

Submission of Taituarā – Local Government Professionals Aotearoa regarding the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill

A submission to the Justice Committee

May 2024



Who are we?

Taituarā – Local Government Professionals Aotearoa (Taituarā) thanks the Justice Committee for the opportunity to submit on the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill (the Bill),

We are an incorporated society of just over 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible.

The decisions and actions of local authorities can and do give rise to breaches of te Tiriti. Māori representation in the decision-making process is therefore essential.

Article Two of Te Tiriti guarantees Māori the right to make decisions over the resources and taonga they wish to retain. Article Three commits the Crown to ensuring the rights and obligation of a New Zealand citizen apply equally to Māori.

Local authorities are public entities that make decisions that impact on lands, waters and taonga. Decisions such as RMA zoning, placement of infrastructure and levels of service, even the setting and enforcement of rates all have (or could have) such an impact.

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.

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

Parliament has conferred certain obligations to consider and support the principles of Te Tiriti in their decision-making and action. There are some overarching requirements that apply to any decision taken by a local authority set out in the Local Government Act 2002. Section 77(1)(c) applies to local authority consideration of alternative options:

identified under paragraph (a) 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, waahi tapu, valued flora and fauna, and other taonga

Section 81 of that same Act also requires local authorities to:

- (a) *establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and*
- (b) *consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority.*

There are a wide variety of arrangements, both formal and informal, for Māori to contribute to local authority decision-making processes. These range from the strategic partnerships with iwi (such as the partnership between Rotorua Lakes and Te Arawa), the Komiti Māori that exist in many local authorities through to the Independent Māori Statutory Board Parliament established when it created Auckland Council.

The Waitangi Tribunal has observed that *“Alternative mechanisms for Māori participation in local government are not the same as having a dedicated seat at the council table”*.¹ A Māori ward or constituency 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.

Restoring polls creates a higher procedural standard for Māori wards than apply to other decisions made in a representation review.

The Bill proposes to restore provisions providing for the community to demand a poll on council decisions regarding Māori ward and constituencies. There is no such trigger for polls with regard to other decisions around wards and constituencies. The only other representation decision that may be overturned by poll is the decision on the voting system. The restoration of polls re-imposes a higher, and therefore inequitable, procedural standard on one particular representation arrangement than applies to others.

The present legislation is consistent with the one person, one vote principle.

We do not agree with claims that Māori wards breach the one person, one vote principle. In fact there’s a statutory formula for determining the number of Māori wards or constituencies. It is based on the total number of seats on council (other than the council leader) and the proportion that those on the Māori roll in the area make-up of the total number on the roll. It is this provision that ensures that a vote in a Māori ward/constituency has broadly the same weight as a vote in any other wards/constituencies.

¹ Waitangi Tribunal (2024), The Māori Wards and Constituencies Urgent Inquiry Report, page 2.

Complex constitutional and political matters do not meaningfully reduce to a simple 'yes' or 'no'.

In what was a generally excellent piece of advice, the Department of Internal Affairs commented that:

*"Referendums and polls are an instrument of majority rule which can suppress minority interests. Normal lawmaking process have safeguards to make sure minority rights and interests are considered – human rights legislation, parliamentary debates and the select committee process. But referendums do not require that tabling and balancing of interests, and the outcome will depend on the majority's perception of the minority interests."*²

We can only agree with this. We further note that the Prime Minister is on public record as not supporting a referendum on Treaty principles in legislation. We agree that the complex constitutional, legal, and political issues do not readily lend themselves to a 'yes/no' question. The restoration of referenda to decisions on Māori wards, including wards that have already been established, places local authorities in exactly that same position and should be avoided

We also concur with the view that former LGNZ President Dave Cull expressed when he said that:

*"Of equal concern, the polls reduce a complex issue to a simple binary choice, which, by encouraging people to take sides, damages race relations in our districts. Matters of representation and relationships should be addressed in a deliberative manner that employs balanced and considered dialogue – not by poll. In fact, a poll is not necessary. Should a council resolve to establish Māori wards or constituencies, or any other ward, against the wishes of its community then the community has the option to hold that council to account at the next election – this is how representative democracy is intended to work."*³

Special provision must be made for those who established wards under the previous legislation without the community triggering a poll.

