environmental, and social issues of significance for mana whenua and

Māori of Tamaki Makaurau to assist the Auckland Council in making decisions, performing functions, and exercising powers." The general functions of the Board set out in section 84 are to:

- "(a) act in accordance with its purpose and functions and to ensure that it does not contravene the purpose for which it was established:
- "(b) develop a schedule of issues of significance to mana whenua and Māori of Tamaki Makaurau, and give a priority to each issue, to guide the board in carrying out its purpose:
- "(c) keep the schedule up to date:
- "(d) advise the Auckland Council on matters affecting mana whenua and Māori of Tamaki Makaurau:
- "(e) work with the Auckland Council on the design and execution of documents and processes to implement the council's statutory responsibilities towards mana whenua and Māori of Tamaki Makaurau.

The Board also has a specific function in section 85 to appoint a maximum of 2 persons to sit on each of the Auckland Council's committees that deal with the management and stewardship of natural and physical resources. The Bill also sets out the Auckland Council's duties to the Board at section 88, stating that the council must:

- "(a) provide the board with the information that the board needs to identify business of the council that relates to the board's purpose:
- "(b) consult the board on matters affecting mana whenua and Māori of Tamaki Makaurau:
- "(c) take into account the board's advice on ensuring that the input of mana whenua and Māori of Tamaki Makaurau is reflected in the council's strategies, policies, and plans:

Survey of local authorities

- “(d) take into account the board's advice on other matters:
- “(e) make an agreement every year to provide the board with the funding it needs to carry out its purpose:
- “(f) work with the board on the design and execution of documents and processes that relate to seeking the input of mana whenua and Māori of Tamaki Makaurau.

On 12 July 2010, the Commission sent a request to 83 territorial and regional authorities asking if they had ever considered Māori representation as set out in the section 19Z of the Local Electoral Act 2001 (LEA 2001) and, if so, when. The Bay of Plenty Regional Council / Environment Bay of Plenty, with whom the Race Relations Commissioner met separately, was the only local authority not sent an information request.

By 20 August 2010, the Commission had received substantive replies from 74 of the 83 local authorities, a response rate of 89.16%. 64 of the 72 territorial authorities responded (88.89%) and 10 of the 11 regional authorities responded (90.91%)

The survey analysis set out below is based primarily on the information provided by the local authorities themselves (except where explicitly noted). Some local authorities produced extensive documentation to support their response, others made brief responses to the two questions posed. The breakdown of when and how local authorities considered establishing Māori wards or constituencies is therefore dependent on the content of responses and may not reflect the full picture of a particular council's deliberations. Where responses have been coded for analysis of when and how they considered the issue, some local authorities explored a number of different options and have therefore been coded to more than one response. As a result, the numbers and percentages for this particular part of the analysis will not reflect the total number of responses, nor add up to 100%.

Provisions of section 19Z of the Local Electoral Act 2001

Section 19Z of the LEA 2001 provides two options for councils to consider the issue of Māori wards or constituencies:

- 1) the Council may resolve that the district, city or region be divided into Māori wards or constituencies. The resolution would need to be made by 23 November two years before the next elections. The decision of Council would be effective for the next two triennial elections (unless a poll is held). It would continue in effect after those two elections until a further resolution is made by Council or a poll of electors is held.
- 2) a poll may be conducted whereby every elector in the district, city or region (on both the Maori and general electoral rolls) has the opportunity to vote on whether or not the district city or region should be divided into Māori constituencies. The majority view of those who voted will determine the result of the poll. Such a poll could either be initiated by Council or demanded by at least 5% of the public. The outcome of either poll is binding and overrides any resolution of Council. It is also effective for next two elections.

Neither of these options is compulsory, and Councils also have the option to do nothing, which is, in effect, a decision to maintain the status quo.

Councils are not able to determine the number of Māori wards or constituencies, how many Māori members shall be elected nor the boundaries of any wards or constituencies as this is determined by the LEA 2001. The formula for calculating the number of Māori members for election is contained in Clause 4 of Schedule 1A of the LEA 2001. The number of Māori wards or constituencies would also impact on the number of general wards or constituencies.

It should be noted that Councillors elected from the Māori electoral roll are required - as are Councillors elected from the General roll - to make a declaration under Clause 14 of the 7th

schedule to the Local Government Act 2002 to act in the best interests of the district generally.

