

// **SUBMISSION**



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

// Local Government New Zealand's submission

// May 2024



Ko Tātou LGNZ.

LGNZ champions, connects and supports local government. We represent the national interests of councils. Our aim is for New Zealand to be the most active and inclusive local democracy in the world.

Introduction

Local Government New Zealand (LGNZ) welcomes the opportunity to submit on the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill (the Bill). We are opposed to the reinstatement of binding polls for Māori wards and Māori constituencies. We urge the Government to reconsider its position and leave local councils to make decisions about appropriate representation arrangements in partnership with iwi and their communities.

LGNZ's vision is for New Zealand to have the most active and inclusive local democracy in the world, so we're concerned about the Bill's potential impact on local decision making. Many of our members share this concern, with 52 Mayors and Chairs (to date) signing our letter to Ministers and coalition party leaders recently to express their opposition to this legislation. Decisions about local democracy, representation arrangements and how communities contribute to them are constitutionally significant. The Bill has had an exceptionally short timeframe for submissions for such a significant piece of legislation, which has made it difficult for councils and communities to appropriately engage.

Key points in our submission

- Māori wards and constituencies should be treated like all other wards and constituencies, with decisions around them being made at the local level in partnership with iwi and communities.
- This legislation is a distraction from the hard work that councils are doing to deliver infrastructure and other core services (including delivering on other key Government priorities such as Local Water Done Well). It will add additional unnecessary cost to councils working hard to keeping costs down for their communities.
- The current law enables good community engagement and principles-based decision-making for representation arrangements
- The Bill politicises representation arrangements, which conflicts with the principles of the Local Government Act 2002 and Local Electoral Act 2001, and undermines partnership with Māori.



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- We are concerned that this legislation is inconsistent with Te Tiriti o Waitangi/The Treaty of Waitangi.
 - While we strongly oppose polls for Māori wards/constituencies, if they are reinstated then the following changes should be made:
 - Only enable those on the Māori roll to vote in any poll
 - Increase the petition threshold from five per cent to 10 per cent of electors to initiate a poll
 - Make the polls non-binding, but require councils to give them due consideration.
 - We're particularly concerned about the retrospective transition provisions and want to see these removed. These will pull focus from the important debates that should be had at the 2025 local elections, and will undermine the position of competent elected members.
 - We support changes to postal voting timeframes to ensure that the voting system functions, and support wider conversations about how to ensure everyone can participate in local elections.

Our submission

The decision on Māori wards and Māori constituencies should rest with individual councils

Our position – a position that has been held by LGNZ since 2018 – is that decisions on whether or not to have Māori Wards and Māori Constituencies as part of a council’s representation arrangements should rest with individual councils without the need for polls. As we pointed out in 2018, polls aren’t required for general wards, so in fairness they should not be required for Māori wards or Māori constituencies either. *“That (these polls) 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.”*¹

The current law enables good community engagement and principles-based decision-making for representation arrangements

Local government’s system of representative democracy empowers democratically elected councils to make decisions on behalf of their communities. This enables issues to be seen holistically and allows elected members to balance competing perspectives. Councils take this approach when deciding on other key aspects of their representation arrangements, such as ensuring appropriate representation of different geographic areas (eg rural areas). They make these decisions without the need for binding polls on any other aspects of representation arrangements. This power comes with the responsibility to consider the views and preferences of those affected and to consult, with elected members ultimately accountable for these decisions through elections. Councils, in determining their representation arrangements, already carry out extensive engagement with all members of their communities over an extensive period of time.

Councils, in making decisions about their representation arrangements, must follow important principles in the legislation – something that people voting in polls are not required to do.

The Local Government Act 2002 (LGA 02) requires councils to provide opportunities for Māori to contribute to its decision-making processes (*LGA 02 s14(1)(d)*). This principle, and its associated requirements, is explicitly included to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi (*LGA 02 s4*).

Two key principles of the Local Electoral Act 2001 (LEA) are “representative and substantial electoral participation in local elections and polls”, and “fair and effective representation for individuals and

¹ Local Government New Zealand (2018), open letter to the Prime Minister, Deputy Prime Minister and Co-leaders of the Green Party.

communities” (LEA s4 (1)(aa)-(a)). Just as they may choose to create wards for rural areas to achieve these aims, councils legitimately could use Māori wards and Māori constituencies.

These principles ensure that the people elected to make decisions on behalf of their communities truly represent those communities. Having diverse perspectives around council tables enables councils to make the best decisions for all their communities, and is why wards representing different communities of interest are established. As Federated Farmers once said about rural representation on Gisborne District Council: *“Rural people have different lives, jobs, skills, perspective, and experience from urban people. Federated Farmers considers that retaining dedicated rural representation is the best way to support the wellbeing of rural people... almost 80% of Gisborne’s population lives in Gisborne city so rural candidates will face significant hurdles getting elected in a general ward.”*²

Reinstating polls adds an impediment to councils who may decide that having Māori wards or Māori constituencies is an appropriate way to meet these requirements.

