

29 May 2024

Justice Committee
Parliament Buildings
Wellington 6160

Tēnā koutou

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

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, anei ngā whakaaro me ngā kōrero nā Te Tūāpapa
Hauora Hinengaro

The Mental Health Foundation of New Zealand (the MHF) is strongly opposed to the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill (the Bill).

Māori wards and constituencies provide an opportunity for Māori to have culturally specific, proportionate representation in their local area, and the MHF considers they should be an ongoing part of the local government system. We support the retention of the 2021 amendments to the Local Electoral Act 2001, which aligned the process for establishing Māori wards with that for establishing other types of wards. These amendments embodied progress towards an inclusive, Tiriti-based local democracy that represents communities' increasingly diverse views, demographics and backgrounds.

This Bill will negatively impact Māori wellbeing.

Removing this rare mechanism for Māori representation in local decision-making will reduce Māori capacity to express rangatiratanga and mana motuhake, which are

preconditions of Māori wellbeing. Ngā Manukura (leadership), Te Mana Whakahaere (autonomy at a community level), and Te Oranga (participation in society) are identified as important aspects of Māori wellbeing in Tā Mason Durie's Te Pae Māhutonga framework.¹ When whānau Māori are enabled to be self-determining and embody Māori values, beliefs and practices in all spheres of life, they experience more positive and secure identities, less isolation, and better mental and whānau wellbeing outcomes overall.² Moreover, bringing te ao Māori values, tikanga and mātauranga into the fabric of local government has been recommended to give effect to councils' role in supporting the intergenerational wellbeing of all citizens and communities.³ Aotearoa New Zealand needs to support and enable Māori to exercise tino rangatiratanga in as many ways as possible to remedy wellbeing inequities between Māori and non-Māori (including disproportionately high rates of poor mental health and suicide).

In the context of other recent actions or commitments by the Crown to scale back the rights of Māori,⁴ we are concerned that Māori – and especially rangatahi Māori – will see this Bill as another attack on their rights and identity, and a confirmation of institutional racism. Racism and discrimination are leading factors in wellbeing disparities between rangatahi Māori and non-Māori youth, and rangatahi Māori have reported feeling they are living "in a wider society that [is] hostile towards them".⁵

We are similarly concerned that the language and provisions of the Bill are divisive and risk inciting backlash against Māori. For example, the statement (in the explanatory note) that the Bill will "enable local electors to take part in their local elections and decisions about their local electoral arrangements" unfairly pits the rights of Māori against those of local electors, when Māori are also electors and

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

² Russell, L. (2018). *Te Oranga Hinengaro: Report on Māori Mental Wellbeing Results from the New Zealand Mental Health Monitor & Health and Lifestyles Survey*. Health Promotion Agency/Te Hīringa Hauora. <https://www.hpa.org.nz/sites/default/files/Final-report-TeOrangaHinengaro-Māori-Mental-Wellbeing-Oct2018.pdf>; McMeeking, S. and Pierre, S. (2019). Whanau ora: building Maori self-determination in Aotearoa/New Zealand. *Reclaiming Indigenous Governance: Reflections and Insights from Australia, Canada, New Zealand, and the United States*, 155-171.

³ Review into the Future for Local Government (2023). *He piki tūranga, he piki kotuku*. Wellington, New Zealand.

⁴ See also the proposed repeal of section 7AA of the Oranga Tamariki Act, and the signalled Treaty Principles Bill, for example.

⁵ Calder-Dawe, O., Carlson, T., Mulholland, J., Squire, D. (2022). *Rangatahi perspectives on hauora and wellbeing: A qualitative report from Aotearoa*. Pōneke Wellington, Victoria University of Wellington.

members of the community. This harms and isolates Māori, and harms all New Zealanders and our unified identity under Te Tiriti o Waitangi.

This Bill is inconsistent with Te Tiriti o Waitangi.

All articles of Te Tiriti o Waitangi are relevant to Māori representation in local government. Article one (kāwanatanga) guarantees the right of Māori to equitable participation, and requires the Crown to ensure its delegation of authority to local government is Te Tiriti consistent. Article two (tino rangatiratanga) confers Māori the right to participate in local and central government decision-making, including the ability to determine how and by whom they are represented in government. Article three (ōritetanga) extends the rights and privileges (including voting rights) of British subjects to Māori.

Māori wards are one instrument to support proportional representation of Māori and move towards a more Te Tiriti-aligned local democracy, but a genuinely Te Tiriti-based local government partnership would entail multiple other embedded approaches through which iwi and hapū could influence local decision-making, including additional dedicated wards for mana whenua and significant local kaupapa-based groups, and a lower threshold for traditional Māori wards.⁶ In other words, we should be seeking to *increase* the number of legally mandated options to enable Māori representation and participation in local government, not remove them through measures that will cost time and money for councils and ratepayers.

The MHF affirms the findings and recommendations of the May 2024 report of the Waitangi Tribunal, *The Māori Wards and Constituencies Urgent Inquiry Report*, which found that the process to introduce the Bill, and its amendments, breach Te Tiriti o Waitangi and its principles and duties (including of partnership, active protection, good faith, equity, mutual benefit, and options). It also raised concerns, shared by the MHF, that this Bill will likely have prejudicial effects on the representation and participation of Māori in local government, expose Māori communities to divisive effects and racist rhetoric, and cause lasting damage to the Crown-Māori relationship.⁷

The principle of partnership derives from articles one and two of Te Tiriti and implies that Crown kāwanatanga and Māori tino rangatiratanga have overlapping and moderating effects on each other. Partnership carries duties of active protection, to act reasonably and in good faith, and to consult. The Tribunal found the Bill to be particularly in breach of the principle of partnership, both by the unilateral manner

⁶ Review into the Future for Local Government (2023). *He piki tūranga, he piki kotuku*. Wellington, New Zealand.

