



13 December 2023

Attorney-General

**Electoral (Equal Protection of Māori Seats) Amendment Bill – Consistency with the
New Zealand Bill of Rights Act 1990**
Our Ref: ATT395/398

1. The Electoral (Equal Protection of Māori Seats) Amendment Bill (**the Bill**) is a Member's Bill in the name of Arena Williams. It was introduced to the House on 31 August, but lapsed on 8 September when the 53rd Parliament was dissolved for the general election. It was reinstated on 6 December.
2. Your obligation under s 7 of the New Zealand Bill of Rights Act 1990 in relation to Member's Bills is different to Government Bills. It is to bring to the House's attention any provision that appears inconsistent with the rights and freedoms contained in the Bill of Rights "**as soon as practicable** after ... introduction", rather than "**on** introduction".¹
3. For the reasons set out below we consider the Bill is **not** inconsistent with rights and freedoms.
4. The Bill would amend s 268 of the Electoral Act 1993 (**the Act**). Section 268(1) sets out those provisions of the Act that are "reserved". Section 268(2) provides:

No reserved provision shall be repealed or amended unless the proposal for the amendment or repeal—

 - (a) is passed by a majority of 75% of all the members of the House of Representatives; or
 - (b) has been carried by a majority of the valid votes cast at a poll of the electors of the General and Māori electoral districts.
5. Among the reserved provisions are ss 35 and 36, which set out how the Representation Commission must divide New Zealand into general electoral districts, and the allowable difference in the number of electors in those districts.
6. However, s 45—setting out how the Electoral Commission must also divide New Zealand into Māori electoral districts (the allowable difference in the number of electors in those districts)—is not currently reserved.

¹ Emphasis added.

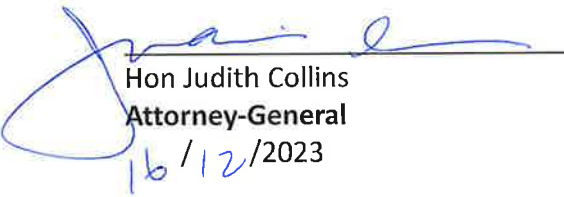
7. The Bill would insert a new subsection 2(da) into the reserved provisions. The effect would be that s 45, and the definition of “Māori electoral population” in s 3(1),² would become reserved.
8. The only right directly concerned with the electoral franchise is s 12, which provides:
- Every New Zealand citizen who is of or over the age of 18 years—
- (a) has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot; and
- (b) is qualified for membership of the House of Representatives.
9. Section 12 would be unaffected by the Bill. “Equal suffrage” is already ensured through those sections of the Act³ which provide that a Māori elector cannot register in both Māori and general electoral districts, but must choose between the two.
10. For completeness we have considered whether the Bill engages the right to be free from discrimination on the grounds of race, affirmed by s 19(1) of the Bill of Rights Act and s 21(1)(f) of the Human Rights Act 1993. We have concluded it does not. The Bill would ensure the rights of Māori electors eligible to register in Māori electoral districts have the same procedural protections (through the reservation of provisions establishing and dealing with the relative size of those districts) as the rights of non-Māori electors (in respect of whom provisions establishing and dealing with the relative size of general electoral districts are already reserved).
11. In accordance with Crown Law internal policies, this advice has been peer reviewed by Daniel Perkins, Senior Crown Counsel.



Daniel Jones
Crown Counsel

(7)
Noted / Approved / Not Approved

Encl.



Hon Judith Collins
Attorney-General

16/12/2023

² The definition at s 3(1) being: “Maori electoral district means an electoral district constituted under section 45”.

³ See especially s 76(1).