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Independent Electoral Review
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Tēnā koe Deborah Hart

**MHF response to He Arotake Pōtitanga Motuhake / Independent Electoral
Review
consultation document**

Tuia te rangi e tū nei
Tuia te papa e takoto nei
Tuia i te here tangata
Tihei mauri ora He hōnore, he korōria ki te atua ki te runga rawa
He whakaaro maha ki a rātou kua haere ki te wāhi ngaro
Rau rangatira mā, ānei ngā whakaaro me ngā kōrero nā
Te Tūāpapa Hauora Hinengaro

Thank you for the invitation to contribute to the Electoral Review. The Mental Health Foundation of New Zealand's (MHF) submission responds to several consultation questions and topics that impact on the rights and wellbeing of tangata whenua and people with lived experience of mental illness or mental distress. We also provided verbal feedback at the Panel's health and disability sector online session in October 2022.

Summary of recommendations

Recommendation 1: Work in partnership with iwi and hapū to determine a deep understanding of how te Tiriti o Waitangi should inform the electoral system and, at a minimum, recommend fully recognising te Tiriti o Waitangi in the Electoral Act 1993.

Recommendation 2: The panel to make recommendation to further strengthen the Māori electoral options beyond reforms currently being debated by parliament such as removing the 'opt-in' requirement in place of automatic enrolment onto the Māori roll for those who indicate whakapapa Māori.

Recommendation 3: The Panel to recommend funding for iwi and hapū to better engage Māori voters in their hapori.

Recommendation 4: Act on the Te Tiriti o Waitangi breaches and recommendations within the WAI 2870 report relating to the Māori prisoner vote.

Recommendation 5: Extend parliamentary terms to four or five years to facilitate effective policy change by and for communities.

Recommendation 6: Remove arbitrary voting restriction for people who have committed a criminal offence and are detained in a hospital due to a mental or intellectual disability for three years or more.

Recommendation 7: Ensure support is made available to those residing in inpatient units and residential facilities, and resource staff to support the exercise of voter rights.

Recommendation 8: Consider exemptions or alternatives to the requirement to sign a declaration form for special voters in in-patient units, such as using a certified witness.

Recommendation 9: In line with recommendation 6, remove the option for the Electoral Commission to refuse to accept the nomination of people who have committed a criminal offence and are detained in a hospital due to a mental or intellectual disability for three years or more.

How can the Crown uphold its obligations under Te Tiriti o Waitangi in regard to electoral law?

Enabling tino rangatiratanga and exercising citizenship is essential to achieving Māori wellbeing. Ngā Manukura (leadership), Te Mana Whakahaere (autonomy at a community level) and Te Oranga (participation in society) are also important aspects of Māori wellbeing, as outlined in the Te Pae Māhutonga public health framework developed by Tā Mason Durie.¹

We fully support the Panel's conclusion that "electoral law should enable Māori perspectives to be represented in Parliament and support active participation by Māori in the electoral system." We encourage the review panel to carefully consider and, work in partnership with iwi and hapū, to establish a clear understanding of the full application of Te Tiriti o Waitangi in the context of electoral reform. While there is good recognition that the "right to participate in elections [is] guaranteed by Article 3 of Te Tiriti o Waitangi...", this should also be viewed alongside the rights, guarantees and obligations set by Articles 1 and 2. For example, Article 1 (Kāwanatanga) would guarantee the right to equitable participation and representation in the electoral system and places an obligation on the Crown to actively protect the rights and interest of Māori as citizens. Article 2 would guarantee individual and collective self-determination by being able to exercise their vote in the appointment of their political representatives, and ensure Māori values influencing and holding authority through parliamentary representation.

Recommendation 1: Work in partnership with iwi and hapū to determine a deep understanding of how te Tiriti o Waitangi should inform the electoral system and, at a minimum, recommend fully recognising te Tiriti o Waitangi in the Electoral Act 1993.

Māori Electoral Option

The Māori electorates and electoral option is viewed as a fundamental right guaranteed to Māori under te Tiriti o Waitangi both as a citizenship right granted under Article 3 and as an expression of tino rangatiratanga granted under Article

¹ Durie, M. (1999). Te Pae Māhutonga: a model for Māori health promotion, Health Promotion Forum of New Zealand Newsletter 49, 1–8.

2.² However, just over half of people who indicate whakapapa Māori now opt for the Māori roll, and the proportion registering to do so is in gradual decline after increasing between 1996 and 2005.³ The MHF supports policy change to improve the Māori Electoral Option, including:

- allowing Māori voters to switch electoral rolls at almost any time,
- automatically enrolling those who identify as Māori onto the Māori roll to support tino rangatiratanga and make participation as tangata whenua as easy as it is right now for tauwiwi/Pākehā to participate as a representative of the general population, and
- regularly reassessing electorate boundaries to ensure they reflect current enrolled voters rather than census data collected every 5 years.