It should also be noted that candidates for a Māori ward or constituency do not have to be on the Māori electoral roll, and candidates could be non-Māori. Only electors on the Māori roll, however, can vote in an election in a Māori ward or constituency, and only electors on the general roll can vote in an election in a general ward or constituency, preserving the principle of one person, one vote at the local level.

How many councils have considered the issue?

Of the 64 territorial authorities that responded to the information request, 54 had considered the establishment of Māori wards (84.38%).

Of the 10 regional authorities that responded to the information request, 9 had considered the establishment of Māori constituencies (90%).

How many councils have not?

Of the 64 territorial authorities that responded to the information request, 10 had not considered the establishment of Māori wards (15.63%).

Of the 10 regional authorities that responded to the information request, one had not considered the establishment of Māori constituencies (10%).

If they have considered it, when did they consider and how?

Most considered the issue during representation reviews, which also assessed the desirability of moving from First Past the Post (FPP) to Single Transferrable Vote (STV) voting systems, and / or the desirability of electing councillors at large or using a ward system. Under sections 19H and 19I of the LEA 2001, local authorities are required to conduct a representation review at least once every six years, beginning either in 2003 or 2006.

Of the 64 territorial authorities that responded, consideration of Māori wards can be broken down further:

Code	Number	Percentage
Never considered (N)	10	15.64
Yes but no further information supplied (Y)	2	3.13
Yes as part of representation review (YRR)	35	54.69
Yes as part of council business / council resolution (YCC)	10	15.64
Yes and included a specific consultation process with iwi or Māori organisations (YCP)	13	20.31
Yes and conducted a poll of electors (YPE)	3	4.69
Yes but low Māori population in area means that the formula does not add up to one seat (YLP)	9	14.06
Yes and plans to implement Māori wards in the near future (YPI)	1	1.56

Of the 10 regional authorities that responded, consideration of Māori constituencies can be broken down further:

Code	Number	Percentage
Never considered (N)	1	10
Yes but no further information supplied (Y)	0	0
Yes as part of representation review (YRR)	5	50
Yes as part of council business / council resolution (YCC)	3	30
Yes and included a specific consultation process with iwi or Māori organisations (YCP)	1	10
Yes and conducted a poll of electors (YPE)	1	10
Yes but a low Māori population in area means that the formula does not add up to one seat (YLP)	1	10
Yes and plans to implement Māori constituencies in the near future (YPI)	0	0

Was there any progress towards implementing Māori wards or constituencies?

Of the responses received, the Far North District Council (FNDC) has made the most progress toward implementing Māori wards. As part of its 2008 representation review, the FNDC received a formal report on the issue, and subsequently resolved:

That, in view of the FNDC's intention to become a unitary authority [i.e. combine functions of territorial and regional authorities], it signals its support in principle for having dedicated Māori seats once this status has been achieved.

At the same time, the FNDC further resolved 'to investigate non-electoral options for the engagement and involvement of Māori in decision-making processes.' The FNDC has started down the route of becoming a unitary authority.

In May 2009, the FNDC received a staff report on Māori representation, and in light of this report, the Council resolved:

That Council signals its intent to favourably consider dedicated Māori seats within the Councillor membership and requests the Chief Executive to prepare a report on this matter in accordance with the Local Electoral Act 2001, for Council's consideration in November 2011.

This is currently where the matter rests: the Council intends to revisit the question as a part of an 'elective' representation review in 2011.

The FNDC staff reports on the issue canvas it from a range of angles and include an assessment of the significance of the issue, and an assessment of practicable options. Of particular note is the concluding comment:

There are complexities involved in the process for determining whether or not to introduce Māori representation, but this is overshadowed by the intricacy of determining the 'right' thing to do. In addition to information provided in this report ... Councillors will no doubt wish to reflect on matters concerning, for example:

- The population of the district, which was 43.9% Māori at the last Census, and whether existing or other non-electoral arrangements allow for appropriate representation for, or engagement with, Māori to occur.
- The capacity of Māori to participate in local government without electoral representation.
- The traditional voting behaviour of Māori
- The consequences of a decision on district governance generally.
- The likelihood of alternative options to fulfill Council's obligations to Māori.

The staff report further noted that 'from submissions received and prior hui held, both the electoral and non-electoral opportunities for Māori representation are preferred. From a Māori perspective they are not seen as being mutually exclusive and both forms of representation would complement one another.'

