



Human Rights Commission
Te Kāhui Tika Tangata

Electoral (Entrenchment of Māori Seats) Amendment Bill

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Introduction

1. The Human Rights Commission (“the Commission”) welcomes the opportunity to provide the Māori Affairs Committee (“the Committee”) with a submission on the Electoral (Entrenchment of Māori Seats) Amendment Bill (“the Bill”).
2. The Commission supports the Bill and welcomes the strengthened protection of the Māori electoral seats, bringing this into line with the status of the general electorate seats. The Commission considers that the Māori electoral seats represent a significant practical recognition of the Treaty of Waitangi – Te Tiriti o Waitangi, and an important constitutional mechanism to ensure a Māori voice in political decision-making. The Commission’s view is that the Māori seats should be retained until such time as Māori decide they are no longer needed. We support this Bill as providing important and necessary protection of the Māori seats until that time.
3. Rather than a public referendum, the Commission considers that any further changes beyond what is proposed in the Bill should be addressed through a thorough review of electoral law. Such a review should address other outstanding issues, such as voting rights of prisoners (following the recent Supreme Court decision *Attorney-General v Taylor* [2018] NZSC 104).

Practical recognition of the Treaty – te Tiriti

4. The Māori electoral seats provide both symbolic and practical recognition of the Treaty partnership, and the obligation that this entails to ensure that Tangata Whenua have a meaningful say in political decision-making. This is both a right under the Treaty and a human rights standard affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.¹
5. United Nations human rights bodies have commented positively on the existence of the Māori electoral seats and affirmed their utility in upholding the human rights of Māori New Zealanders. Most recently, in 2016 the UN Human Rights Committee recommended that the New Zealand Government “should take all appropriate measures to enhance Māori ... representation in government positions at all levels” in order to address their stated concerns about “persistently low representation”.²

¹ UN Declaration on the Rights of Indigenous Peoples, Articles 3, 18

² UN Human Rights Committee, (2016), *Concluding Observations: New Zealand*, CCPR/C/NZL/CO/6, at para 47-48. Accessible at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NZL/CO/6&Lang=En.

6. As Māori are a statistical minority in Aotearoa New Zealand, the Māori seats are a critical means of ensuring that at least a minimum number of Members of Parliament are mandated to represent Māori perspectives and are accountable specifically to Māori voters. Professor Sir Mason Durie has noted that, despite the positive impact of MMP on Māori representation, there remains a strong need for dedicated Māori seats. He has stressed that without them, “Māori influence within the system would be diffuse and unfocussed” and also that the particular significance of the Māori seats comes from the capacity they provide for dedicated Māori representation.³ Durie has identified a constitutional convention that the future of the Māori seats in Parliament should be determined by Māori.⁴

7. The situation – and the value of the Māori seats – has been summarised by constitutional expert and now High Court Justice, Matthew Palmer, as follows:⁵

Because of the political nature of New Zealand’s constitution, I conclude that Māori political representation is the most significant manifestation of the Treaty of Waitangi in New Zealand’s constitution in reality. This accords with representative democracy and parliamentary sovereignty being fundamental norms of New Zealand’s constitution. Māori political representation relies on representative democracy to access influence over the exercise of parliamentary sovereignty. Māori have managed to convert a pragmatic Pākehā initiative, the Māori seats, into a symbolic representation of their own identity and political relationship with the State. MMP has broadened that representation and given it real political power. This ensures that Māori have a voice in the constitutional dialogue in New Zealand – in the branch of government that speaks the loudest, Parliament.

8. Palmer does, however, sound a note of caution:⁶

However loudly Māori voices are heard within Parliament, that institution is ultimately ruled by the majority and Māori do not now constitute a majority in New Zealand. A group of people that consistently forms the majority [i.e Pākehā] has few incentives not to exploit or ignore a group of people that consistently forms a minority.

9. For the reasons outlined above, and in particular bearing Palmer’s caution in mind, the Commission takes the view that the Māori seats in Parliament should be retained until such time as *Māori* decide that they are no longer needed.

³ Mason Durie (2005), *Ngā Tai Matatū: Tides of Māori Endurance* (Oxford University Press), p 221

⁴ Durie, *Ngā Tai Matatū*, p 222

⁵ Matthew S. R. Palmer (2008) *The Treaty of Waitangi in New Zealand’s Law and Constitution* (Wellington: Victoria University Press), p 291

