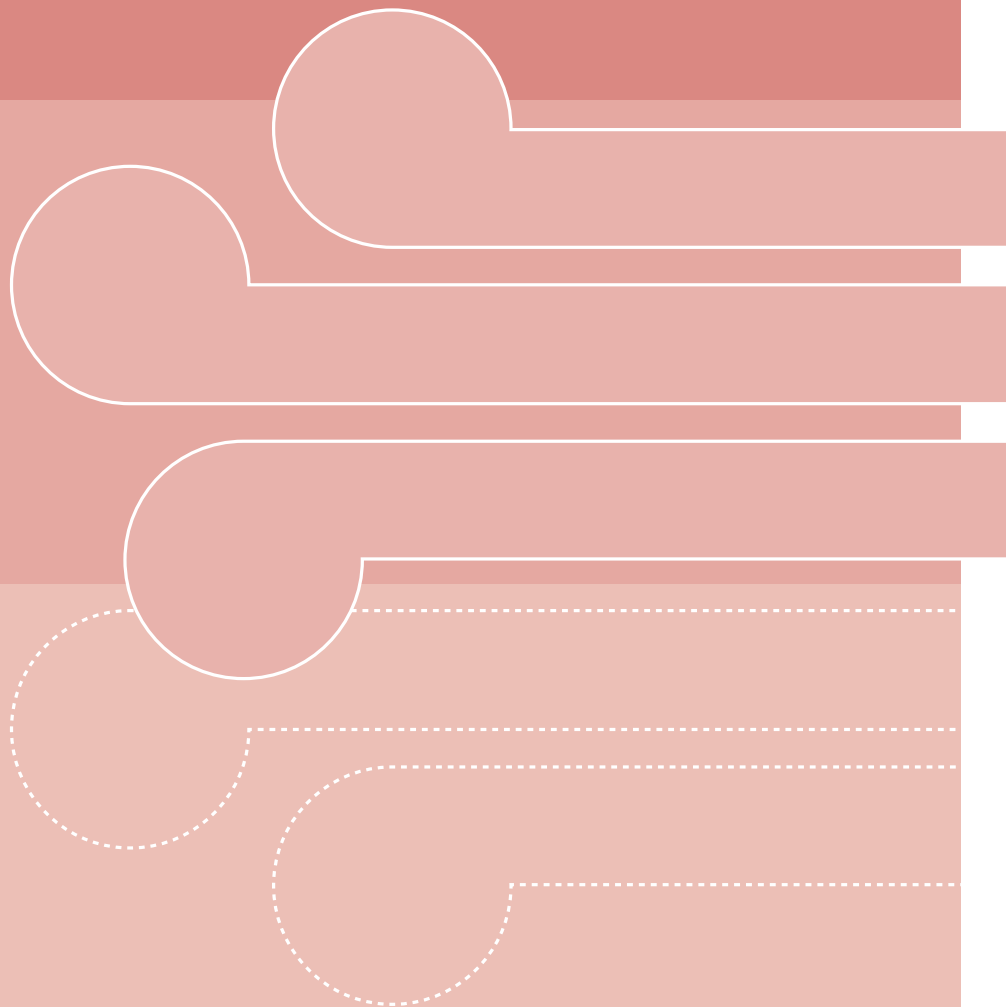


# Māori Representation



# Recommendations

## **The Panel recommends the Government:**

- notes the Panel's advice that the current arrangements for the representation of Māori in Parliament should remain while the conversation continues
- investigates how Māori representation in Parliament might be improved
- investigates how local government processes and decision-making can better reflect the interests and views of tangata whenua and whether the processes can be made more consistent and effective
- when conducting the investigation into representation in both Parliament and local government has regard to a range of options including Māori political structures, and local and international models



## Māori Representation, Ngā Mangai Māori in Parliament and local government

The Māori seats in Parliament are a unique feature of New Zealand's democratic system. These seats ensure that a guaranteed minimum number of members of Parliament (MPs) can represent Māori views and perspectives in Parliament. There are currently seven Māori seats.

### Perspectives

Three broad groupings of aspirations for Māori representation in Parliament emerged during the Conversation:

- enhancing Māori representation and participation in policy and law-making
- retaining the Māori seats to guarantee a Māori voice
- abolishing separate representation.

