

# Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill

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Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

29 May 2024

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill (**Bill**).
- 1.2 The Bill seeks to amend the Local Electoral Act 2001 (**Act**) to introduce binding polls on whether to keep or disestablish Māori wards and Māori constituencies, and to adjust the timeframes for local elections to allow more time for the postal delivery of voting papers.<sup>1</sup>
- 1.3 For the reasons set out below, the Law Society does not recommend the Bill proceed in its current form. It recommends deleting the binding poll provisions from the Bill if it is to proceed.
- 1.4 This submission, prepared with assistance from the Law Society's Public Law Committee,<sup>2</sup> is necessarily brief and outlines some key concerns regarding the proposal to reinstate binding poll provisions. We have not had the opportunity to prepare a more comprehensive submission which discusses these concerns in more detail due to the very short timeframe for submitting on the Bill.
- 1.5 The Law Society wishes to be heard.

## 2 Key concerns regarding the binding poll provisions

- 2.1 The Law Society notes the following key concerns regarding the binding poll provisions:  
*Statutory overreach into local government*
- 2.2 Territorial authorities and regional councils already have the ability to consult their communities and determine their own representation arrangements through the representation review processes, which must take place at least every six years.<sup>3</sup> The legislated purpose, role, powers and principles relating to local authorities require, amongst other things, democratic decision-making for the benefit of the entire community the local authority represents.<sup>4</sup> These provisions, together with the decision-making obligations of local authorities,<sup>5</sup> the representation review requirements, and the ability for councils to resolve to introduce Māori wards or constituencies, already provide a framework for local government decision-making on representation decisions. As discussed below, the binding poll provisions introduce changes that are inconsistent with this framework and the processes for establishing general and other wards.

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<sup>1</sup> Explanatory Note of the Bill.

<sup>2</sup> More information about this Committee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-law-committee/>.

<sup>3</sup> Local Electoral Act 2001, ss 19H and 19I.

<sup>4</sup> Local Government Act 2002, ss 10, 11, 12 and 14.

<sup>5</sup> See Local Government Act, Part 6.

- 2.3 Any proposal which alters or overrides these local democratic processes, without prior public consultation or engagement could therefore be seen as an overreach into local decision-making.<sup>6</sup> In this instance:
- (a) Following the 2021 amendments, some local authorities established Māori wards and constituencies.
  - (b) In doing so, those local authorities and their elected members followed local electoral law and decision-making processes in the Local Government Act 2002.
  - (c) Decisions to establish Māori wards and constituencies therefore reflected the democratic will of each particular local authority's constituency.
  - (d) This Bill seeks to override those decisions and amend local electoral law for the future, without meeting basic procedural requirements in the legislative process (including adequate public consultation, and engagement with Treaty of Waitangi partners, as discussed further below).
- 2.4 The provisions in the Schedule of the Bill, which give local authorities “the opportunity to rescind their decision”<sup>7</sup> to create a Māori ward or constituency also appear to be an interference with decisions already made at a local authority level. If these provisions are enacted, local authorities may effectively have no option but to rescind their decisions, rather than hold a binding poll, because:
- (a) Based on past experiences,<sup>8</sup> they consider the outcome of a binding poll would be to disestablish the Māori ward or constituency in question (noting the RIS states that between 2002 and 2019, only two councils established Māori wards using the previous process).
  - (b) Local authorities may have already prepared their Long-Term Plans for 2024-2034 (which include budget allocations), and have not allocated any funding for holding binding polls in those Long-Term Plans.
  - (c) The timing of this legislation, and upcoming elections may prevent local authorities from funding the binding polls through their annual plans for 2025/26 in a way that promotes transparency and public engagement if needed.
- 2.5 We also note that local authorities' Standing Orders already include provisions relating to revoking and altering previous decisions (including limitations on when decisions can be revisited). The provisions in the Bill do not recognise the application of those Standing Orders, and cut across the wider requirements around local government decision-making.