We oppose the reinstatement of a poll provision

Polls are a poor substitute for holistic decision making.

As we noted in 2018, *“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.”*³

As outlined in the previous section, a requirement for polls on decisions councils make to establish Māori wards or constituencies is not consistent with requirements for other decisions local government makes, including the creation of other wards/constituencies such as to ensure the representation of different geographic areas of a region/district or rural communities. Councils already consult all of their communities when making representation decisions Mandating polls for some types of wards or constituencies but not others undermines the ability of councils to consider representation holistically and take a considered approach to arrangements.

Binding polls create an insurmountable barrier to Māori wards and constituencies

We agree with the view of DIA that the previous legislated-for polls were an ‘insurmountable barrier’ to establishing Māori wards and constituencies for those councils who would otherwise use these. For many councils that would otherwise choose to have Māori wards or constituencies, mandating

² Federated Farmers (2021) Member Advisory Representation Review – Council’s proposal to remove rural wards

³ ibid

polls means these are not an option. If the intention of the Government is to reimpose a barrier then it would be more transparent if the ability to create Māori wards was removed completely rather than placing councils in this situation.

The number of Māori elected members increased because of councils instituting Māori wards and constituencies after the poll requirements were removed. It is therefore likely that the reinstatement of polls will result in lower representation for Māori in local government. This is despite a large number of councils having identified Māori ward and constituency councillors as having made significant and meaningful contributions around the council table, and helping their councils to improve relationships with mana whenua.

We are concerned that the Government appears to have ignored advice from officials that these changes may have Bill of Rights implications, given that Māori wards and constituencies will face a greater process bar for establishment than any general ward or constituency. We urge the committee to explore this matter in more depth.

Reinstatement of poll provisions is an unhelpful distraction and will make for increased costs for councils with no benefit

Reinstatement of polls will add additional costs to councils. Costs will vary from council to council but are not insignificant. This is not just in the administration of polls, but the potential impacts on out-of-cycle representation reviews. It is hard to see the benefits of this additional expenditure, especially at a time of significant funding challenges for councils and higher priority areas for investment (including delivering on other key government priorities such as Local Water Done Well). When the Minister of Local Government recently called on councils to *'focus on the must haves, not the nice to haves... that's the focus that we expect from local government'*⁴ it is hard to see expenditure on these polls as a 'must have' in that context.

Politicising representation arrangements undermines partnership with Māori

Regardless of what kind of ward or constituency a member is elected to, all elected members make the same statutory declaration to execute and perform their powers, authorities, and duties in the best interests of their region or district. However, diversity of decision makers leads to better decisions being made for communities.

We agree with the view of DIA that, *"Referendums and polls are an instrument of majority rule which can suppress minority interests. Normal lawmaking process have safeguards to make sure minority rights and interests are considered ... [b]ut referendums do not require that tabling and balancing of interests, and the outcome will depend on the majority's perception of the minority interests"*⁵.

⁴ Minister Simeon Brown (2024), Annual Review Debate — Local Government

⁵ Department of Internal Affairs (2023), Local Government Briefing – Coalition policies for local electoral changes

These polls will ultimately politicise representation arrangements, which creates unnecessary division in communities. Representation arrangements should be fair and effective for individuals and communities, but polls make it harder to ensure fair and effective representation for Māori. This does not necessarily mean that the only or best option for councils is to have Māori wards and constituencies – and we know that for some iwi and hapū their preference, in consultation with their councils, is to have other arrangements for representation and engagement. However, the establishment of Māori wards and constituencies should be as much an option for councils as establishing wards to provide representation of, for example, different geographic areas or rural communities.

Conversations about how councils meet their statutory obligation to provide for Māori to contribute to decision making are important and should strengthen relationships between local government and iwi/hapū. Many Māori wards and constituencies have in fact been seen as a key partnership milestone for councils and mana whenua. Working in partnership with Māori (and with communities) is a natural part of how councils work. In adopting our response to the Future for Local Government's final report, 76.1% of councils voted in favour of the positions related to creating stronger, more authentic relationships between local government and iwi, hapū and Māori.

The restoration of polls threatens to undermine these relationships, and the many social, cultural, environmental and economic benefits that strong partnership between councils and iwi/hapū brings.

We are concerned that this legislation is inconsistent with Te Tiriti o Waitangi/The Treaty of Waitangi

In 2010 the Tauranga Moana Tribunal ultimately concluded that poll provisions for Māori wards and constituencies were inconsistent with Te Tiriti o Waitangi.