There had also been some progress on Māori wards, and particularly on effective Māori participation, by some of the outgoing Auckland Councils, including Waitakere City, Manukau City and Franklin District. Waitakere City, for example, chose not to adopt Māori wards even though its Taumata Runanga group supported them. Waitakere City did, however, submit to the Royal Commission on Auckland Governance that Māori wards should be established for the new Auckland Council.

What were the reasons given for not implementing Māori wards or constituencies?

Responses ranged from a brief 'yes, the Council has considered this issue' with no further information supplied to more fulsome responses that outlined detailed consultation processes with either the community at large and/or iwi and Māori organisations within the district, city or region..

Here are some examples of responses and reasons given for not introducing Māori wards or constituencies:

Council resolution to maintain status quo:

'The establishment of specific Maori wards creates an electoral privilege which is not regarded as being in the best interests of the city's cultural development. The establishment of Maori wards has the potential to create confusion for electors as to how and for who they can vote ... There is a preference to continue discussion with Maori individuals and Maori organisations to engage the Maori community within Council activities and decision-making.' (Hamilton City Council)

'Council resolved not to establish Maori seats for the 2010 local authority elections for the following reasons: Council had a good perspective of Maori issues from their input under the current arrangements; a single Maori representative could potentially reduce Maori participation; [the council] has had Maori elected members in the past election through the general election issue.' (Tauranga City Council)

Outcome of representation review following consultation hui with Māori groups in the district:

Initial points raised at the hui included '1. There would be a perception that someone elected to a Maori ward would hold a 'second class' position; 2. People on the Maori Electoral Roll wanted to be able to vote for all the candidates available, not just those standing for a Maori ward; 3. Maori people wanted representation in their own right, on merit, against all comers.' The groups involved favoured either or both the establishment of a special advisory committee or participation on standing committees of council. (South Waikato District Council)

'The [Iwi Liaison] Sub-committee believed, and this was supported by individual comment at the time, that a Maori ward(s) would not be representative of the District's hapu, whereas the Subcommittee includes representatives from all hapu.' (South Taranaki District Council)

'[The Council] held a number of meetings with local Maori on the issue in 2008. Presentations were held from other local authorities on different methods of representation. The outcome of this was that most of the local iwi were in favour of a committee structure instead of Maori wards. In 2009 [the council] set up a District Maori Council [sic]. This consists of three representatives from each of the three local iwi and three from [the Council] including the mayor. The iwi were asked to nominate their representatives to the Council. One group from one of the iwi have decided not to be part of the committee, so two seats remain empty at present. This group would prefer Maori wards.' (Ruapehu District Council)

Council resolutions following input from Māori advisory committees (reasons from committees)

'[The council's] Maori committee made the following recommendation to council: 'that the Maori committee does not support the establishment of Maori constituencies for the local government elections of 2007 for the following reasons: 1) non-tangata whenua could stand for election and deny tangata whenua their mana whenua in terms of regional council roles and functions; 2) the committee does not want to risk the demise of the Maori committee should constituencies be established.' (Hawke's Bay Regional Council)

'Maori members [would] represent both their Maori constituency and the region as a whole. As [Maori committee] representatives represent their iwi authority on behalf of their iwi, they speak for their iwi in dealing with [the council]. An elected Maori member would not speak exclusively for iwi even if from that iwi The election of a Maori representative may impact on the mana of the [Maori committee]. ... While the nuances of tikanga are for each iwi to establish, this may represent a shift in the relationship of the [Maori committee] to the Council. Whereas mana whenua and mana tangata currently lie with iwi and are exercised through the [Maori committee], to have a Maori constituency is to place mana tangata for [Council] matters in that constituency The perception of a cultural view is the perception of tikanga. The creation of a Maori constituency could change the view of how tikanga applies at [the Council], in effect standardising tikanga from tangata whenua to Maori. Clearly this is at odds with the [Maori committee's] attempt to protect the complexity of tikanga.' (Greater Wellington Regional Council)

Outcome of representation review including feedback from the general public:

'Some public feedback was received on the issue and whilst not a significant response thereon, those that did respond showed an overwhelming opposition to the establishment of such (73% were against). The results of the public feedback were conveyed to Council at a workshop on 17 October 2005 and Council ultimately agreed not to proceed any further with that option.' (Taupo District Council)