#### Enhancing Māori representation and participation

This grouping acknowledged existing mechanisms such as the Māori seats as better than having no guaranteed voice, but wished to explore stronger mechanisms to enhance Māori representation in Parliament. The Panel's conversations suggested that a majority of Māori are within this grouping.

#### Retain the Māori seats to guarantee Māori voice

During the conversations the Panel heard from Māori, amongst others, that the seats should be retained or increased. This grouping aspires to a Parliament that recognises and takes account of Māori views. To this grouping the Māori seats in Parliament are a significant (although not necessarily sufficient) symbol of the commitments made by iwi and the Crown at Waitangi in 1840, and many submissions explored the historical detail and relevance of the seats.

Māori MPs who are elected to general seats are responsible for representing all their constituents. MPs elected to the Māori seats ensure a distinctive Māori voice in the issues considered by Parliament.

A significant number of individuals and organisations noted that the retention or otherwise of the Māori seats was a matter for Māori people to decide.

#### Abolish separate representation

This grouping rejected the concept of guaranteed minority representation, aspiring to 'one law for all'. While many did not provide reasoning for their views, others suggested that separate representation is unfair or undemocratic.

Within this grouping some referred to the report of the 1986 Royal Commission on the Electoral System, which suggested that the Mixed Member Proportional voting system (MMP) would ensure Māori are adequately represented in Parliament so dedicated seats would no longer be required.<sup>32</sup> A common observation was that the number of people who identify as Māori in the current Parliament is roughly equivalent to the percentage of Māori in the population.

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<sup>32</sup> Royal Commission on the Electoral System (1986) p. 101.

## Options and reflections

The conversations demonstrated that like the Treaty, Māori representation through the Māori seats is a mechanism that many people are deeply interested in. For some this Conversation was an opportunity to pursue well traversed arguments, and for some it was an opportunity to look to the future.

The Panel is of the view that there is no immediate need to change the current arrangements for Māori representation in Parliament. The Māori seats are effectively self-regulating as Māori can determine, through the Māori Electoral Option, whether or not they continue. The Panel concurs with the views of the 1987 Electoral Law Committee's inquiry into the Royal Commission on the Electoral System which put the decision on the future Māori seats in the hands of Māori,<sup>33</sup> and sees significant support among Māori for the retention of Māori seats.

Further work is required, however, to explore options to enhance representation, including looking at Māori historic initiatives, and to develop something unique that suits our circumstances. International examples such as Canada, Wales, Bolivia and Norway also offer some comparative examples for consideration.

Some participants in the Conversation considered Māori representation, particularly the Māori seats in Parliament, to be a form of apartheid. As the Royal Commission noted, this view is 'plainly wrong':

Separate Māori representation is not a form of apartheid because the seats are within the *general* Parliament responsible for the *general* law and for supporting the *general* government of New Zealand. Individual Māori people have a choice whether to vote on the Māori roll or the General roll, and can be candidates for election in any seat, Māori or General. In fact, separate Māori representation works in exactly the opposite direction to the measures adopted by the South African regime in respect of the non-white population. The purpose of separate Māori representation is to *prevent* the exclusion of the Māori people from the policy and law-making processes by guaranteeing them representation in the legislature.<sup>34</sup>

The Panel agrees with the Royal Commission and can see no merit in revisiting this point.

The Panel recommends that along with further work in relation to the status of the Treaty, options for Māori representation in Parliament should be explored. The work should take account of the history of Māori representation in New Zealand, including the many Māori initiatives to improve representation and participation.

A high-level description of the options that started to emerge during the Conversation is set out below. Other options will no doubt emerge and develop as the conversations continue, with these offered as a starting point for further discussion.

### Transforming Māori representation

One option discussed in the Conversation was to consider alternative models to enhance Māori representation, drawing on national and international initiatives to create unique mechanisms for New Zealand.

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<sup>33</sup> Electoral Law Committee, 'Inquiry into the report of the Royal Commission on the Electoral System' (1988) AJHR I 17 B p 24 ([www.parliament.nz](http://www.parliament.nz))

<sup>34</sup> Royal Commission on the Electoral System (1986), p. 94.

