

Canterbury Regional Council (Ngāi Tahu Representation) Bill

Local Bill

Explanatory note

General policy statement

The Council recognises the valuable contribution made by the Ngāi Tahu members to the Council's governance and operations, and wishes to reinstate direct Ngāi Tahu representation at Council level.

Under the Environment Canterbury (Transitional Governance Arrangements) Act 2016, Canterbury Regional Council (trading as Environment Canterbury, and often referred to as ECAN) included 2 members appointed by Ministers on the recommendation of Te Rūnanga o Ngāi Tahu (TRoNT).

That Act was repealed in 2019, and did not affect the 2019 local election which was conducted under the usual rules applying to regional councils.

The Council has 14 elected members, which is the maximum number permitted under section 19D of the Local Electoral Act 2001.

Support for and opposition to direct Ngāi Tahu representation at Council level was expressed in responses to the representation review conducted before the 2019 election. The issue was not directly part of that review, which had to be conducted under the requirements of the Local Electoral Act 2001, and so related only to elected members.

A Local Bill of materially the same effect as this Bill was defeated at its First Reading on 3 April 2019.

Options considered

The Council has considered the following other options:

- Dividing the region into Māori constituencies for electoral purposes, as contemplated by sections 19Z to 19ZH of the Local Electoral Act 2001. There are no logical boundaries for Māori constituencies in the region, and election on a

constituency basis may not result in appropriate recognition of mana whenua. It would enfranchise all Māori on the Māori electoral roll, and disenfranchise Ngāi Tahu members on the general electoral roll. The Council has previously resolved not to have Māori constituencies; and it is too late for Māori already enrolled within the region to elect to be on or off the Māori electoral roll in advance of the next local elections. That option does not arise again until 2024.

- Do nothing. That is of course possible, and will be the outcome if this Bill is not passed. However, it would deprive mana whenua of a voice at the Council table, and continue to deprive the Council of that direct input at the highest level.

The Council has considered options adopted elsewhere, including the special legislation creating the Bay of Plenty Regional Council Māori constituencies and Hawke's Bay Regional Planning Committee legislation; as well as initiatives that mostly have failed and led to the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021.

The Council has only one iwi with mana whenua throughout its region.

For that reason, the Council prefers direct appointment by TRoNT as a reflection of Ngāi Tahu as mana whenua.

In considering the appointment process the Council considered, and rejected, the following options:

- appointment by Ministers on the recommendation of TRoNT. That was rejected because, apart from the exceptional circumstances of the former transitional Act, it is not appropriate that Ministers make appointments to local authority governance bodies:
- election of members by members of Ngāi Tahu. That presents various difficulties in identifying eligible electors and compiling rolls, and consistency with Ngāi Tahu tikanga.

General effect of the Bill

The Bill will empower TRoNT to appoint up to 2 members to the Council after the 2022 local elections.

Those members will be additional to the elected members, so the maximum number of councillors will be 16.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The Bill comes into effect on the day after the date of Royal Assent. There is no reason or need to defer commencement. While the law will be clear prior to the local elections in October 2022, in practice, no action will be taken under the legislation until after those elections.

Clause 3 sets out the purpose of the Bill, which is to enable TRoNT to appoint up to 2 members of the Council.

Clause 4 defines various terms used in the Bill. It also provides that terms used in the Local Government Act 2002 and the Local Electoral Act 2001 have the same meanings in the Bill.

Clause 5 provides that enactments applying to local authorities generally continue to apply to the Council, except to the extent that they are inconsistent with or modified by the Bill.

Clause 6 provides for the Council to include up to 2 members appointed under the Bill. The maximum number of members is therefore 16.

References to elected members include appointed members (except where that is inappropriate) and appointed members have the same functions, responsibilities, rights, indemnities, and duties as elected members.

An impact of this is, for example, that the quorum for a Council meeting will always be 8, if the total potential membership is 16, even if there are not 2 TRoNT appointed members. That is the effect of clause 23 of Schedule 7 of the Local Government Act 2002.

Clause 7 empowers TRoNT to appoint up to 2 members of the Council after the 2022 local election, and thereafter as vacancies arise.

Appointed members must be eligible to have been elected as elected members at the date of appointment.

Clause 8 requires the CEO of TRoNT to give signed written notice of each appointment to the chief executive of the Council. The notice must also be signed by the appointed member, and takes effect on and from the date the notice is given. The chief executive of the Council must give public notice of the appointments.

Clause 9 provides that, generally, appointed members vacate office at the same time as elected members.

Appointed members can vacate office, and can be suspended, before the expiry of their term in the same manner as elected members.

Specific provision is made to ensure that TRoNT cannot remove or suspend members whom it appoints.

Clause 10 makes it clear that the Council can call meetings irrespective of whether or not TRoNT has made any appointments.

The clause also makes it clear that the Council must perform its functions and duties, and can exercise its powers, irrespective of whether or not TRoNT has appointed any members.

TRoNT has an opportunity to make its appointments before the first meeting of any newly elected Council, but if it does not, or there are subsequent vacancies in appointments, the Council's roles are not affected.

Clause 11 requires the Council to disregard the likely appointment of members by TRoNT when making representation review decisions under the Local Electoral Act 2001.

Clause 12 relates to the remuneration of appointed members, including their allowances, expenses, and fees. Under Part 1 of Schedule 7 of the Local Government Act 2002, the Remuneration Authority has broad discretion to make determinations under the current determination (the Local Government Members (2020/21) Determination 2020: LI 2020/160), annual remuneration for members is set according to whether the member is the Chairperson, Deputy Chairperson, or a councillor with or without additional responsibilities.