Outcome of representation following a poll of electors:

'As part of the review, the Council decided that this was an issue that affected all residents and therefore the community needed to determine whether separate Maori representation should be introduced. A referendum was subsequently held as part of the 2007 elections with the following outcome: I vote FOR the introduction of Maori wards - 2894. I vote AGAINST the introduction of Maori wards - 6762.' [note total number of responses = 9656: 29.97% for and 70.02% against] (Whakatane District Council)

Outcome of representation review, noting population characteristics:

'[The Council] has noted the Maori composition of the total population at approximately 17%, and its current 'mixed' member representation (1 Rural Ward, 4 Urban Wards, 5 at large, 1 Mayor) as adequately covering the communities of interest. It has taken into account advice from its Maori liaison task group (which supported the status quo both times) and the advice from its Maori councillors who have been elected directly as part of the current composition. The council has memoranda of partnership with its two iwi.' (Masterton District Council)

'At both formal reviews, [the Council] decided not to use a ward system, instead all Councillors are elected at large. This in itself would not preclude the creation of a Maori ward, but it would be difficult to achieve this [in the city] where the Maori population would result in 0.8 councillor. Under the Electoral Act this would be rounded up to one seat but we note that territorial authorities within significantly higher proportion of Maori have not succeeded in introducing Maori wards.' (Nelson City Council)

Outcome of representation review - deferred to a later date:

'A response was received from [local runanga]. They requested the retention of 14 councillors plus a position for tangata whenua to fully reflect the sector. The comment was made in the questionnaire response that the city tries to connect and understand its community of interest but Maori interest may not best be served by a ward system. They identified that an at-large system may work better for tangata whenua given the general spread of Maori across the city ... The Council currently has a Maori Participation Working Party that meets several times a year ... and the Review team considers that this issue may be one the Working Party may wish to address at a later date.' (Dunedin City Council)

Never considered - low Māori population in district:

'The total general population is very small in our district ... and the Maori proportion of that is one of the lowest, if not the lowest, in the country. There does not appear to have been a call for this to be considered by either the council or the community.' (Hurunui District Council)

Never considered - Māori able to stand in general elections:

'We have one Memorandum of understanding with one runanga and one further in development. There has not been any further request from either of these groups to consider the matter. Our view would be that if they seek representation, nominations for council elections are open currently and that avenue is open for all groups in the community.' (Waitaki District Council)

Issues arising from the survey of local authorities

The picture that emerges around the country is therefore very diverse and differences can be noted in terms of political will, level of engagement with local Māori groups on the issue, and the meeting of population thresholds under the LEA 2001. The issues from around the country can be summarised as follows:

- The option for a binding poll of electors does not provide well for the interests and participation of minorities, and, in this case, an indigenous minority, even in areas with significant Māori populations. This raises the question of whether a binding majority decision is the most appropriate means of giving effect to enhanced Māori representation.
- Indigenous status is not dependent on numbers. This seems particularly significant for councils in the South Island, many of which have very small Māori populations. This raises the question of whether numbers (proportion of the population) are an appropriate basis for determining whether a local authority should establish Māori wards or constituencies. The Declaration on the Rights of Indigenous Peoples, for example, states at Article 18 that 'Indigenous peoples have the right to participate in decision-making in matters

which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.'

- The reliance on population and the Māori electoral roll also obscures the questions of whether and how to provide for mana whenua groups as well as taura here (Māori resident in the area who are not tangata whenua in the area). The Royal Commission on Auckland Governance canvassed this issue and made a recommendation for a mechanism to accommodate both mana whenua and taura here.
- There is some lack of consensus among iwi in regions where more than one group holds mana whenua i.e some groups want Māori wards, others do not. In other areas, existing Māori committees or advisory groups consider that Māori wards or constituencies would lessen their (positive) role and influence. There was concern that where only one Māori councillor could be elected, they may not be able to adequately represent the views of all iwi. It should be noted, however, that the establishment of Māori wards does not preclude other non-electoral avenues for engagement with Māori. Environment Bay of Plenty, for example, has other non-electoral mechanisms in place to assist in engagement with Māori. This raises the question of whether dedicated Māori wards or constituencies are the best vehicle for realising Maori aspirations in a particular district, city or region.
- At the very least, where there is evidence in the responses from local authorities that they have seriously considered the issue of Māori wards or constituencies, consultation and engagement on the issue - regardless of the outcome - appears to have enhanced engagement with Māori. Some councils who

did not resolve to establish Māori wards or constituencies did resolve to establish or improve their processes for engaging with Māori.