Some options for enhancement mooted during the Conversation included:

- ensuring equal representation in Parliament of tangata whenua and tangata Tiriti
- creating an upper house with equal representation of tangata whenua and tangata Tiriti
- entrenching the Māori seats so they cannot be removed by a simple majority in Parliament
- revising the formula used for allocating Māori seats. The number of seats would be determined solely by the total Māori population, not by dividing the Māori electoral population by the quota for South Island general electorates
- recasting the Māori electorate boundaries to align more closely to tribal boundaries
- compulsory registration of Māori on the Māori roll with an option to opt off.

### ***Alternative models of representation***

It is not uncommon in modern democracies for indigenous people and minority groups to be represented through different mechanisms, including multiple sovereignties. Alternative frameworks can ensure minority voices are heard. This section briefly summarises some of the models as a basis for further conversation.

***Indigenous parliaments:*** these parliaments can sit alongside western-style parliaments. For the Saami people in Scandinavia indigenous parliaments act in an advisory capacity, with limited legislative authority. Saami parliaments are financially accountable to the state.

***Political parties:*** some political parties actively recruit ethnic minorities to widen their support. The Welsh Labour Party and Ontario New Democratic Party have a quota for ethnic minorities. Allowing for a specific quota is up to each political party.

***Constitutional status:*** some countries provide for the protection of indigenous people in their constitutions. For example in Slovenia two national communities have the right to veto legislation that directly concerns their communities.

***Creation of a separate territory:*** in 1999 the Canadian Parliament established Nunavut, a self-governing territory for the Inuit. The Act establishing the territories was 23 years in the making and was the result of land claim negotiations between the Inuit and federal government. The Legislative Assembly of Nunavut is the territory's Parliament, and decisions are made by consensus. The Assembly elects a single member to the federal House of Commons.

### **Retaining the status quo – developing existing mechanisms**

This option could see the Māori seats remain indefinitely, fluctuating in number depending on both the Māori population and voter population. As long as Māori opt to retain the Māori seats, through the Māori Electoral Option, they would remain.

This option could also include considering ways to improve participation suggested during the Conversation, including greater promotion of the Māori Electoral Option and better education about the current arrangements.

### **Remove the Māori seats**

Although the Panel received a large number of submissions supporting the removal of the Māori seats this option is not recommended. It is inappropriate for longstanding rights of a minority to be taken away simply because that minority is outnumbered. The existence of the Māori seats does not impede or limit the rights of other New Zealanders to exercise their vote.

For the same reason the Panel does not support the view it heard that a general referendum should be held on the retention or abolition of the Māori seats. The question about options for the Māori seats and Māori representation requires a more nuanced decision-making tool that takes account of minority views. The Panel agrees that the decision about the future of Māori seats should remain in the hands of Māori.

## Māori Representation in local government

Historically iwi exerted kaitiakitanga, managing all of New Zealand's natural resources. Māori and the Crown agreed, through the Treaty, that Māori would maintain control over their taonga, including natural resources. Now much of the management and regulation of these resources is the responsibility of local government. Iwi therefore have a close interest in local government to ensure their views and perspectives are represented in the management of natural resources. The nature and extent of both iwi and Māori elected representation and participation in local government decision-making varies across the country.

### *Māori representation*

The Local Electoral Act 2001 provides councils with an opportunity to create Māori wards by resolution.<sup>35</sup> A poll of voters is taken on the implementation of the resolution if a sufficient number of people seek it. Māori wards, like the Māori seats in Parliament, guarantee that a Māori perspective is represented in the work of local government.

### *Participation in decision-making*

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi, the Local Government Act 2002 requires local authorities to facilitate Māori participation in decision-making processes.<sup>36</sup> The Act also requires a local authority, if making a significant decision on land or a body of water, to take into account the relationship Māori have to their ancestral land, water, sites, wāhi tapu, flora and fauna, and other taonga. Consultation on local matters would necessarily involve consultation with the iwi and hapū who have customarily exercised authority within a particular area (mana whenua).

