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Report of the

# ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act  
1990 on the Local Electoral (Māori  
Representation) Amendment Bill

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Presented to the House of Representatives pursuant to  
Section 7 of the New Zealand Bill of Rights Act 1990  
and Standing Order 261 of the Standing Orders of the  
House of Representatives

1. I have considered whether the Local Electoral (Māori Representation) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act'). I have concluded that the Bill appears to limit the right to be free from discrimination as affirmed by s 19(1) of the Bill of Rights Act. The limitation cannot be justified under s 5 of that Act. As required by s 7 of the Bill of Rights Act and Standing Order 261, I draw this to the attention of the House of Representatives.

### **The Bill**

2. The Bill amends the Local Electoral Act 2001 ('the Act') to replace voluntary Māori representation in local government with a requirement for territorial and regional authorities to establish one or more Māori wards (for territorial authorities) and constituencies (for regional authorities). The number of Māori seats would be in proportion to the total Māori population of the relevant territory or region.
3. The current Act empowers territorial authorities and regional councils to resolve to establish Māori representation. Alternatively, a poll must be held on the question of whether there should be Māori wards or constituencies if demanded by 5% of electors. Territorial authorities and regional councils can also resolve to conduct such a poll. The Bay of Plenty Regional Council is the only local body with dedicated Māori seats at this time.<sup>1</sup>

### **Section 19(1) of the Bill of Rights Act (freedom from discrimination)**

4. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to be free from discrimination on the grounds of discrimination in the Human Rights Act 1993, which include race.
5. The Bill requires all territorial and regional authorities to establish one or more Māori wards or constituencies. Individuals of Māori descent who are enrolled to vote on the Māori roll would vote in Māori wards and constituencies. Everyone on the general roll would continue to vote in general wards and constituencies. Nevertheless, the general roll is predominately non-Māori while the Māori roll consists entirely of individuals of Māori descent. The Bill, therefore, draws a distinction on the basis of race between Māori and non-Māori.
6. The Bill appears to discriminate against non-Māori because the proposed formula for calculating the number of Māori seats would lead to disparity in representation between Māori wards or constituencies and general wards or constituencies. The reasons for this are set out below.

### *Electoral population and total population*

7. New s 19ZA would change the formula for calculating the number of council members for Māori wards or constituencies. The proposed formula would be based on the percentage of the total population of the territory or region who identified as being of Māori descent in the previous census. The current formula is set out in Schedule 1A of the Act and is based on the Māori Electoral Population (MEP).

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<sup>1</sup> Those seats were established under Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001, which would be repealed by the Bill.

8. The MEP is comprised of the electors on the Māori roll and a proportion of persons of Māori descent who are under the age of 18 or not otherwise registered as electors.<sup>2</sup> That proportion is equivalent to the proportion of electors of Māori descent who are enrolled on the Māori roll (and the dormant Māori roll).
9. The General Electoral Population (GEP) is the total normally resident population of New Zealand minus the MEP. In this way, the MEP and the GEP account for the entire normally resident population of New Zealand, including those under the age of 18 years old.

*Effect of the proposed formula*

10. The proposed formula set out in new s 19ZA would count all persons of Māori descent in the calculation of the number of Māori seats. The calculation would not be limited to those on the Māori roll, and an equivalent proportion of those who are under the age of 18 or not otherwise registered as electors (the MEP), but would also include:
  - the proportion of persons of Māori descent under the age of 18 (or otherwise not registered to vote) that currently counts toward the GEP; and
  - all persons of Māori descent registered on the general roll (although those individuals would continue to vote in general wards and constituencies).
11. As a result, there would be disproportionately more council members representing Māori wards or constituencies under the proposed formula than under the current formula, and fewer representing general wards or constituencies. This is despite the fact that the number of people who live and vote in both types of wards or constituencies would not change.
12. The estimated effect of the Bill in each territory and region is set out in an appendix to this report. In summary, if Māori representation were established nationwide, the total number of Māori seats on territorial authorities would be 101 under the current formula and 172 under the proposed formula (out of a total of 789). The number of Māori seats on regional councils would be 16 under the current formula and 27 under the proposed formula (out of a total of 135).<sup>3</sup>
13. In a representative democracy, it is important to maintain approximately the same level of representation for everyone. The proposed formula would make the number of council members for Māori wards or constituencies disproportionately higher than the number of council members for general wards or constituencies in comparison to their respective populations. The Bill has a discriminatory impact on non-Māori by diluting their democratic participation in local authority elections.

**Is the apparent inconsistency justified in a free and democratic society?**

14. A limitation on a particular right or freedom can be justified under s 5 of the Bill of Rights Act where:
  - the provision serves an important and significant objective; and
  - there is a rational and proportionate connection between the provision and that objective.

<sup>2</sup> Section 3 of the Electoral Act 1993.

<sup>3</sup> Based on population data at 30 June 2009 (Source: Statistics New Zealand).

*Important and significant objective*

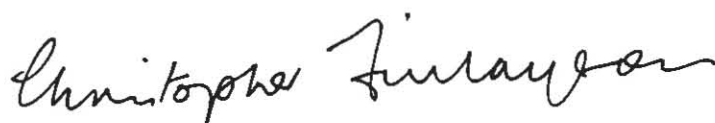
15. The broad purpose of the Bill appears to be to make better provision for Māori representation in local government. The explanatory note to the Bill states that the requirement to establish Māori seats arises from the Treaty of Waitangi. It also states that the specific purpose of changing the formula for calculating the number of Māori seats is to provide representation for persons of Māori descent who are under the age of 18. For the purposes of this report, I consider both these objectives to be significant and important.