A further question is whether dedicated Māori wards or constituencies need to be specifically legislated by central government. While researching the paper and conducting the survey, the Commission received some feedback from Janine Hayward, Associate Professor in Politics at the University of Otago. Professor Hayward has been researching local government and Māori relations since the mid-1990s. She has published in this area and presented evidence to the Waitangi Tribunal on this issue.

Professor Hayward welcomed the focus on Māori representation and reminded the Commission that central government has a key role to play in this issue, even as the issue concerns matters of local decision-making. She commented 'I am increasingly of the belief that central government has an obligation to intervene and compel local government to provide more effective representation for Māori. It is almost ten years since local government was first given options to address this issue, and Māori remain chronically under-represented. The Local Government Act reminds us that the Crown (not local government) is the Treaty partner; central government must therefore accept responsibility for this important problem and find immediate and appropriate solutions.' She noted further that while some councils have taken excellent initiatives to increase Māori participation in local government with good results, 'others have failed to engage in this question at all, and are under very little compulsion to do so.' More specifically, she recommended that legislation should be amended to establish Māori constituencies for all regional councils and territorial local authorities.

Discussion at the Diversity Forum 2010

The Commission hosted a session at the annual New Zealand Diversity Forum on Māori representation in local government on 23 August 2010 in Christchurch. The session drew on an earlier version of this paper which had been released for public discussion before the forum, and also presented the findings of the survey of local authorities presented in section 6. Presentations on the discussion paper and survey were followed by reflections from Environment Bay of Plenty Councillor, Raewyn Bennett, Wairoa District Councillor, Benita Cairns, and Waiariki MP, Te Ururoa Flavell.

Councillor Raewyn Bennett, Environment Bay of Plenty

Councillor Raewyn Bennett from Environment Bay of Plenty (EBOP) spoke about her experiences in local government and the reasons why Māori seats are so controversial. She said that three reasons were usually given for not having Māori seats: that such seats would be 'race-based', confer 'special privilege', and/or be 'undemocratic'. These attitudes on the part of local authorities played a role in why Māori don't vote in local elections: they have no belief in the system as it stands. The decision made by the government not to have dedicated Māori seats on the Auckland Council despite the recommendations of the Royal Commission (which in turn drew on submissions for mana whenua and taura here groups) worked to confirm their lack of belief.

Councillor Bennett also pointed out that there was a debate that needed to happen around the roles for iwi and the roles for Māori more generally. She noted that iwi are mana whenua and that they have Treaty of Waitangi rights to resources and, therefore, involvement in resource management. She also noted, however, that Māori wellbeing was a significant factor, paying tribute to the work of such pan-tribal

groups as the Māori Women's Welfare League. She noted that under the Local Government Act 2002 'wellbeing' outcomes – economic, social, and cultural – were sought for communities, based on UN human development models.

Turning to her own experience in the Bay of Plenty, Councillor Bennett commented that iwi there accepted that their representatives on Council may not be from their own iwi. She noted that the EBOP councillors made a difference particularly in respect to cultural change within the organisation, for example, through the use of inclusive processes.

She also talked about the role of Māori Advisory Committees within Councils and said that it can be hard to shift people from the 'advisory committee' model and point of view to the 'dedicated seats' point of view.

Councillor Benita Cairns, Wairoa District Council

Benita Cairns is a Wairoa District Councillor and a member of the Māori Committee of Local Government New Zealand. Councillor She began by pointing out that even in Wairoa, where over 60% of the population is Māori, Māori are not well represented on Council. She said that of the 97 elected Council representatives in the recent past, fewer than 10 had been of Māori descent.

She said that Wairoa District Council was currently reviewing its Māori Committee and its Māori policy. The Māori Committee was the mechanism within the organisation that could support dedicated Māori representatives. She emphasised that even where Māori seats were established, non-electoral Māori mechanisms must be retained. She noted that in Wairoa, the Māori Committee made great recommendations but they were not getting to the governance table. She felt that 'segregation' was occurring in relation to money and resources, and said

that this was creating a feeling of anxiety within the community. She concluded that it was up to Māori in Wairoa to advocate for Māori seats within council.