Gisborne District Council has raised an issue with us about the application of this provision. We understand that there may be as many as four councils in this situation – Gisborne, Ruapehu, South Taranaki and New Plymouth. Therefore, their establishment of Māori wards was made fully within the legal framework of the existing legislation. Parliament should exercise particular care in those local

² Department of Internal Affairs (2023), Local Government Briefing – Coalition policies for local electoral changes, page 7.

³ Local Government New Zealand (2018), open letter to the (then) Prime Minister, Deputy Prime Minister, and Co-leaders of the Green Party.

authorities, and we recommend that they be exempt from the need to hold a poll at the 2025 election.

For completeness on this issue, there were nine councils in total that resolved to have Māori wards under the previous legislation. Five of those did receive a valid demand for a poll, however, the four listed above did not.

Changes to the electoral timetable are welcomed but are a 'stop-gap' measure at best.

The Bill also provides for a two-week extension to the timetable for local elections. The extension is at the beginning of the electoral period which we support. Adding it to the end of the period would be unwieldy due to the long weekend of Labour Day, and in Hawkes Bay a four-day weekend including Hawke's Bay Anniversary Day.

We further support:

- the additional few days between the close of nominations to the start of the voting period to provide more time to print and assemble voting documents, and
- Voting documents being sent early in the week to facilitate any troubleshooting during weekdays rather than over the weekend.

The nomination and enrollment periods will be pushed back. We do not foresee any issues with an earlier nomination period. The formation of the roll is complex with several departments involved in the process. We recommend there be appropriate communication and resourcing for the work to be prioritised by Stats NZ, LINZ, and the Electoral Commission in the shortened time.

NZ Post advises that the 3.5 million voting packs delivered last October is triple the volume of mail for an average week.

Diminishing mail volumes may mean that it becomes increasingly difficult to conduct elections via the postal system. Postal deliveries to residential addresses are made every other day rather than daily. Post office branches and post boxes are becoming increasingly difficult to find.⁴ A majority of commercial invoicing and almost all payment is done electronically, it does not appear there is any real prospect of a reversal of declining mail volumes.

In 2022 the sector attempted to mitigate these concerns by:

- advising electors to allow a week for return of both nomination forms and voting documents

⁴ We are aware of one council having attempted to verify the locations of post boxes in their district and having found three no longer existed.

- issuing publicity around a 'last date to post' and advice to voters as to where they could deliver votes in person
- providing an alternative option for return of votes. Local Government New Zealand coordinated the provision of orange ballot bins to councils (Auckland arranged for collection using its own means). We understand that approximately 48% of votes cast in Wellington and 33% in Auckland were returned through the ballot bins, and
- one council used an alternative mail provider for delivery of outgoing and incoming voting papers with very successful results.

Councils will be increasing their use of ballot bins for return votes in 2025. We are working with supermarket chains for agreements to place bins nationwide.

But eventually something has to change about the way we deliver local elections. Booth voting has always been available as an option but is expensive and the experience with booth voting in local elections is not encouraging.⁵

Taituarā supports an online voting option in principle, subject to sufficient public confidence in the security and accuracy of the system. In itself, online voting is more of a tool for making the act of voting more convenient for those that have decided to cast a vote. Online voting is not a substitute for engaging the public and persuading them to vote.

Almost all financial transactions have moved into an online environment, it may be timely to take a fresh look at public confidence in online transactions. We should also continue to monitor the international developments with online voting and in particular security.

Recommendations:

1. That Māori wards be decided by councils based on an informed consideration of the needs and preferences of the community, especially iwi and hāpu.
2. That the Committee not impose a higher procedural standard on one particular representation arrangement than applies to others.
3. If the Bill proceeds then the Committee exempt Gisborne, South Taranaki, New Plymouth, and Ruapehu District Councils from the poll requirement in

⁵ The last booth election was held in 1992 . Turnout was 26 percent in a tightly contested Mayoral race.

2025 because their decisions were made fully within the 2020 legal framework and no requests for a poll were received.

Timing of elections

4. That there be appropriate communication and resourcing for the compilation of the electoral roll to be prioritised by Stats NZ, LINZ, and the Electoral Commission within the shortened timeframe.
5. Note that in the long run the postal service looks set to continue its decline and something has to change about the way we deliver local elections. The online environment continues to increase momentum and this option is a logical way forward.



Taituarā - Local Government Professionals Aotearoa
Level 9, 85 The Terrace, Wellington
PO Box 10373, Wellington 6143

T 04 978 1280

W taituara.org.nz

E info@taituara.org.nz