In 2019, the Remuneration Authority introduced a governance remuneration pool for each council, which is not part of the formal Determination.

The effect of this clause is that the appointed members will be remunerated by the Council as if they were elected councillors of the appropriate category even if that means the governance remuneration pool amount is exceeded.

The clause is expressed in general terms because the Remuneration Authority is not obliged to apply a governance remuneration pool, and has many options available to it in making determinations.

The intent of this clause is that the remuneration of elected members is not affected by whether or not there are appointed members.

Clause 13 makes it clear that the Council retains the option of resolving to establish one or more Māori constituencies.

Rino Tirikatene

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Canterbury Regional Council (Ngāi Tahu Representation) Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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- 3 Purpose**
- The purpose of this Act is to enable TRoNT to appoint up to 2 members of the Council in accordance with this Act, and make related consequential provisions.
- 4 Interpretation** 5
- (1) In this Act, unless the context otherwise requires,—
- 2022 election** means the triennial general election of members of local authorities required by section 10 of the Local Electoral Act 2001 to be held on the second Saturday in October 2022
- appointed member** means a member of the Council who is appointed to office under **section 7** 10
- Council** means the regional council named in the Local Government Act 2002 (Part 1 of Schedule 2) as the Canterbury Regional Council
- elected member** means a member of the Council who is elected to office under the Local Electoral Act 2001 15
- member**, in relation to the Council, means—
- (a) an elected member; or
- (b) an appointed member
- TRoNT** means Te Rūnanga o Ngāi Tahu established by section 6 of the Te Rūnanga o Ngāi Tahu Act 1996. 20
- (2) A term or expression that is defined in the Local Government Act 2002 or the Local Electoral Act 2001 and used but not defined in this Act has the same meaning as in the Local Government Act 2002 or the Local Electoral Act 2001, as the case requires.
- 5 Relationship between this Act and other legislation applicable to local authorities** 25
- The Local Government Act 2002, the Local Electoral Act 2001, and any other enactment applicable to a local authority apply to the Council, except to the extent that those enactments are inconsistent with, or modified by, this Act.
- 6 Extended membership** 30
- (1) From the 2022 election, in addition to the elected members, the Council may include 2 members appointed under this Act.
- (2) Despite sections 19D and 19E(2) of the Local Electoral Act 2001 the maximum number of members of the Council is 16.
- (3) A reference in any enactment, other than in sections 19D and 19E of the Local Electoral Act 2001, to a member or an elected member of a local authority or a regional council must, in relation to the Council be read as including a reference to an appointed member (including, for example, treating a reference to an
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elected member's election as a reference to an appointed member's appointment).

- (4) Without limiting **subsection (3)**, all members of the Council have the same functions, powers, responsibilities, rights, indemnities, and duties irrespective of whether they are elected or appointed. 5

7 Appointment of members by TRoNT

- (1) After the day on which the official result of the 2022 election is declared under section 86 of the Local Electoral Act 2001 in relation to the Council, and after each subsequent triennial general election, TRoNT may appoint up to 2 members of the Council. 10
- (2) Despite section 117 of the Local Electoral Act 2001, whenever a vacancy arises in the case of an appointed member, TRoNT may appoint a member to fill that vacancy.
- (3) Every member appointed under this section must be qualified to be elected as an elected member at the date of appointment. 15

8 Notice and commencement of appointment

- (1) Every appointment under **section 7** must be notified to the chief executive of the Council in writing signed by the appointed member and chief executive of TRoNT, and the appointment takes effect on and from the date that notice is received. 20
- (2) The chief executive of the Council must give public notice of every appointment as soon as practicable after the notification under **subsection (1)** is made.

9 Vacation of office by appointed members

- (1) Unless vacating office sooner, appointed members cease to hold office at the same time as elected members vacate office under section 116(1)(a) of the Local Electoral Act 2001; but are eligible for reappointment if qualified. 25
- (2) Appointed members vacate office or are suspended in the same manner as applies to elected members under the Local Government Act 2002 (clauses 1 to 5 of Part 1 of Schedule 7, but subclause 5(2) does not apply). 30
- (3) Section 12 of the Interpretation Act 1999 does not apply in respect of appointed members.

10 Lack of appointed members

- (1) Meetings of the Council (including the first meeting called under the Local Government Act 2002 (clause 21 of Schedule 7)) may be called irrespective of whether or not TRoNT has made any appointment under **section 7**. 35

- (2) The Council must perform its functions and duties, and may exercise its powers, irrespective of whether or not TRoNT has made any appointment under **section 7**.

11 Representation reviews

In making any determination under section 19I of the Local Electoral Act 2001, the Council must disregard the right of TRoNT to appoint members under **section 7**. 5

12 Remuneration of appointed members

- (1) Despite **section 6**, in determining the remuneration, allowances, expenses, and fees of members of the Council pursuant to the Remuneration Authority Act 1977 and Part 1 of Schedule 7 of the Local Government Act 2002, the Remuneration Authority must not have regard to whether or not any members have been appointed under **section 7**. 10

- (2) The Council must pay remuneration, allowances, expenses, and fees to any member appointed under **section 7** to the same extent as other members are remunerated according to their responsibilities; and must make those payments even if doing so exceeds any governance remuneration pool or other maximum prescribed by the Remuneration Authority. 15

13 Council may establish Māori constituencies

Nothing in this Act prevents the Council from passing a resolution under section 19Z(2) of the Local Electoral Act 2001 (which relates to a resolution to create one or more Māori constituencies). 20