Councillor Cairns then asked Councillor Bennett if the dedicated EBOP seats had increased voting among Māori in local elections. Councillor Bennett replied that the voting level in Māori constituencies was at the same level as in the rural and general constituencies. She also pointed out that there had been two elections to date, and that sitting councillors in the Māori seats were not necessarily contested.

Councillor Bennett then commented that the Māori seats brought a different dynamic to participation; they brought a Māori point of view to the table, which wouldn't necessarily happen if Māori were elected in general seats.

Councillor Cairns then observed that whether local authorities liked it or not, they 'walked the talk' of the Crown (i.e. people saw them as the Crown, whether or not that was technically the case). She commented that if Māori waited for 'good will' on the part of local authorities to establish dedicated Māori seats, they would be waiting a long time.

Te Ururoa Flavell, MP for Waiariki

The presentations were concluded with some reflections from Te Ururoa Flavell, MP for Waiariki, whose 2010 member's bill proposing compulsory Māori seats for local authorities was unsuccessful. Mr Flavell said that these issues came up time and time again, and that the attitudes of the local authorities (as reflected in the presentation on the results of the survey of local authorities) reflected more general views and the debate in Parliament on 'the place of Māori within New Zealand.' He called for a bigger, ongoing debate on the issue of dedicated Māori representation.

Mr Flavell continues to think that making Māori seats compulsory through legislation is a good idea, but noted that this will depend on the relationship between the Māori Party and one of the two major parties. He said that there were two main ways to take the proposal forward: legislate, which would likely be unpopular, or keep working at it with individual councils, which would take much longer but may be more effective in the long run.

Discussion

After the presentations, the floor was opened for discussion. One of the main speakers was Donald Couch, who was appointed as an Environment Canterbury Commissioner in 2010. Mr Couch said that he had been appointed to represent Ngāi Tahu. He thought that there needed to be room for some flexibility with Māori representation, and talked about his role representing Ngāi Tahu. He noted that in the legislation establishing Environment Canterbury's Commission, there was a requirement that there be someone on the Commission who was knowledgeable about the tikanga of the area.

Another participant noted that this was a result of central government intervention, advised by iwi, and that this role probably wouldn't have been established under the Local Electoral Act 2001 in Canterbury otherwise.

Mr Couch also noted that Environment Canterbury was principally responsible for water management, and that there are a range of committees to support this, each of which had Tangata Whenua representation.

Uncertainty was noted as to whether dedicated Māori representation would be retained when an elected Canterbury Regional Council is re-established in 2013.

The future

Where to next?

The Race Relations Commissioner commented that the first 'test' for whether Māori representation would increase, decrease or stay the same under the current system would be at the local body elections held in October 2010. He noted that many councils will be conducting representation reviews in 2011, which would be the optimal time for them to consider dedicated Māori representation or an alternative. He recommended that if neither the 2010 elections, nor the 2011 representation reviews produced any meaningful progress on the issue, that it should be taken up as an issue in the next general election.

Since the Local Electoral Amendment Act 2002 came into force, a number of councils have considered the option of establishing Māori wards or constituencies, but none have as yet done so. Even territorial authorities in the Bay of Plenty Regional Council's own region have declined to make a decision in this respect, despite support for such a move by local iwi and hapū. The Environment Bay of Plenty model has been cited as good practice in studies of Māori representation in local government, and has attracted the attention of local authorities and indigenous groups both in New Zealand and overseas. The evidence is overwhelming that the model works well in the Bay of Plenty, so why has it not been adopted elsewhere?

Janine Hayward, in her report *The Treaty Challenge: Local Government and Māori*, written before the Local Electoral Amendment Bill passed into law at the end of 2002, reflected on the parliamentary debate on the Bay of Plenty legislation as follows:

... the current Local Government Bill allows all councils to introduce a similar ward system in order to allow for Māori representation of Māori constituencies. The debate played out in the House over the EBOP reforms may, therefore, be played out at the local level in many regions in the future. That each different region may undergo a similar process of debate seems an unnecessary duplication of time and effort. A national debate is required to thrash out the issues surrounding Māori representation at any level, and to establish a case for Māori representation, if such a case can be successfully made. If a case is made, then local authorities and local Māori can negotiate how the model of representation would best work in their own community. To ask every community to decide for itself whether Māori have a right to representation

on council seems an unnecessary burden on already strained community relations (Hayward, 2002, p.30).”

