

9 May 2018

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: Electoral (Entrenchment of Māori Seats) Amendment Bill**

1. We have considered whether the Electoral (Entrenchment of Māori Seats) 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. The purpose of the Bill is to entrench the provisions of the Electoral Act 1993 ('the principal Act') that relate to Māori electorates. Clause 4 of the Bill adds s 45 of the principal Act, relating to Māori representation in Parliament, and the definition of the term 'Māori electoral population' in s 3(1), to s 268 (the entrenchment provision). The Māori seats would therefore be able to be repealed only with a 75 percent majority of votes in the House of Representatives, (or by a majority vote in a referendum), rather than an ordinary majority.
3. We note that entrenchment of ss 45 and 3(1) would continue a distinction based on race (between Māori and non-Māori), which is already a feature of New Zealand's electoral system. However, we do not consider that this engages the freedom from discrimination protected by the Bill of Rights Act, as it does not cause any material disadvantage for non-Māori groups. Entrenchment of Māori seats does not confer greater voting rights on those on the Māori roll. The existence and number of Māori seats neither generate disproportionate representation in Parliament, nor dilute democratic participation for non-Māori groups.<sup>1</sup> Additionally, the Māori seats may also be regarded as supporting the right to equal suffrage under s 12 of the Bill of Rights Act.<sup>2</sup>
4. 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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<sup>1</sup> Statutory formulae are used to calculate the Māori Electoral and General Electoral populations to preserve proportionality.

<sup>2</sup> For example, the Human Rights Council commended New Zealand on its Māori electoral roll in its 12th, 13th and 14th Report under the Convention on the Elimination of Racial Discrimination: see Andrew Butler and Petra Butler, *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis NZ, Wellington, 2015) at [12.8.2].