⁷ Waitangi Tribunal. (2024). [The Māori Wards and Constituencies Urgent Inquiry Report, WAI3365](#).

in which the Crown's coalition agreements have been prioritised over its obligations to consult with Māori, and by its failure to actively protect Māori rangatiratanga at the local government level.⁸

The principle of options entails that Māori gain access to the benefits of New Zealand citizenship and the wider world while maintaining their own customs and taonga. At the local government level, this means Māori have the option to elect a representative in a general ward or a Māori ward. Māori wards do not enable Māori to vote more than once, they simply give Māori the right to choose where their one vote is allocated.

The principle of equity (deriving from article three of Te Tiriti), requires the Crown to actively intervene to address disparities between Māori and non-Māori.⁹ Māori are historically underrepresented in local government, both in terms of who is elected and who votes,¹⁰ and the 2021 amendments to the Local Electoral Act 2001 are the only significant legislative measure to address this inequity. The Waitangi Tribunal had previously found that the process to establish Māori wards and constituencies prior to 2021 was discriminatory and created an almost insurmountable barrier to their continuation, such that prior to 2021, only three councils had successfully established Māori wards.¹¹ The removal of the poll provisions resulted in a significant increase to over 45 councils, today, having either established or resolved to establish Māori wards or constituencies.¹²

The MHF objects to the majority (non-Māori) having veto power over dedicated Māori representation in local government. This is inconsistent with established, common-sense approaches to representative democracy (including the Māori electoral option in parliamentary elections), and leaves room for a small number of interest groups to overpower processes and outcomes. Councils are already obliged to seek community views on their decisions on other matters, without the need to call a referendum. No other aspects of council decision-making are subject to polls, including decisions to establish other kinds of special wards (such as rural wards).

⁸ Waitangi Tribunal. (2024). [The Māori Wards and Constituencies Urgent Inquiry Report, WAI3365](#).

⁹ Ibid.

¹⁰ Review into the Future for Local Government (2023). *He piki tūranga, he piki kotuku*. Wellington, New Zealand.

¹¹ Waitangi Tribunal. (2024). [The Māori Wards and Constituencies Urgent Inquiry Report, WAI3365](#).

¹² Department of Internal Affairs. (2024). *Fact sheet: Upcoming changes to local elections*. [https://www.dia.govt.nz/diawebsite.nsf/Files/maori-wards/\\$file/Fact-sheet-upcoming-changes-to-local-elections-web-changes.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/maori-wards/$file/Fact-sheet-upcoming-changes-to-local-elections-web-changes.pdf).

This Bill will compromise a healthy local democracy.

Voter turnout at local elections is typically low¹³ and has been steadily declining for the past three decades. At present, local governments are disproportionately made up of Pākehā between the age of 56 and 60,¹⁴ which does not accurately reflect age and ethnic diversity of the voting population. Broad citizen participation is necessary for local government to fulfil its democratic purpose and potential, and to achieve this participation, local government must be representative of the views, demographics, and backgrounds of its community. Supporting Māori (and other under-represented groups within the community) to have a say in local governance can help ensure a fairer, more democratic, and more responsive local government.

Māori representation in local government brings cultural, social, environmental and economic value to councils. Local government representatives have spoken of the benefits of Māori wards to councils, which include better relationships with local iwi and hapū, and the ability to access Māori views and feedback more easily from councillors with a strong footing in Māori communities.¹⁵ This is significant given that councils need to engage with Māori regardless of their Māori ward status, and many councils are reportedly already constrained in their ability to engage with Māori due to lack of capacity or access to effective approaches.¹⁶ Embedding Māori wards will ensure mutually beneficial relationships between Māori communities and local councils are consistent and sustainable. Two-thirds of mayors and chairs from councils across the motu have signed a letter urging the Government not to progress this Bill.¹⁷

The process to introduce and deliberate on this Bill is undemocratic.

The MHF is especially concerned that this law change is being made with only minimal opportunity for public – and iwi, hapū and whānau Māori – scrutiny, due to the truncated Select Committee process. This is inconsistent with the Bill's ostensible aim of upholding democracy and the rights of communities to input into government decisions. The only reason we can identify for the expedited process is

¹³ At an average of 42 percent in the 2022 local body elections (Review into the Future for Local Government, 2023).

¹⁴ Review into the Future for Local Government (2023). *He piki tūranga, he piki kotuku*. Wellington, New Zealand.

¹⁵ Jacobs, M. (2024). 'Disruptive': Mayors say Māori ward polls cost more than money. *Stuff*. <https://www.stuff.co.nz/te-ao-maori/350286018/disruptive-mayors-say-maori-ward-polls-cost-more-money>.

¹⁶ Review into the Future for Local Government (2023). *He piki tūranga, he piki kotuku*. Wellington, New Zealand.

¹⁷ Jacobs, M. (2024). Two in three mayors and chairs urge Government to reconsider Māori ward provisional polls. *Stuff*. <https://www.stuff.co.nz/nz-news/350286934/two-three-mayors-and-chairs-urge-government-reconsider-maori-ward-provisional>.

Government's eagerness to deliver on coalition agreement commitments with urgency, but this should not override or take precedence over the Crown's obligations to fairness, democracy, or a proper Te Tiriti-consistent process, including genuine consultation with Māori.

Mauri tū, mauri ora,

Shaun Robinson

Chief Executive