As Janine Hayward predicted, the same issues have been raised on various occasions when the option has been discussed by other councils. So has another matter raised by her, whether it is appropriate for all Māori on the Māori Electoral Roll to determine Māori representation when the council’s primary relationship in resource management is with the iwi and hapū that hold mana whenua. These issues have most recently been canvassed by the Royal Commission on Auckland Governance, which recommended a new form of representation for mana whenua alongside the arrangement provided for by the Local Electoral Act 2001. None of the Royal Commission’s recommendations on Māori representation were accepted by government. However, the provisions of the Local Electoral Act 2001 still apply to the new Auckland Council, which will be able to resolve to establish Māori constituencies (but not mana whenua representation) once it is established on 1 November 2010.

A key problem with the current provision in the Local Electoral Act 2001 is that the decision can only be made by the council and may be challenged by a poll of all eligible voters – in other words, implementation depends on the very shortcomings of the majoritarian process which the Māori constituencies are designed to address. In each case, as Janine Hayward has pointed out, the same arguments are traversed, and thus far, irrespective of the wishes of Māori voters, the provision has been rejected. Those who have the power have been unwilling to share it.

It seems appropriate that Māori themselves should determine whether or not they wish to be represented through Māori wards or

constituencies, rather than that option being determined by a majority of existing councillors and challengeable by a poll of all voters. The provisions for Māori wards and constituencies in the Act do not, after all, diminish the rights of other voters. They simply recognise and affirm the democratic and Treaty rights of Māori. The principle of one person, one vote is preserved.

It is something of an anomaly in the Bay of Plenty that territorial local authorities do not have the same system of Māori representation as the regional council and parliament, although Māori apparently strongly support (and have sought) the same system across all three levels of government in the region.

The Auckland Governance Legislation Select Committee has urged the new Auckland Council to consider establishing Māori representation should there be community support for this move. Their own report indicated that such support already exists, so the council should be able to give effect to Māori representation by a simple resolution.

It is also incumbent on other regional councils to reconsider the Māori representation option, given how well it operates in the Bay of Plenty to give effect to the regional council’s responsibilities for Māori participation under the Local Government Act 2002.

The Select Committee expressed the belief “that the question of whether the existing legislation provides adequate opportunities for Māori representation in local government is an issue of national significance, extending beyond Auckland. Resolving this issue should therefore be considered in that context rather than through this piece of legislation (Auckland Governance Legislation Select Committee Report on Local Government (Auckland Council) Bill, 2009, p.9).” This could be addressed by means

References

of an amendment to the Local Government Electoral Act to allow Māori to determine for themselves whether they wish to avail themselves of the representation available under the Act. The wider question of mana whenua representation, as opposed to representation of Māori in general, as canvassed by the Royal Commission, does indeed require further discussion, but need not impede an initial amendment to give the decision on representation of Māori to Māori themselves. Given the local nature and the complexities of mana whenua, its expression may best be discussed at the local level and, where treaty settlement negotiations are in process, perhaps in that context.

Recommendations

The Commission recommends that:

- Iwi should discuss whether or not they want Māori seats on their local or regional council
- The new Auckland Council should proceed to establish Māori seats without further ado, subject to re-endorsement by Auckland iwi
- Discussions should take place between councils and iwi on Māori seats and Māori representation prior to next representation review (in 2011-12)
- Councils should support the Māori choice
- There should be further national discussion on improved provision for Māori representation.

Auckland Governance Legislation Committee Report on Local Government (Auckland Council) Bill. (2009). Retrieved on April 23, 2010 from http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/8/d/f/49DBSCH_SCR4490_1-Local-Government-Auckland-Council-Bill-36-2.htm.

Bay of Plenty Regional Council (Māori Constituency Empowering Act) 2001. Retrieved April 6, 2010 from http://legislation.govt.nz/act/local/2001/0001/latest/viewpdf.aspx?search=qs_act_entertainment_resel.

Bennett, R. (2008.) Submission to the Royal Commission on Auckland Governance, 22 April 2008.

Bennion, T. (nd). 'No Māori seats on the Auckland bus' Te Karaka Issue 43. Retrieved April 7, 2010 from <http://www.tekaraka.co.nz/Te-Karaka-43/He-Whakaaro/>.