Under the Resource Management Act 1991, local authorities are required to have regard to the exercise of guardianship in accordance with tikanga Māori (kaitiakitanga) of mana whenua. Most councils consult to some degree with mana whenua, although the nature and extent of consultation varies region by region.

The current mechanisms providing for iwi participation with local authorities therefore require the combining of two different world views. A recent report of the New Zealand Productivity Commission noted:

[A]ppropriately recognising the relationship of Māori to environmental features involves effectively meshing two different systems of governance—local representative democracy, and the tikanga and kawa of local iwi. Put another way, it calls for the reconciliation of kāwanatanga and rangatiratanga. At present, this governance or 'system' issue is left largely up to local authorities to resolve. The best English term available for what needs doing is establishing a 'partnership' – the language of Treaty responsibilities.

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<sup>35</sup> See Appendix E, Local Electoral Act 2001.

<sup>36</sup> See Appendix E, Local Government Act 2002.

Local authorities and iwi are best placed to work out their relationship at the local level, but there are real questions about whether the current legislative framework best enables that relationship.<sup>37</sup>

Mana whenua can currently participate in management of local resources through:<sup>38</sup>

***Iwi management plans:*** the Resource Management Act requires local authorities to take these plans into account

***Statutory consultation:*** where statute establishes specific structures, for example Auckland's Independent Māori Statutory Board

***Māori committees:*** the Local Government Act 2002 sets out requirements to include Māori in decision-making and to build Māori capacity to do so. Establishing a Māori committee is a common solution to achieving this objective

***Joint management agreements:*** such agreements create joint mana whenua and local authority management of natural features, for example the Waikato River Authority established under Treaty settlement legislation.

## Perspectives

The perspectives on representation in local government were broadly similar to those on Māori representation in Parliament.

### Enhancing Māori representation

This grouping considered Māori are underrepresented in local government, even though the legislative framework provides ways for councils to address representation. Consequently a Māori perspective is often not reflected within a regional authority at a strategic level and operational policy flowing from a set strategic direction is not reflective of tikanga Māori. The Productivity Commission identifies the common problem of 'insufficient capacity to actually participate in the process as currently designed'.<sup>39</sup>

The Waitangi Tribunal has articulated what rangatiratanga means in respect of mana whenua involvement in the management and control of local resources.<sup>40</sup> People who shared this view thought the current legislative provisions did not sufficiently empower local iwi and authorities to work towards a relationship to reflect rangatiratanga.

This grouping generally supported regulatory or legislative change to impose on councils a legislative imperative to engage with mana whenua in all stages of council business. This imperative would require local authorities to engage with iwi rather than leaving them with a discretion.

An alternative view was for legislation to empower local authorities and iwi to come up with a framework that reflects the Treaty partnership. The Bay of Plenty Regional Council was cited in conversations as a positive example of a council and iwi working together to ensure iwi and Māori views are represented within the council – local people creating local solutions that work.

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<sup>37</sup> New Zealand Productivity Commission, 'Towards Better Local Regulation' (May 2013), ([www.productivity.govt.nz](http://www.productivity.govt.nz))

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> The Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claim: Stage 1 (Wellington, New Zealand: Legislation Direct, 2008) p. 1241

## Maintaining the present position

Another grouping supported the present position, with the Resource Management Act 1991 and Local Government Act 2002 placing obligations on local authorities to consult with iwi. The tool through which the Acts are given effect on the ground is up to iwi and local authorities. This grouping thought it appropriate for Māori wards only to be created if a vote is taken and the majority determines there is a need for them.

## Remove separate representation

This grouping held the view that separate representation of Māori is undemocratic and that Māori should have the same opportunities as others in the community to be heard and elected onto a council.

# Options and reflections

Unlike representation in Parliament, the relevant statutes provide no consistent mechanisms for elected Māori representation in local government or for the relationship between iwi and councils.

The Panel recommends further work to find effective ways of involving iwi in local authority decision-making. Iwi history and tradition are based in the lands they have occupied for generations. The challenge is to investigate how the views of mana whenua with a direct whakapapa connection to the land or region in question can be heard and considered effectively.

Delegated authority through legislation and the relationship between central and local government were key factors in the conversations about Māori representation. The Resource Management Act 1991 and Local Government Act 2002 impose certain positive obligations and responsibilities on local authorities, but the Crown as Treaty partner retains responsibility to iwi.

