Taituarā
Local Government Professionals Aotearoa

Submission of Taituarā to the Department of Internal Affairs regarding the *Changes to Māori ward and constituency processes* discussion document

Taituarā thanks the Department of Internal Affairs for the opportunity to submit on the discussion document *Changes to Māori ward and constituency processes* (the discussion document).

The Importance of Fair and Effective Māori Representation

Ko te Tuarua (Article 2) of Te Tiriti guarantees Māori the right to make decisions over the resources and taonga they wish to retain. This includes, but is not limited to, decisions affecting lands and waters. Ko te Tuatoru (Article 3) commits the Crown to ensuring the rights and obligation of a New Zealand citizen are applied equally.

There can be little room for debate that local authorities are public sector entities that make significant decisions with impacts on lands, waters and other taonga daily. Decisions of this nature range from decisions as significant as an RMA zoning decision or decision about a sewage treatment plant, to something as frequent as a decision to waive a rates penalty on a block of Māori freehold land.

While not signatories to Te Tiriti, the decisions that local authorities make can easily impact on the Crown's obligations to Māori. Local authorities should be cognisant of these principles and identify the impacts that their decisions will have. The way local authorities apply their legislation can give rise to a breach of the Crown's obligations.

Additionally, there are some activities where local authorities are acting as delivery agent on behalf of the Crown. Many of the regulatory services local authorities deliver involve exercise of some function on behalf of the Crown. Some public health activities are also provided on a similar basis.

There are a wide variety of arrangements, both formal and informal, for Māori to contribute to local authority decision-making processes. Parliament saw fit to legislate for an Independent Māori Statutory Board when it created Auckland Council. Many local authorities have Komiti Māori with varying levels of delegated decision-making authority. Other local authorities have formal strategic partnerships with iwi – such as the partnership between Rotorua Lakes Council and Te Arawa.

A Māori ward or constituency is but one means for ensuring Māori perspectives are incorporated into the decision-making process. Importantly though, it is the only mechanism that guarantees Māori representation on the body that makes the final decisions (for example committees of council cannot adopt a District Plan or Long-Term Plan).

This is a matter for local choice based on an informed consideration of the needs and preferences of the community, especially iwi and hāpu. In some communities, particularly those where the relationships are strong, Māori may see no need for dedicated representation or even see such a move as a retrograde step.

A Comment on the Māori Electoral Option

This consultation process, like the legislation earlier in the year, will raise expectations among Māori regarding the availability of specific representation on local authorities and may also influence decisions as to whether an individual voter chooses to exercise that option.

It is therefore somewhat unfortunate that the next Māori electoral option is not scheduled until 2024. The practical effect is that even with an additional two dozen councils voting for Māori wards to take effect in 2022, the earliest any person wanting to move to the Māori roll could exercise a vote is the 2025 local elections.

The logistics of something as significant as this preclude offering the option before 2024, especially as our understanding is that this would require legislation.

Matters from the Discussion Document

Requirement to consider

Councils are accountable for and should be trusted to make reasonable decisions for and on behalf of the people they represent, including Māori. However, it is often challenging to make decisions that are unpopular to some within our communities. In this regard it would be useful to review sections 19T and 19U of the Local Electoral

Act 2001 that requires councils to provide for 'effective representation of communities of interest' to make it explicit that these provisions include the requirement to consider Māori communities

Representation arrangements need to be reviewed occasionally to ensure that they still provide for fair and effective representation. As the discussion document notes, the requirement to review general wards every six years (two cycles) balances this with the desirability of letting people acclimate to new changes. That applies also to Māori wards – a requirement to consider on the same frequency as other decisions seems appropriate.

We are not sure we share the same concerns the Department has about 'unnecessary bureaucracy', especially if the timing of decisions is changed as below. Councils will make decisions about numbers on 1 March and should then at least have an indication of the likely number of Māori seats.

Timing of decisions

The main reason that the existing legislation specifies two decision points is primarily an historic one. The November 23 deadline was to support the poll requirements by allowing those opposed to a council decision time to collect signatures, and then conduct a poll under the Act. With the removal of poll provisions, the second decision point appears largely redundant.

Taituarā supports moving all decisions to a single point with councils making those decisions following a single engagement process with the community. This would ensure that the community is able to evaluate the representation proposals as an entire package, with each of the different aspects open to the same procedures. It avoids the potential for community confusion as to what's being debated when. And a single process removes the risk of any 'early' decision on the establishment of Māori wards being relitigated through subsequent engagement.

Going to one decision point may see the engagement on the review 'captured' by a single issue. We submit that local authorities are well accustomed to managing complex processes with multiple issues, where one issue dominates debate. This is far from uncommon with long-term plan engagement.

Opportunities for public input

It is not tenable to suggest that councils could not engage with communities when making decisions on Māori wards, whether to establish or disestablish (should that option be available). Engagement is not a referendum – the weight of numbers for or against a proposal is not determinative in and of itself. The requirement on local authorities is to consider feedback with an open mind (being open to change).

There should be some process of engagement with the wider community, and some obligation to undertake an additional process for engaging specifically with Māori. When consultation on Parliamentary representation is undertaken it is with the general community with targeted engagement with Māori. We see no reason why local authorities would or should undertake anything different.

Further, local authorities are under obligations to ensure there are specific processes for Māori to contribute to decision-making processes. The legislation should not specify processes but should leave decisions about how and when to engage with mana whenua and with all Māori to the local authority. We do not consider legislation could adequately and fairly deal with the range of circumstances that would otherwise arise.