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<sup>6</sup> We understand Local Government New Zealand has raised similar concerns in a letter signed by 50 mayors & council members (see: Local Government New Zealand's letter to Rt Hon Christopher Luxon dated 22 May 2024, available here: [https://d1pepq1a2249p5.cloudfront.net/media/documents/Letter\\_from\\_LGNZ\\_Mayors\\_and\\_Chairs\\_on\\_Māori\\_wards\\_and\\_constituencies\\_S4jE57h.pdf](https://d1pepq1a2249p5.cloudfront.net/media/documents/Letter_from_LGNZ_Mayors_and_Chairs_on_Māori_wards_and_constituencies_S4jE57h.pdf)).

<sup>7</sup> RIS at page 2.

<sup>8</sup> RIS at page 8.

### *Different treatment of Māori wards and constituencies*

2.6 The Act does not contain any provisions or mechanisms requiring local authorities to hold polls on establishing general wards or constituencies. For this reason, the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 (**2021 Amendment Act**) removed the binding poll provisions which apply to Māori wards and constituencies in order to “align the treatment of Māori wards and Māori constituencies with the treatment of general wards and general constituencies as much as possible”.<sup>9</sup>

2.7 As noted in a previous Regulatory Impact Statement prepared by the Department of Internal Affairs:<sup>10</sup>

... the process for establishing new general wards for local authorities does not contain a poll mechanism. Instead this is done through a process which involves: a council proposal, a public consultation process, and an appeal mechanism to the Local Government Commission. This has created a two-tiered system where it is far more difficult for councils to establish new Māori wards to ensure better representation of iwi and Māori than it is to establish general wards. The process barriers have prevented some councils from using this mechanism to assist with obligations to provide opportunities for Māori to contribute to decision-making processes.

2.8 If enacted, this Bill will effectively reinstate the two-tier system which allows for differential treatment of Māori wards and constituencies, and reintroduce poll provisions which “have proven to be an almost insurmountable barrier to establishing Māori wards and constituencies”.<sup>11</sup> This is particularly concerning, given the lack of early engagement and consultation with Māori (who will be directly affected by this policy proposal), as discussed below.

### *No prior consultation with Treaty partners or the public*

2.9 The Regulatory Impact Statement (**RIS**) for the Bill states:<sup>12</sup>

There is a risk that this approach may reduce Māori representation in local government. The option that best minimises this risk is the status quo, which would maintain the 2021 legislative amendment, enabling greater public input through additional consultation requirements that will come into effect in October 2025 as part of previous legislative changes.

2.10 Despite the proposed changes having a direct impact on Māori, there has been no public consultation, or engagement with Treaty of Waitangi partners, about the proposal to reinstate binding polls prior to the introduction of this Bill.<sup>13</sup>

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<sup>9</sup> Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill, Explanatory Note.

<sup>10</sup> Department of Internal Affairs *Impact Summary: Changes to the process for establishing Māori wards and constituencies* (December 2020) at page 4.

<sup>11</sup> Department of Internal Affairs *Impact Summary: Changes to the process for establishing Māori wards and constituencies* (December 2020) at page 4.

<sup>12</sup> Department of Internal Affairs *Regulatory Impact Statement: Binding Polls on the Establishment of Māori Wards* (14 March 2024) at page 2.

<sup>13</sup> The RIS states, at page 2: “Engagement on the policy issues has been minimal due to timing and confidentiality requirements, and the general public has not yet been consulted on this work. Public engagement is expected to be limited, with a truncated select committee process.”

