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Māori wards and constituencies

Local Government New Zealand's submission on the Local Electoral (Māori wards and Māori constituencies) Amendment Bill

February 2020

We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and promote the good governance of councils and communities. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities. Our purpose is to deliver our Vision: “Local democracy powering community and national success.”

Introduction

Thank you for the opportunity to make a submission on the Local Electoral (Māori wards and Māori constituencies) Amendment Bill. LGNZ supports the Bill. Its objective, to remove the legislative provisions that allow for a poll to overturn a council decision to establish a Māori ward or constituency, has the full support of LGNZ, which has actively promoted the removal of the poll for a number of years.

In June 2017, we submitted to the Justice and Electoral Select Committee in support of Andrew Judd’s (former Mayor of New Plymouth District Council) petition asking:

“that the House of Representatives consider a law change to make the establishment of Māori wards on district councils follow the same legal framework as establishing other wards on district councils.”

In that submission we noted that the right of communities to hold a poll that would bind their local authority to either establish or dis-establish Māori wards should apply to all wards or none.

LGNZ reinforced this view in a letter **Appendix A** to the leaders of the Coalition Government in 2018. In that letter we reinforced concerns expressed by political leaders in those districts that had resolved to establish Māori wards but where the decision was over turned by poll.

Why the poll should go

Following the passage of the Bay of Plenty Regional Council (Māori Constituency) Bill in 2001, parliament resolved that such decisions, to establish a Māori ward or constituency, should be made by councils themselves, and incorporated this power into the Local Electoral Act 2001. At the time the decision was made to make the decision a stand-alone one, to be made in the year prior to the representation review process (undertaken by councils at least once every six years). Parliament treated the decision as similar to that involving the choice of electoral systems (the choice of Single Transferrable Vote or First Past the Post). Both processes had an accompanying right for citizens to force a council to establish a ward/constituency or dis-establish one (or change their electoral system) by poll.

From the start it was controversial, as logic would suggest that participation in such a poll should be a matter for Māori voters given that it was concerned with the quality of their representation, not all voters. However, experience since 2001 has added further reasons why the process for

establishing Māori wards/constituencies should be incorporated within the overall representation review process, for example:

- The poll is an anomaly which only applies to one type of ward. Although the creation of Māori wards should involve factors that are currently outside the scope of the Local Electoral Act, most importantly consideration of the views of mana whenua, the mandated Iwi, all other factors are consistent with matters considered when establishing any ward or constituency, and thus should be considered together.
- Reviewing representation arrangements to ensure effective and fair representation is best undertaken in a holistic and comprehensive manner. This means that Māori representation must be considered as part of a broader discussion involving whether elections should be at large, be divided into wards, the number of members in each ward, and provide for community boards or not. Depending on the demographic make-up of a council's rohe other options to ensure Māori are well represented may be more effective. All options needs to be considered together.
- A strong argument for the removal of the existing poll provisions is the damage it has done to community cohesion allowing divisive (Trumpist) politics to threaten relationships between Māori and non-Māori built up over many generations. The polls have reduced complex issues of voice and representation to a simple binary choice, which, by encouraging people to take sides, damages race relations.
- The poll process, which has come to dominate local elections in many districts, has also had the effect of distracting attention from the critical issues facing communities, such as poverty and well-being. In doing so it also undermines the credibility and reputation of local government.

LGNZ supports change for the reasons set out above, however, it is essential that this Bill is quickly followed by further legislation setting out a revised representation review process to ensure decisions about Māori wards are taken in an holistic manner, take into account the relationships existing between councils and Iwi/hapu, and change over time according to changes in population.

Next steps

The removal of the mandatory poll creates a number of consequential issues that are usually dealt with through the representation review process, such as changing ward boundaries as population numbers change over time, increasing or decreasing the number of members and whether a Māori ward should be divided for electoral purposes.

Representation reviews require councils to prepare and publish for consultation a draft representation proposal, to ensure electoral arrangements are fair and effective and represent communities of interest, for its district or region. Proposals include, for example, a recommendation on the number of elected members, whether or not there will be wards/constituencies, and their boundaries. Citizens have the right to appeal or object to a council's proposal and any such appeals or objections are heard by the Local Government Commission (LGC), which is responsible for ensuring the fairness and effectiveness of a council's representation arrangements.

In LGNZ's view the LGC should also be given authority to consider appeals and objections related to Māori wards/constituencies, whether the appeal concerns a proposal to establish such wards and constituencies or the lack of any such proposal. Including the dis-establishment of Māori wards, should Iwi/Māori believe that it is necessary. This will require the LGC to develop additional capacity, including members with the necessary cultural knowledge and expertise to rule on appeals and objections related to Māori wards and constituencies. It will also require changes to principles and the process itself, including timing.

Conclusion

Matters of representation and relationships should be addressed in a deliberative manner that employs balanced and considered dialogue – not by poll. In fact, a poll is not necessary. Should a council resolve to establish Māori wards or constituencies, or any other ward, against the wishes of its community then the community has the option to hold that council to account at the next election – this is how representative democracy is intended to work. It should also have the right to express their views to the LGC through the representation review process.