In seeking to participate in local decision making on matters that affect them, Māori in many parts of the country have repeatedly sought to be represented on councils. The Tauranga Moana Tribunal found that the inclusion of Māori constituencies by Bay of Plenty Regional Council was a positive and Treaty-compliant means of addressing the consistent underrepresentation of Māori in local government. Moreover, Māori would benefit from increased representation, and the council would in turn benefit from Māori participation in decision-making, particularly in matters related to resource management and the environment.

In considering the bill currently before the House, and the process surrounding its development, the Waitangi Tribunal found it to be in breach of Te Tiriti o Waitangi. The Tribunal found there were clear breaches of the principles of partnership, options, equity, and the duty to consult, act in good faith and actively protect Māori rights and interests. It also found that the previous use of polls in the process to establish Māori wards and constituencies prior to 2021 was discriminatory and inconsistent with Treaty principles. Therefore, the reinstatement of similar poll provisions that require binding polls only in respect of Māori wards and constituencies, and not of any other wards or constituencies, was found to be discriminatory. We are concerned that the Government is proceeding with this legislation after this response from the Waitangi Tribunal.

If poll provisions are to be reinstated, then we seek changes

We are strongly opposed to the reinstatement of polls for Māori wards and constituencies only and want to see this legislation withdrawn. However, if polls are to be implemented, then we strongly urge the Government to make the following improvements:

- Only enable those on the Māori roll to vote in any poll. These electors are the ones who will be directly affected by the decision of the poll, and so should have the most input into it. We agree with the point that Andy Foster MP made in the first reading of this bill: *“The question I ask is: is it right for Māori to be able to determine the way in which Māori are represented? The second question: is it right for other people to say, ‘No, Māori shouldn't be entitled to be represented the way they want to be represented’?”*
- Increase the petition threshold from five per cent to 10 per cent of electors to initiate a poll. Five per cent is a low threshold given the costs and impacts of polls on communities. It is therefore not unreasonable to expect a larger demonstration of a desire for a poll before undertaking one. A move to 10 per cent would align with the threshold set out in the Citizens Initiated Referenda Act 1993.
- Make the polls non-binding but require councils to give them due consideration in their decision-making process. This would give the poll weight in the decision-making process, but still enable these decisions to be made within the wider legal context and with due consideration of a range of relevant factors.

The proposed transition provisions are of particular concern

We are concerned about the proposed transition arrangements. These require 45 councils with existing Māori wards/constituencies to conduct a binding poll at the 2025 local elections if they want to retain their current representation arrangements. The results of such referenda would determine Māori representation arrangements for the following two general elections for these councils.

If the reinstatement of polls occurs, then this should only apply to any new Māori wards/constituencies proposed after the 2025 local body election, with the transition arrangements proposed in the bill removed.

The requirements for councils to have referenda on existing Māori wards or constituencies at the next local government elections is particularly concerning for a number of reasons. These transition provisions go beyond even the poll provisions as they require binding polls without requiring a petition of five per cent of electors. These polls would add additional cost to the administration of these elections. This also sets a concerning precedent in terms of retrospectively applying additional requirements to previous decisions of councils. This is bad practice and undermines decisions made with widespread engagement and input from communities/iwi as required by the Local Government Act.

Elections are critical opportunities for communities to debate important issues for their areas, and this will be particularly true for the 2025 local body elections. However, these referenda are likely to crowd out debate of more important issues.

This bill has unfairly undermined the legitimacy of democratically elected councillors. These polls have the potential to unfairly impact on these councillors, particularly if they are standing for re-election and simultaneously facing a Government-mandated poll on whether the ward or constituency they are standing for should exist. During the next term, Māori ward or constituency councillors will be in an unenviable situation if they are elected to a seat that a majority of voters has voted to disestablish.

Reinstatement of the poll provisions without the transition requirements would be more appropriate. Under this approach, the 33 councils who established their Māori wards for the 2022 local elections could have a poll in 2027 if a petition met the threshold required.

Additional councils should also be exempt from the 2025 poll requirement

Gisborne District Council, Ruapehu District Council, South Taranaki District Council and New Plymouth District Council all appear to have established their Māori wards before the Local Electoral Act was amended to remove binding polls. If the transition provisions are retained, then these councils should be exempted from the need to carry out a poll at the 2025 elections (in the same way that Bay of Plenty Regional Council, Waikato Regional Council, Ōpōtiki District Council, and Wairoa District Council are not covered by these transition provisions).

We support changes to postal voting timeframes to ensure that the voting system functions and we support wider conversations about how to ensure everyone can participate in local elections

We support the fixing of timeframes to enable the postal voting system to function for upcoming elections. We agree with the submission of Taituarā that these moves are a stop-gap measure and that there is a need for wider change to the way in which people participate in local body elections, especially with the decline of the postal service.