Recommendation 2: The panel to make recommendation to further strengthen the Māori electoral options beyond reforms currently being debated by parliament such as removing the 'opt-in' requirement in place of automatic enrolment onto the Māori roll for those who indicate whakapapa Māori.

Boosting Māori voter numbers

The MHF recommends a dedicated funding model for iwi and hapū to better engage Māori voters in their communities. Overall, non-Māori enrolment rates exceed Māori enrolment rates although the gap looks to be narrowing with the Māori enrolment rate sitting at just three percentage points behind non-Māori in 2020 (87.59% and 90.67% respectively). Whilst the percentage of the eligible Māori population turning out to vote has increased across the last three election cycles, in

² Waitangi Tribunal Report (2020) He Aha i Pērā Ai? The Māori Prisoners' Voting Report, WAI 2870. Lower Hutt, New Zealand

Vowles & Gibbons (2022) Representation, identity and indigeneity: changes in Māori roll choice in Aotearoa-New Zealand, Kōtuitui: New Zealand Journal of Social Sciences
Online, DOI: [10.1080/1177083X.2022.2058967](https://doi.org/10.1080/1177083X.2022.2058967)

³ Bargh M. 2020. The Māori electoral option: How can trends in roll choices be explained? Mai Journal. doi: <https://doi.org/10.20507/MA>

2020 there was a 11.4 percentage point difference between the enrolled eligible Māori population and eligible non-Māori population that turned out to vote.⁴

Recommendation 3: The Panel to recommend funding for iwi and hapū to better engage Māori voters in their hāpori.

Māori prisoner vote

The Waitangi Tribunal ([WAI 2870](#)) found Māori have been disproportionately affected by the 2010 law change to exclude sentenced prisoners, including Māori prisoners, from registering as electors, excluding them both from eligibility to vote in a general election and from participating in the Māori electoral option (section 80(1)(d) of the Electoral Act 1993). The Tribunal found the Electoral Act is in serious breach of te Tiriti o Waitangi because:

- Māori are significantly more incarcerated than non-Māori, especially for less serious crimes
- young Māori are more likely to be imprisoned than non-Māori, thereby impeding the development of positive voting habits
- the practical effect of disenfranchisement goes wider than its effect on individual prisoners, impacting on their whānau and communities; and
- the legislation operates as a de facto permanent disqualification due to low rates of re-enrolment amongst released prisoners.

The MHF recommend the review panel consider the recommendations from the Tribunal, including legislative amendment and to start a process to enable and encourage all Māori – including sentenced prisoners and all released prisoners – to enrol and vote.

Recommendation 4: Act on the f Te Tiriti o Waitangi breaches and recommendations within the WAI 2870 report relating to the Māori prisoner vote.

⁴ Te Puni Kōkiri Ministry of Social Development. 2022. Long-term insights briefing. Evidence brief: Māori outcome Trends. <https://www.tpk.govt.nz/docs/tpk-longterminsights-evidencebrief%202022.pdf>

Part 1: The voting system

The parliamentary term and election timing

We agree that parliamentary terms must strike the right “balance between ensuring voters can regularly hold the government to account and the time it takes to enact policy.” In the case of ambitious whole-of-system transformation, a three-year political cycle is typically insufficient for policy processes to be undertaken and implemented, and impacts, positive or negative, to be assessed. For example, the mental health and addiction system transformation process, which the Labour government agreed to following recommendations in *He Ara Oranga* - the report from the 2018 Mental Health and Addiction Inquiry, has made some gains, but other areas prioritised in *He Ara Oranga* have had little progress.⁵ While this system transformation process has been hampered by a lack of leadership and a clear plan, and has been somewhat side lined to progress wider health system reforms, meaningful system transformation is not simple and it does take time. Time is essential to activate meaningful co-design and engagement by communities, activate whole-of-government approaches to planning and implementation, and achieve the scale and spread of new systems, services and new ways of working.

Recommendation 5: Extend parliamentary terms to four or five years to facilitate effective policy change by and for communities.

Part 2: Voters

Voter eligibility rules

The MHF is opposed to voter ineligibility for people who have committed a criminal offence and are detained in a hospital due to a mental or intellectual disability for three years or more (i.e., a special patient). This position discriminates on the basis of a mental or cognitive disability depending on the circumstances of detention⁶ and

⁵ Initial Mental Health and Wellbeing Commission. 2021. Mā te rongo ake/Through listening and hearing. <https://www.mhwc.govt.nz/assets/Ma-Te-Rongo-Ake/Ma-Te-Rongo-Ake-Initial-Commission-Report.pdf>

⁶ the European Commission for Democracy through Law (also known as the Venice Commission) has stated that excluding a person from voting on the basis of a disability (in this case the presence of a mental disorder) is a form of discrimination which engages Article 29 of the Convention on the Rights of Persons with Disabilities.

is punitive and unhelpful. Forensic services are there not for punitive reasons but to support a person to recover, to participate in their usual lives and to support individuals to return to the community. There is evidence that keeping forensic patients enfranchised during periods of hospital treatment is as an important way of reducing social exclusion and enhanced autonomy and recovery.⁷ There is also no evidence to suggest that mentally disordered offenders are more likely to hold unusual or extreme political views compared with the general public so electoral ballots would be unaffected by this monitory group having voting rights (see Rees & Reed, 2016).