As noted at the start of the submission, Māori wards are not the panacea for Māori representation. Every community is different as are the interests and expectations of Iwi/hapu. There is no magic bullet. As LGNZ surveys show, Māori representation nationally is already closely aligned with the proportion of Māori in New Zealand's population, but national data is irrelevant to the question of whether representation is fair and appropriate in our sub-national communities. In some communities being Māori is a major obstacle to being elected to the local authority.

The ability to establish Māori wards should be seen as a tool for the effective representation of Māori that should sit alongside other tools, such as the successful partnerships established between councils and mana whenua groups in many parts of New Zealand, community boards like the Ratana community board, and the role of Māori appointed members on council committees. Together they enable better Māori representation on councils, and no single tool is sufficient in its own right.

As we said in our letter to the coalition party leaders in 2018, "it is imperative that the Government act to address the unfairness created by the poll provisions and put in place a legislative framework that will enable mature and constructive conversations about options for Māori representation in local authorities. We acknowledge that the answers will vary from place to place, which is appropriate, but resorting to simplistic and emotion-fuelled campaigns to seek signatures and votes is not good for our communities."

Ka kite ano

Stuart Crosby

President

LGNZ

Appendix ARemoving the poll for Māori wards and constituencies – an open letter to the Government

23 March 2018

Rt Hon Jacinda Ardern	Rt Hon Winston Peters	Hon James Shaw
Prime Minister	Deputy Prime Minister	Minister for Climate Change
Leader of the Labour Party	Leader of New Zealand First	Leader of the Green Party
Parliament Buildings	Parliament Buildings	Parliament Buildings
WELLINGTON	WELLINGTON	WELLINGTON

Dear Leaders

Removing the poll for Māori wards and constituencies – an open letter to the Government

Ngā mihi kia koutou kī runga i ngā tini āhuatanga o te wā, greetings to you all during this time of many and varied issues.

We are writing to you in your role as the three leaders of our governing coalition on behalf of our members, the 78 local authorities of New Zealand. This letter seeks your support to remove those sections (s.19ZA to 19ZG) of the Local Electoral Act 2001 (LEA) that allow for polls of electors on whether or not a city, district or region can establish Māori wards and constituencies.

Following its decision in 2001 to establish Māori constituencies for the Bay of Plenty Regional Council, Parliament amended the LEA to give this power to councils, in consultation with their citizens. The amendment also allowed electors, through a binding poll, to either require a council to establish wards and constituencies or overturn a council decision to that effect.

The changes to the LEA were intended to increase Māori representation in local authorities but the intent has failed, largely due to the nature of the poll provisions; provisions which do not apply to any other type of ward or constituency. The binding poll only applies to Māori wards and constituencies.

Since 2002, in fact, the only Māori wards or constituencies so far established have been the constituencies introduced by the Waikato Regional Council, by resolution, in 2013 and the Maori wards, agreed by poll, in Wairoa in 2016. Over this period many polls have been held at the request

of iwi to establish Māori wards only to be lost and in a number of instances councils have resolved to establish Māori wards only to have their decisions overturned by a poll of voters, for example, in New Plymouth District prior to the 2016 local elections.

Currently five councils have resolved to establish Māori wards; these are Kaikoura District Council, Manawatū District Council, Western Bay of Plenty District Council, Whakatāne District Council and Palmerston North City Council, and each council is facing a binding poll intended to reverse its decision. Should any of the polls succeed (a simple majority is all that is required) then not only will the proposed Māori wards not be established, but no future consideration of Māori wards will be able to take place until after the 2022 local authority elections.

As noted, these poll provisions apply only to the establishment of Māori wards and constituencies. That they do not apply to other wards and constituencies marks the provision as discriminatory to Māori and inconsistent with the principle of equal treatment enshrined in the Treaty of Waitangi. Either the poll provisions should apply to all wards or they should apply to none. The discriminatory nature of these polls is not acceptable.

Of equal concern, the polls reduce a complex issue to a simple binary choice, which, by encouraging people to take sides, damages race relations in our districts. Matters of representation and relationships should be addressed in a deliberative manner that employs balanced and considered dialogue – not by poll. In fact, a poll is not necessary. Should a council resolves to establish Māori wards or constituencies, or any other ward, against the wishes of its community then the community has the option to hold that council to account at the next election – this is how representative democracy is intended to work.

It is imperative that the Government act to address the unfairness created by the poll provisions and put in place a legislative framework that will enable mature and constructive conversations about options for Māori representation in local authorities. We acknowledge that the answers will vary from place to place, which is appropriate, but resorting to simplistic and emotion-fuelled campaigns to seek signatures and votes is not good for our communities.

We intend to share this letter widely with our members and the public and look forward to meeting with you to discuss our request and share with you the reasons why we believe this is an important and urgent matter for parliament to consider.

Nāku iti nei, nā

Mayor Dave Cull

President

SUBMISSION

Local Government New Zealand

CC: Hon Nanaia Mahuta, Minister of Local Government
Hon Kelvin Davis, Minister for Crown Māori Relations