

**LOCAL ELECTORAL (MĀORI  
WARDS AND  
CONSTITUENCIES)  
AMENDMENT BILL**

11 February 2021



**NZ  
Human  
Rights.**

Human Rights Commission  
Te Kāhui Tika Tangata

## Submission of the Human Rights Commission to the Māori Affairs Select Committee

**11 February 2021**

The New Zealand Human Rights Commission (the Commission) is established and operates under the Crown Entities Act 2004 and the Human Rights Act 1993. The Commission is accredited as an 'A status' national human rights institution under the Paris Principles. Information about the Commission's activities can be found on our website: [www.hrc.co.nz](http://www.hrc.co.nz)

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## Submission of the Human Rights Commission on the Local Electoral (Māori Wards and Constituencies) Amendment Bill

1. The Human Rights Commission (“the Commission”) welcomes the opportunity to make a submission on the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill (“the Bill”). This brief submission is made in support of the Bill. We would like to speak to the Committee on this submission and are happy to provide further information if required.
2. The Commission supports the Bill as a positive step towards strengthening Tangata Whenua representation and participation in decision-making in line with Te Tiriti o Waitangi and international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples.<sup>1</sup>
3. The Bill addresses a longstanding issue with local government legislation whereby council decisions to establish Māori wards or constituencies – unlike wards for other population groups – can be overturned by a public referendum. These provisions have significantly hindered the creation of Māori electoral arrangements and to date have been used to block efforts in almost all cases. We understand that since the Local Electoral Amendment Act 2002 came into force, 24 councils have attempted to establish Māori wards or constituencies, but only two have successfully done so.<sup>2</sup>
4. In 2010 the Commission published *Māori Representation in Local Government: the Continuing Challenge*, which noted that a key problem with current provisions is that implementation of councils’ decisions to establish Māori wards “depends on the very shortcomings of the majoritarian process which the Māori constituencies are designed to address”.<sup>3</sup> Citing Professor Janine Hayward, the report noted that to that point, “irrespective of the wishes of Māori voters, the provision has been rejected. Those who have the power have been unwilling to share it.”<sup>4</sup> In the decade since that report, the point has, for the most part, continued to prove true.
5. As well as being inconsistent with Tiriti obligations to protect and uphold rangatiratanga and Tiriti partnership, the provisions contradict human rights standards relating to non-discrimination, and the rights of Indigenous Peoples to have a say in decision-making that affects them. As a result, our local government legislation has attracted repeated criticism

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<sup>1</sup> For example, article 5, 18, 19 UN Declaration on the Rights of Indigenous Peoples; article 25, International Covenant on Civil and Political Rights; article 15, International Covenant on Economic, Social and Cultural Rights.

<sup>2</sup> Hon Nanaia Mahuta, ‘Government supports councils to increase Māori representation’, 1 February 2021, at: <https://www.beehive.govt.nz/release/government-supports-councils-increase-m%C4%81ori-representation>.

<sup>3</sup> Human Rights Commission, (2010), *Māori Representation in Local Government: The Continuing Challenge*, at p 38. Accessible at: [https://www.hrc.co.nz/files/3014/2422/5030/08-Nov-2010\\_16-07-00\\_MaoriRepresentation\\_web.pdf](https://www.hrc.co.nz/files/3014/2422/5030/08-Nov-2010_16-07-00_MaoriRepresentation_web.pdf).

<sup>4</sup> Ibid.

from United Nations human rights bodies, and several recommendations have been directed to New Zealand in recent years. These include:

- The [UN Human Rights Committee](#), when it last reviewed New Zealand’s compliance with civil and political rights in 2016, recommended that Government:

“take all appropriate measures to enhance Māori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements.”<sup>5</sup>
- The Committee also urged Government to:<sup>6</sup>
  - (a) Strengthen the role of the Treaty of Waitangi in the existing constitutional arrangements;
  - (b) Guarantee the informed participation of indigenous communities in all relevant national and international consultation processes, including those directly affecting them;
  - (c) Implement technical capacity programmes for indigenous communities aiming at their effective participation in all relevant consultation and decision-making processes.
- In 2017 the [UN Committee on the Elimination of Racial Discrimination](#) made several recommendations also dealing with constitutional recognition of Te Tiriti and Māori participation, including:<sup>7</sup>
  - (b) Ensure that its public policy and legislative initiatives comply with the participation principle of article 2 of the Treaty of Waitangi;
  - (c) Give greater assurance that the State party recognises the fundamental right to self-determination of Māori and the obligation to establish shared governance with hapū.
- Most recently, the [UN Human Rights Council](#) reviewed New Zealand’s overall human rights compliance in 2019. Recommendations from that review included for Government to:

Take all appropriate measures to enhance Māori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements.<sup>8</sup>

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<sup>5</sup> UN Human Rights Committee, (2016), *Concluding Observations on the sixth periodic report of New Zealand*, CCPR/C/NZL/CO/6, at para 48.

<sup>6</sup> *Ibid.*, at para 46.

<sup>7</sup> UN Committee on the Elimination of Racial Discrimination, (2017), *Concluding observations: New Zealand*, CERD/C/NZL/CO/21-22, at para 13.

<sup>8</sup> Human Rights Council, (2019), *Report of the Working Group on the Universal Periodic Review: New Zealand*, A/HRC/41/4, at para 122.165.

6. The Commission's view is that this Bill will remove discriminatory provisions that impose barriers to the creation of special electoral arrangements for Māori, where no such barriers exist in relation to general wards for other population groups, such as rural wards.
7. Rather than something divisive or discriminatory, the Commission's view is that special measures to advance Tangata Whenua representation and participation support fairness and inclusion, and align with New Zealand's obligations under Te Tiriti and human rights to ensure that Tangata Whenua – as Tiriti partners and Indigenous Peoples – are able to participate fully in decisions that affect them. These special electoral arrangements do not diminish the rights of other voters, they simply recognise and affirm the democratic and Tiriti rights of Tangata Whenua.
8. We welcome the decisions of several councils that have voted to establish these mechanisms for the 2022 election, and we are in favour of this amendment being passed in time to ensure they are able to do so without impediment. We support the provisions enabling councils to establish special electoral arrangements for the 2022 election, regardless of previous poll outcomes.
9. While welcoming and supporting this Bill, and agreeing that its proposed changes are long overdue, we are concerned at the very short timeframe for public submissions. The Commission considers that use of urgency should be limited to exceptional circumstances.
10. While supportive of this Bill, the Commission submits that further amendment of the Act is needed to ensure that Tangata Whenua have an adequate voice in local government decision making in their rohe. While the Bill will remove the discriminatory provisions inhibiting Māori wards and is a positive step towards strengthening Māori representation in local government, further work is still needed to ensure that local Iwi and Hapū specifically (rather than Māori electors more broadly) have a strong voice and are able to exercise their rangatiratanga and Indigenous rights as Tangata Whenua of their territories. The Commission submits that these issues should be further explored and worked through by local authorities in partnership with Iwi and Hapū.
11. We suggest a further clause is added to the Bill, requiring local authorities to work with Iwi and Hapū to identify and establish suitable mechanisms and processes for the participation of Tangata Whenua in council decision-making. These mechanisms might include, for example, Mana Whenua appointed representatives.
12. We submit that the principal Act's provisions would also be strengthened by an explicit reference to Te Tiriti o Waitangi. We suggest an addition to the principles section of the Act (s 4) to include "fair and effective representation for Tangata Whenua in line with the obligations

of Te Tiriti o Waitangi”. We further recommend that the Act’s provisions are amended to refer to Tangata Whenua (rather than ‘Māori’) wards and constituencies.

### Summary of recommendations

The Human Rights Commission supports the the Bill as a positive step towards strengthening Tangata Whenua representation and participation in decision-making in line with Te Tiriti o Waitangi and international human rights standards. We recommend that the Bill is passed.

The Commission further recommends that:

- The use of urgency is limited to exceptional circumstances and accordingly that the timeframe for public submissions is extended;
- A clause is added requiring local authorities to work with Iwi and Hapū to establish appropriate processes and mechanisms for the participation of Tangata Whenua in council decision-making;
- Section 4 of the principal Act is amended to specifically include “fair and effective representation for Tangata Whenua in line with the obligations of Te Tiriti o Waitangi” as one of the Act’s guiding principles;
- The Act is amended to refer to Tangata Whenua, rather than Māori, wards and constituencies.