Recommendation 6: Remove arbitrary voting restriction for people who have committed a criminal offence and are detained in a hospital due to a mental or intellectual disability for three years or more.

Accessibility issues for voting

People with mental illness and distress might experience a range of barriers to exercise their right to vote, including difficulties communicating, feelings of anxiousness about the voting process and restrictions on their ability to travel to a voting station. Options such as advance voting, which allow a person to vote in their own time and at their own home, are helpful. Assisted voting options at polling places will need to be clearly identifiable and actively made available to all people as not all disabilities are visible. We would also support voting hubs being set up at community mental health centres and respite centres to provide education support and voting assistance.

A significant issue is whether people who have been admitted to an inpatient unit on voting day have sufficient information and support to exercise their right to vote. Facilitating the process for people in inpatient units and residential facilities to vote can increase their agency in shaping their community and amplify their voices and concerns.⁸ The options currently available seem reasonable, such as advance voting, postal voting, takeaway voting (where a trusted person can collect and deliver voting papers to them) and mobile voting. We recommend volunteers are

⁷ Rees & Reed (2016) Patients or prisoners? Time to reconsider the voting rights of mentally disordered offenders. *BJPsych Bull.* Aug;40(4):169-72. doi: 10.1192/pb.bp.115.050781.

⁸ Okwerekwu, McKenzie, Yates, Sorrentino & Friedman. 2018. Voting by people with mental illness. *Journal of American Academy of Psychiatry and the Law*, JAAPL.003780-18; DOI: <https://doi.org/10.29158/JAAPL.003780-18c>

made available in and around the voting period to support those residing within inpatient services as they may need additional support, such as finding out whether they are registered or providing support with same-day enrolment. We recommend providing information and education to staff to explain voting rights and what support is available, and we believe peer support workers would be uniquely placed to support the right to vote if they are sufficiently resourced to do so.

We note the requirement for special voters to sign a declaration form might, for some, be challenging. For example, someone who is severely mentally unwell may feel anxious about signing a declaration particularly in an environment of an inpatient unit where their rights are being restricted. We encourage the panel to consider alternative ways of ensuring secure balloting, such as using a certified witness to verify the secure casting of the ballot.

Lastly, we are aware that some tāngata whaiora are concerned about the publication of their name and home address on the electoral roll and might be unaware that they can ask to go on the unpublished roll. We recommend more education and awareness raising about this option and its implications i.e., casting a special vote.

Recommendation 7: Ensure support is made available to those residing in inpatient units and residential facilities, and resource staff to support the exercise of voter rights.

Recommendation 8: Consider exemptions or alternatives to the requirement to sign a declaration form for special voters in in-patient units, such as using a certified witness.

Part 3: Parties and candidates

Just as we consider it discriminatory to restrict voting to special patients, we believe the Electoral Commission's ability to refuse to accept the nomination of a candidate such as a special patient is discriminatory.

Recommendation 9: In line with recommendation 6, remove the option for the Electoral Commission to refuse to accept the nomination of for people who have committed a criminal offence and are detained in a hospital due to a mental or intellectual disability for three years or more.

Thank you for the opportunity to contribute to this kaupapa. Please do get in touch if you have any questions.

Mauri tū, mauri ora,

Shaun Robinson
Chief Executive Officer

About the Mental Health Foundation of New Zealand

We work to improve the mental health and wellbeing of all New Zealanders – of communities, whānau and individuals.

Our work is focused on positive mental health, workplace wellbeing, eliminating bullying, reduction of stigma and discrimination, increasing social inclusion, suicide prevention, providing information and advocating for positive change and social justice. We are committed to upholding the principles of Te Tiriti o Waitangi and to addressing and reducing inequities and the impacts of colonisation that contribute to higher rates of mental distress and suicide for Māori.

We are committed to ensuring that Te Tiriti o Waitangi and its Articles are honoured, enacted, upheld and incorporated into our work, including through our Māori Development Strategy. We are proud that Tā Mason Durie is a Foundation patron.

We value the expertise of tangata whaiora/ people with lived experience of mental distress and incorporate these perspectives into all the work we do.

Established in 1977, the Mental Health Foundation is a charitable trust. We are funded through a variety of methods, including public fundraising through events, individuals and sponsorship from corporates, government contracts and strategic partnerships.