

19 January 2021

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill**

**Purpose**

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1. We have considered whether the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 23352/9.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with sections 19 (freedom from discrimination) and 27(1) (natural justice). Our analysis is set out below.

**The Bill**

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4. The Bill aims to remove barriers to the improvement of Māori representation in local government by removing the provisions that allow binding polls to be held on the establishment of Māori wards or Māori constituencies in the 2022 local government elections. A further Bill will put a permanent mechanism in place for local authorities to establish Māori wards or constituencies more easily which will impact local elections from 2025 onwards.
5. The Bill repeals ss 19ZA to 19ZG of the Local Electoral Act 2011 ('the principal Act'), which allow for binding polls to be held on whether a local authority district or region should be divided into one or more Māori wards or constituencies. These provisions have historically been used by electors to overturn local authority resolutions to establish Māori wards and constituencies, and do not apply to the establishment of general wards and constituencies.
6. The Bill also amends s 9 of the principal Act, which enables local authorities to require a referendum to be held on a wide range of matters or proposals relating to its services, policies, activities and objectives. As a result of the amendment, any referendum conducted under s 9 on the establishment of Māori or general wards or constituencies will not be binding on the local authority.
7. The Bill inserts new Schedule 1, which provides local authorities with an opportunity to make or revoke resolutions to establish Māori wards and constituencies, in light of the changes above, in time for the 2022 local elections. The Schedule also provides that no binding poll may be held after the Bill's commencement date on whether to establish a Māori ward or constituency despite any actions of any person or authority taken before the commencement date.

## **Consistency of the Bill with the Bill of Rights Act**

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### **Section 19(1) – freedom from discrimination**

8. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to be free from discrimination on the grounds set out in s 21 of the Human Rights Act 1993, which include race. Legislation may give rise to discrimination under s 19(1) if it draws a distinction based on one of the prohibited grounds of discrimination and the distinction involves disadvantage to one or more classes of individuals.
9. The Bill repeals provisions that draw a distinction on the basis of race between Māori and non-Māori, and that have in practice disadvantaged Māori by operating as a barrier to Māori representation in local government. In these circumstances, we do not consider that s 19(1) is engaged. We also note that a previous attempt to repeal the poll provisions of the principal Act was similarly considered to be consistent with the rights and freedoms affirmed in the Bill of Rights Act, including s 19(1).<sup>1</sup>

### **Section 27(1) – right to justice**

10. Section 27(1) of the Bill of Rights Act affirms that everyone has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
11. Electors currently have a right under ss 19ZB and 19ZC of the principal Act to demand a poll following a local authority resolution to establish one or more Māori wards or constituencies. By repealing these provisions, and by providing that any extant demands for a poll will cease to have effect when the Bill commences (see Schedule 1, Part 1, cls 5 and 6),<sup>2</sup> the Bill could be seen to limit s 27(1).
12. We consider the objective of removing barriers to improve Māori representation in local government is sufficiently important to justify some limit on s 27(1). Removing electors' right to demand a poll following a local authority resolution to establish a Māori ward or constituency is rationally connected and proportionate to this important objective and impairs the right no more than is reasonably necessary to achieve it.
13. In addition, the Bill has a safeguard in place which allows councils to reconsider resolutions to establish Māori wards or constituencies for the 2022 elections up until 21 May 2021, knowing that the poll provisions no longer apply.
14. For these reasons, we consider that the limitation on s 27(1) is justified under s 5 of the Bill of Rights Act.

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<sup>1</sup> Ministry of Justice legal advice *Consistency with the New Zealand Bill of Rights Act: Local Electoral (Equitable Process for Establishing Māori Wards and Māori Constituencies) Amendment Bill* (23 May 2017).

<sup>2</sup> In 2020, nine councils resolved to establish Māori wards or constituencies for the 2022 local elections. We understand that it is expected that at least one valid demand for a poll seeking to overturn one of these decisions will be submitted before the Bill comes into effect.

## Conclusion

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15. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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