Department of Internal Affairs. (2009). 'Māori Participation and Engagement with Local Government' Local Government Information Series (no.19).

Environment Bay of Plenty. (2008). Annual Report for the Year Ending 30 June 2008.

Environment Bay of Plenty. (nd),a. 'Councillors'. Retrieved April 4, 2010, from <http://www.envbop.govt.nz/Council/Councillors.aspx>.

Environment Bay of Plenty. (2007). 'Environment Bay of Plenty Progress Report', Press Release, October 13. Retrieved May 8 2010 from <http://www.scoop.co.nz/stories/AK0710/S00173.htm>.

Environment Bay of Plenty. (nd),b. 'Kaupapa Māori'. Retrieved April 4, 2010 from <http://www.envbop.govt.nz/Council/Kaupapa-Maori.aspx>.

Environment Bay of Plenty. (nd),c. 'Māori Committee Terms of Reference'. Retrieved April 7, 2010 from <http://www.envbop.govt.nz/Agendas/Council-090422MaoriCommitteeTermsofReference.pdf>.

Environment Bay of Plenty. (nd),d. 'Māori Seats'. Retrieved April 5, 2010 from <http://www.envbop.govt.nz/Council/Maori-Seats.aspx>.

Environment Bay of Plenty. (2009). 'Māori seats working well for regional council', Press Release, August 25,. Retrieved April 4, 2010 from <http://www.scoop.co.nz/stories/AK0908/S00378.htm>.

Hayward, J. (2002).The Treaty Challenge: Local Government and Māori. A Scoping Report Crown Forestry Rental Trust.

Human Rights Commission. (2008). Tūi Tūi Tuituiā Race Relations in 2007 Human Rights Commission.

Human Rights Commission. (2010). Tūi Tūi Tuituiā Race Relations in 2009 Human Rights Commission.

Local Electoral Act 2001. Retrieved May 2, 2010 from http://www.legislation.govt.nz/act/public/2001/0035/latest/DLM93301.html?search=ts_act_Local+Electoral+Act_resel&p=1.

Local Electoral (Māori Representation) Amendment Bill, Member's Bill, introduced 6 May 2010. Retrieved July 9, 2010 from http://www.parliament.nz/en-NZ/PB/Legislation/Bills/d/f/b/00DBHOH_BILL9884_1-Local-Electoral-M-ori-Representation-Amendment.htm.

Local Government (Auckland Law Reform) Bill 2009. Retrieved May 1, 2010 from <http://www.legislation.govt.nz/bill/government/2009/0112/latest/versions.aspx>.

New Zealand Parliamentary Debates (Hansard), volume 635, p.6773-7. Retrieved April 7, 2010 from <http://www.parliament.nz/en-NZ/PB/Debates/Debates/>.

New Zealand Parliamentary Debates (Hansard), volume 665, p 11793-11804. Retrieved July 9, 2010 from http://www.parliament.nz/NR/rdonlyres/8650C409-E235-41C7-98BF-64CBAB68836D/148319/49HansD_2010061999.pdf.

Parliamentary Library. (2003). The Origins of the Maori Seats, Background Note 2003/09 11/11/03. Retrieved May 7, 2010 from <http://www.parliament.nz/NR/rdonlyres/49B230C1-9D94-4B2B-99DF-C58EF3F9965C/342/0309MaoriSeats1.pdf>.

Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Local Electoral (Māori Representation) Amendment Bill. Presented to the House of Representatives pursuant to Section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 261 of the Standing Orders of the House of Representatives. Retrieved July 9, 2010 from http://www.parliament.nz/NR/rdonlyres/BBA6FB86-4CEA-4A3B-BF3C-167271F2C4E6/144863/DBHOH_PAP_20024_AttorneyGeneralReportoftheunderthe.pdf.

Royal Commission on Auckland Governance. (nd). 'Māori', Chapter 22. Retrieved April 4, 2010 from http://www.royalcommission.govt.nz/web/part4/22_maori.html.

Trapski, P. (1998). The Proposal to Establish a Māori constituency for Environment B.O.P (The Bay of Plenty Regional Council). Retrieved April 4, 2010 from <http://www.envbop.govt.nz/Reports/Maori-980829-EstMaoriConstituencyReport.pdf>.





Human Rights
Commission

Te Kāhui Tika Tangata