⁶ Palmer, *The Treaty of Waitangi*, p 292

Enhanced protection for the Māori seats

10. In the meantime, the Commission supports strengthening the protection of the Māori seats, by moving them into the entrenched provisions of the Electoral Act as proposed by the Bill. This would also address an existing disparity between the Māori seats and the general seats, which are already entrenched in the Act.
11. Māori representation in central (and local) government can be vulnerable to political attack. The Māori seats provide a voice for Māori as Tangata Whenua and Treaty partners in our Parliamentary democracy where the Māori population are a minority. In this context, Māori interests and rights are at risk of being overridden by the majority and their voice susceptible to being drowned out, or ignored.
12. The situation of Māori representation at local government level provides an indication of the vulnerability of Māori representation initiatives when these are decided by the wider electorate/general public. Māori are under-represented in local government. However, efforts to address this by establishing Māori wards (essentially a local-level equivalent to the Māori seats) have been blocked when put to a public vote.⁷ Under the Local Electoral Act 2001, councils may vote to establish Māori Wards, however such a decision can be overturned by a citizen initiated referendum held in that city or region.
13. The lack of success of efforts to instigate special electoral arrangements for Māori seats at local level (five out of six attempts by councils have been blocked), highlights the fragility of these measures if not afforded adequate protection (or at least the same protection as general seats).⁸
14. Entrenching the Māori Parliamentary seats is an important way to ensure they are retained and protected until such time as Māori decide they are not needed. The Commission supports the strengthened protection that the Bill would confer on the Māori seats, bringing them into line with the position of general electorate seats.

⁷ Five councils (Whakatāne, Western Bay of Plenty, Palmerston North, Manawatū, Kaikōura) have voted to establish Māori wards and have had this decision overturned by public referendum. Only one council – Bay of Plenty Regional Council – has established Māori wards. The Bay of Plenty Regional Council has three Māori constituencies established under the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001.

⁸ These issues have been the subject of Petition 2014/60 by Andrew Mark Judd, and accompanying information accessible at: https://www.parliament.nz/resource/en-NZ/52SCGA_EVI_68941_804/948cd343f8b69bca3a5bd439fa0ca565f093cc21. See also: Human Rights Commission, (2010), *Māori Representation in Local Government*, accessible at: https://www.hrc.co.nz/files/5114/3529/8043/13-Oct-2010_11-46-09_HRC_Maori_representation.pdf

Discrimination issues

15. From time to time arguments are raised that the Māori seats are themselves a discriminatory institution. The Commission's view is that they are not. This is because:
 - a) They do not confer greater voting rights for those on the Māori roll;
 - b) There is no material disadvantage for non-Māori voters.
16. In this regard the Commission concurs with the Bill of Rights Act advice provided by the Ministry of Justice in relation to this Bill.⁹
17. The existence of the Māori seats is a positive and important means of recognising and providing for the participation rights of Māori under the Treaty and human rights standards.
18. Conversely, it has also been argued that the disparity that the current Bill would address – namely the lesser protection afforded the Māori seats compared with general electorate seats – is “a major disparity between the Māori and general electoral systems.”¹⁰

Citing the exclusion of the entire system of Māori representation from the entrenched provisions of the 1956 Electoral Act, [the late Dr Ranginui Walker described] it as “perhaps the most discriminatory measure of all in the application of the law to Māori representation.”¹¹
19. The Commission considers that removing this distinction is a positive aspect of the Bill.

Other issues

20. The need to investigate how Māori representation in Parliament could be improved was among the [recommendations of the 2013 Constitutional Advisory Panel](#). Several human rights bodies have urged that the Panel's recommendations, along with those of Matike Mai Aotearoa (an Iwi-led constitutional review) should be implemented – namely, that further public discussions about constitutional issues should be progressed. The Commission strongly endorses this view.

⁹ Ministry of Justice Advice on Consistency of the Bill with the New Zealand Bill of Rights Act 1990, 9 May 2018, accessible at: <https://www.justice.govt.nz/assets/Documents/Publications/bora-electoral-entrenchment-of-maori-seats-amendment-bill.pdf>

¹⁰ Parliamentary Library Research Paper “The Origins of the Māori Seats” November 2003 (updated May 2009), accessible at: <https://www.parliament.nz/mi/pb/research-papers/document/00PLLawRP03141/origins-of-the-m%C4%81ori-seats>.

¹¹ Ranginui Walker, *The Māori People: Their Political Development*, in Hyam Gold (ed.), *New Zealand Politics in Perspective*, 1992, Longman Paul Ltd, Auckland, p.383, cited in Parliamentary Library Research Paper “The Origins of the Māori Seats” November 2003 (updated May 2009), above.

21. While the Commission is supportive of this Bill, we reiterate our view (stated in the submission made on the Electoral (Integrity) Amendment Bill, March 2018) that there are a range of electoral issues that need to be addressed, and which should be dealt with through a comprehensive review of electoral law, rather than in a piecemeal manner through separate bills.

Conclusion

22. The Commission supports this Bill and recommends that the Committee progress it in its current form, rather than addressing these matters through a public referendum. The Commission wishes to appear before the Committee to speak to this submission and is also happy to provide any further information on the matters we have raised here.