Councils are under no imperative to engage with iwi and hapū. Iwi representation, even by the creation of Māori wards, is reliant on individual personalities within each council. It is undesirable that Māori representation in local government continue in this ad hoc manner.

Each local authority may determine the mechanisms for fulfilling their obligations to consult iwi. While this approach enables flexibility to find a solution which fits local conditions, it means that there are considerable differences across the country. Such inconsistency can lead to impressions of unfairness and inequality.

Because of feelings that local governments have failed to satisfy Māori expectations about the implementation of these provisions, Māori have increasingly turned to central government to seek (through the Treaty settlement process) greater involvement in local decision-making about natural resource management.

The Panel supports further consideration of this issue to try to find a better solution. The options for further work mirror those discussed in parliamentary representation, but the imperative is stronger in light of the need for a measure of consistency across the country and the significance of the direct interests of mana whenua. Options and solutions should be developed in consultation with mana whenua.



### **Alternative models for Māori representation in local government**

One option discussed in the Conversation was to consider alternative models to guarantee iwi representation, drawing on national and international initiatives to create something unique for New Zealand.

Through Treaty settlement legislation, Parliament has established iwi statutory bodies to engage with local authorities. A recent example of this is the Ngāi Tāmanuhiri Claims Settlement Act 2012, which establishes a Local Leadership Body as a joint committee of the council to contribute to the sustainable management of natural and physical resources.

Another example is the Waikato-Tainui (Raupatu Claims) Settlement and Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Acts 2010 which established a co-governance framework for the Waikato River. The framework consists of a single co-governance entity, Waikato River Authority, who set the direction for improving the health and well-being of the Waikato and Waipa Rivers. The Waikato River Authority has 10 members appointed on a 50:50 basis by the Crown and Waikato River iwi. The co-management arrangements include joint management agreements between the iwi and their local authority.<sup>41</sup>

Another example is the Local Government (Auckland Council) Act 2009, which established the Independent Māori Statutory Advisory Board members. Board members comprise seven mana whenua and two mataawaka representatives.

The Panel acknowledges the success of these mechanisms depend in large part on the commitment of the individuals involved to make them work.

### **Retaining the status quo**

This option would preserve the existing flexibility, without any consistent or guaranteed representation. Existing mechanisms could potentially be developed or enhanced by looking at innovative ways to engage under-represented communities. Some would argue the current approach allows local iwi and councils to develop the right mechanisms to suit the local community without central government imposing fixed models.

### **No separate representation**

The Panel does not recommend exploration of this option. The Crown has made co-governance commitments to iwi and hapū in Treaty settlements legislation. Co-management arrangements reflect Treaty principles and the Māori-Crown relationship and it is not realistic to undo this progress.

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<sup>41</sup> 'Co-governance and Co-management Arrangements for the Upper Waipa River: Regulatory Impact Statement' (2010), [www.treasury.govt.nz](http://www.treasury.govt.nz).

## The Māori Electoral Option and Māori electoral participation

The Māori Electoral Option provides Māori with a choice between being enrolled on the Māori electoral roll or the general electoral roll. Electoral participation tended to be less of a focus of conversations, but it is linked to broader questions about the Treaty of Waitangi and Māori representation generally.

If Māori do not see their views reflected within institutions or see their views consistently disregarded, participation is likely to be lower. Participants suggested changes to the mechanics of the Māori Electoral Option including:

- compulsory registration of Māori on the Māori roll with an option to opt on to the general roll
- an option to enrol on the Māori roll prior to each election, not only after the Census.

Other suggestions for encouraging Māori electoral participation included:

- improved civics and Treaty education programmes
- active encouragement of Māori to stand as candidates in local body and general elections
- creating mechanisms for engaging youth such as engagement through social media
- addressing underlying socio-economic issues.

Māori-led initiatives were generally seen as likely to be more effective.

Many people who participated in the Conversation noted that both central and local government need to look for innovative ways to engage their constituents, with the use of social media being a recurring theme. Other suggestions included more frequent use of questionnaires or establishing representative advisory committees (youth, Pasifika, disability, rural).