Decision-making rights

As we understand it, a decision to divide the community into general wards is appealable the Local Government Commission, as are subsequent decisions such as the boundaries of wards and the number of people to be elected. A decision to create a Māori ward is not subject to appeal.

As we've seen, the decision to divide into general wards does not usually give rise to unfair representation – it's how the decision is implemented. We propose that the appeal rights on the establishment of general wards (but not boundaries, numbers of seats) etc be removed.

If the Department wishes to proceed with appeal rights on the establishment of Māori wards, we submit that appeals should be heard by the Local Government Commission. The appellate process will be required for a short period (say 3-5 months once every six years), we do not consider that this justifies a separate agency. Sending appeals on Māori wards to an existing body (such as the Representation

Commission) runs the risk of two different interpretations of 'fair and effective' representation.

Discontinuance process

Circumstances change. One of the implications of demographic shifts is that what constitutes fair and effective representation may change from time to time. For example, such as a relative decline in the Māori population which means it falls below the statutory formula (which arguably could form part of a representation review as the formula considers the total number of councillors) but also where the Māori population in a district grows to become a majority.

Earlier we argued that Māori wards should be subject to review as part of representation arrangements. One of the corollaries of this is that the possibility of discontinuance following similar processes should be permitted.

However, there should be a safeguard against discontinuance solely because there's a change around the council table. We submit that once established, discontinuance of a Māori ward should be subject to a binding poll of those on the Māori roll in the district. This would not apply in circumstances where the statutory formula is not met (i.e. the Māori population falls below the percentage necessary to generate a seat).

Fair and effective representation

We agree with the following from the Waikato Region:

"Section 19V could apply to both general and Māori wards/constituencies. This change not only ensures that all elected members meet the fair representation requirement, but also allows equitable flexibility for exceptions to the rule. The fact that currently councils can establish a general ward/constituency in a way that does not comply with the 'fair representation' requirement, but the same does not apply to a Māori ward/constituency, is inequitable. Such an improvement would also enable the small number of councils who currently do not meet the threshold possible to establish a Māori ward/constituency, to do so if they consider it is necessary for effective representation. For clarity's sake, it is anticipated a council decision not to comply with 19V would then be referred to the LGC for a determination, as is the case for general wards/constituencies under the current provisions."

Commented [GH1]: Regional Council?

Other matters raised in the Cabinet Paper

Access to the Supplementary Roll

We concur with the proposal to extend access to the supplementary rolls. In the absence of this information the electoral officer must send details of the requests for special votes to the Electoral Commission and wait for confirmation. We have received advice this process has delayed the declaration of results by as much as three days in some local elections.

However, the supplementary roll is only part of the story. The Commission has advised that it maintains a deletions file (a list of those who have recently ceased to be electors in the district). Previous Justice Committee reports have recommended that local authorities be provided access to both the supplementary roll and the deletions file. Our understanding is that access to the deletions file may be matter of practice rather than a matter for regulation.

Electronic Transmission of Nominating Documents

The 2016 and 2019 elections each underscored the decline in levels of service provided by the postal system were evident. One of the ways that this manifested itself was in the delivery of nomination forms from potential candidates.

In some parts of many regional councils, and some of the larger rural councils, it is not uncommon for post to take a week to get from an isolated community to the receiving council offices. We became aware that local authorities were advising residents contemplating nomination to allow a week for delivery by post. We also became aware that local authorities had received conflicting legal advice as to whether nominations that were scanned and emailed were 'in writing' for the purposes of the LEA.

We also sought advice and concluded that the answer to this question was far from clear, and the least risky course was for candidates to 'post early'. Clearly something as fundamental as what 'nomination in writing' means should be clear and certain.

We submit that a nomination received electronically should be valid provided that the particulars are all clearly legible (including the signatures and addresses of the nominee, nominator, and seconder).

Tied Elections

There were several extremely close elections in 2019. There was some public concern at the resolution of the tied election in Whakatāne District Council where the candidate declared elected after the decision by lot was unseated after a judicial recount.[1]

We consider that information for candidates around post-election processes could be enhanced to clarify both what steps are available and how close results are managed. We will consider this in the next review of the SOLGM Code of Good Practice.

Commented [GH2]: Taituarā or have we not changed the name yet?

There is merit in investigating whether a mandatory judicial recount should be undertaken prior to any decision by lot in a tied election. A judicial recount would provide an independent result with authority from the court and any further appeal of the results would be precluded. We consider this a common-sense approach.

Telephone Dictation Voting

We support the introduction of an alternative means of voting for voters with high needs. We reluctantly note that the security concerns around online voting mean this is not a viable option for the foreseeable future.

The timing of proposed legislation suggests telephone dictation voting (or something similar) could not be available before 2025. This is sensible as it allows for a lead time to develop or acquire a solution or solutions.

Our support for this option comes with a caveat. We see little merit in the sector exploring different solutions from a cost and timing standpoint. Taituarā would be happy to assist the sector explore potential solutions. If the Government wishes to make the option available of its own initiative, it should be prepared to assist councils with the cost and resource requirements.

[1] Two examples spring readily to mind of Members of Parliament declared elected in this way - the Rt Hon Winston Peters (Hunua, 1978 declared in 1979) and the Hon Wyatt Creech (Wairarapa, 1987 declared in August 1988).