*Rational and proportionate connection*

16. The establishment of dedicated Māori representation could be said to be rationally connected to the objective of making better provision for Māori representation in local government. A formula for calculating the number of Māori seats that reflects the total Māori population (not just the voting population) could be said to be rationally connected to the objective of providing representation for those under the age of 18 years old. It ensures they are represented despite being ineligible to vote.
17. However, the proposed change to the formula does not appear to be proportionately connected to either objective. The change proposed appears to be based on the incorrect assumption that the current formula uses the number of registered electors rather than the total population. The MEP and GEP are not restricted to those registered to vote, but also take account of those under the age of 18 or otherwise not registered to vote.
18. The Bill creates a disparity in the number of people represented by each council member. The proposed formula would make the number of council members for Māori wards or constituencies disproportionately higher than the number of council members for general wards or constituencies in comparison to their respective populations. Conversely, the calculation of the MEP and GEP is designed to ensure that everyone, whether in Māori or general wards or constituencies, have approximately the same level of representation. In establishing dedicated Māori seats, it is unnecessary to adopt a formula that would create a disparity in representation between the Māori and general seats. The proposed formula is therefore not a proportionate response to the problem it seeks to address.

**Conclusion**

19. For these reasons, I have concluded that the proposed formula in new s 19ZA appears to limit s 19(1) of the Bill of Rights Act and this cannot be justified under s 5 of that Act.



Hon Christopher Finlayson  
Attorney-General

## Appendix: Estimated Effect of the Local Electoral (Māori Representation) Amendment Bill

The tables below set out the number of Māori seats there would be on Territorial and Regional Councils using the current method in the Local Electoral Act 2001 and the method proposed under the Local Electoral (Māori Representation) Amendment Bill. Only the Bay of Plenty Regional Council has established Māori seats (under the Bay of Plenty Regional Council (Maori Constituency Empowering) Act 2001).

### Territorial Authorities

Territorial Authority Area	Total Seats	Māori Seats	
		Current	Proposed
<i>Total</i>	789	101	172
Far North District	9	3	4
Whangarei District	13	2	4
Kaipara District	8	1	2
Rodney District	12	1	2
North Shore City	15	1	1
Waitakere City	14	1	2
Auckland City	19	1	2
Manukau City	17	2	3
Papakura District	8	2	3
Franklin District	12	1	2
Thames-Coromandel District	8	1	2
Hauraki District	13	2	3
Waikato District	13	3	4
Matamata-Piako District	11	1	2
Hamilton City	12	2	3
Waipa District	12	1	2
Otorohanga District	7	1	2
South Waikato District	10	2	4
Waitomo District	6	2	3
Taupo District	10	2	3
Western Bay of Plenty District	12	2	3
Tauranga City	10	1	2
Rotorua District	12	3	5
Whakatane District	10	3	5
Kawerau District	8	4	5
Opotiki District	6	3	4
Gisborne District	14	5	7
Wairoa District	6	3	4
Hastings District	14	3	4
Napier City	12	2	3
Central Hawke's Bay District	8	1	2
New Plymouth District	14	1	3
Stratford District	9	1	1
South Taranaki District	12	2	3
Ruapehu District	11	3	5
Wanganui District	12	2	3

Territorial Authority Area	Total Seats	Māori Seats	
		Current	Proposed
Rangitikei District	11	2	3
Manawatu District	10	1	2
Palmerston North City	15	2	3
Tararua District	8	1	2
Horowhenua District	10	1	3
Kapiti Coast District	10	1	2
Porirua City	13	2	3
Upper Hutt City	10	1	2
Lower Hutt City	12	1	3
Wellington City	14	1	1
Masterton District	10	1	2
Carterton District	8	0	1
South Wairarapa District	9	1	1
Tasman District	13	1	1
Nelson City	12	1	1
Marlborough District	13	1	2
Kaikoura District	7	1	1
Buller District	10	1	1
Grey District	8	0	1
Westland District	10	1	2
Hurunui District	9	0	1
Waimakariri District	10	0	1
Christchurch City	13	1	1
Selwyn District	11	0	1
Ashburton District	12	1	1
Timaru District	10	0	1
Mackenzie District	6	0	0
Waimate District	8	0	1
Chatham Islands Territory	8	3	5
Waitaki District	10	0	1
Central Otago District	10	0	1
Queenstown-Lakes District	10	0	1
Dunedin City	14	1	1
Clutha District	14	1	2
Southland District	12	1	2
Gore District	8	0	1
Invercargill City	12	1	2

Based on population data at 30 June 2009 (Source: Statistics New Zealand)

## Regional Authorities

Regional Authority Area	Total Seats	Māori Seats	
		Current	Proposed
<i>Total</i>	<i>135</i>	<i>16</i>	<i>27</i>
Northland Region	8	2	3
Auckland Region	13	1	2
Waikato Region	12	2	3
Bay of Plenty Region	13	3	4
Hawke's Bay Region	9	2	3
Taranaki Region	11	1	2
Manawatu-Wanganui Region	12	2	3
Wellington Region	13	1	2
West Coast Region	7	0	1
Canterbury Region	14	1	1
Otago Region	11	0	1
Southland Region	12	1	2

*Based on population data at 30 June 2009 (Source: Statistics New Zealand)*