2.11 This is concerning due to:

- (a) The failure to consult with Treaty partners on a matter directly affecting Māori, particularly where binding polls have proven to be “an insurmountable barrier” to the establishment of Māori wards in local authorities.
- (b) Prior to its enactment, the 2021 Amendment Act was also considered at the select committee stage under urgency, with a two-day timeframe for submissions on the proposal to remove the binding poll provisions. As a result, there is little information and evidence as to whether members of the public support the proposal to reinstate the poll provisions.
- (c) The Bill seeks to “ensure that local communities have appropriate input into decisions about their local government representation arrangements, while maintaining a balance of Māori representation and participation in local government decision-making”.<sup>14</sup> Allowing enough time for engagement on this Bill and the 2021 Amendment Act (before it was enacted) would have given local communities the opportunity to participate, leading to better, enduring law-making. It would also minimise the concerns above regarding central government overreach into local government decision-making.

2.12 We acknowledge these proposals in the Bill seek to give effect to commitments in the 2023 coalition agreements between the New Zealand National Party, ACT New Zealand, and New Zealand First.<sup>15</sup> However, once a Government is formed, it is bound by the commitments and obligations the Crown has to Māori under the Treaty, and it should follow policy development and consultation processes which are consistent with those Treaty obligations and commitments.

2.13 Local Government elections involve the exercise of civil and political rights and have implications for the democratic governance and future planning of communities. They are not of lesser importance than general elections. Changes to these arrangements require the same care and consideration as would be expected for changes to general electoral law. Even if a legislative amendment arises from a coalition agreement, it should undergo proper policy development and consultation, and a full select committee process.

#### *Repudiation of New Zealand’s commitments to international obligations*

2.14 The binding poll provisions could be considered a repudiation of New Zealand’s commitments to its international obligations, and in particular, its obligations under:

- (a) Articles 25 and 26 of the International Covenant on Civil and Political Rights,<sup>16</sup> which set out the right of every citizen to take part in the conduct of public affairs, and right of equality before the law. The United Nations Human Rights Committee has previously raised concerns about the representation of Māori in

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<sup>14</sup> RIS at page 1.

<sup>15</sup> Explanatory Note of the Bill.

<sup>16</sup> United Nations (General Assembly) *International Covenant on Civil and Political Rights* (1966).

local government and asked New Zealand to take steps to address those concerns.<sup>17</sup>

- (b) The International Convention on the Elimination of All Forms of Racial Discrimination,<sup>18</sup> noting the 2021 Amendment Act, which removed the binding poll provisions, was previously put forward as an example of New Zealand progressing Article 5 of this convention.<sup>19</sup>

*The binding poll provisions should be removed from the Bill*

- 2.15 In light of the above concerns, we recommend deleting the binding poll provisions from the Bill. Further policy work, including meaningful engagement with Māori and the wider public, would be needed in order to determine whether it is in fact necessary and appropriate to reinstate the binding poll provisions.

### 3 Other concerns

- 3.1 If the Bill is to proceed, notwithstanding our concerns, the following additional issues should also be addressed:

- (a) The requirements in the Schedule to consider alternative representation arrangements for the 2025 triennial general election by September 2024 are onerous, given the short timeframe by which those alternative arrangements must be determined. We suggest providing for a longer timeframe in order to enable local authorities to meet their obligations under this legislation and the wider legislative framework.
- (b) Clause 51 of the Schedule requires the Local Government Commission to issue guidelines identifying factors and considerations which would be relevant when passing resolutions and making determinations under this legislation. Those factors and considerations are not set out in the Bill, and, as a result, the legal effect of the factors and considerations is unclear. The exclusion of those factors and considerations from the Bill, together with the use of the word “guidelines”, suggest they may not have any legal effect (even though local authorities would be required by statute to apply those factors and considerations). We suggest clarifying the intended effect of those factors and considerations in order to avoid any ambiguity being the subject of judicial review challenges to decision-making.



David Campbell  
**Vice-President**

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<sup>17</sup> Departmental Disclosure Statement at page 7.

<sup>18</sup> United Nations (General Assembly) *International Convention on the Elimination of All Forms of Racial Discrimination* (1965).

<sup>19</sup> RIS at page 7. Also see the Departmental Disclosure Statement for the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill 2021.