

5128

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 4:06 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Gordon Barker Habgood Email: Phone:  
Postal AddressA: Postal City: Lincoln Postal Region: Canterbury Postal  
Post Code: Postal Country: New Zealand Submission: I support changing the electoral  
term to four years which will save costs by having elections less often, while allowing a government a  
longer term to implement their promised policies but if these are not popular they will not get a second  
term.

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Submitted on the 14 June 2013 at 23:32

2341

**From:** Lyla"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 7:49 p.m.  
**Subject:** CAP Submission

Maori seats should be abolished, time to move on as one government representing everyone here.

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Lyla Haddon  
email

"4456

**From:** "Grace Haden"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 5:46 p.m.  
**Subject:** constitution  
**Attachments:** submission for consitution.pdf

Please find my submission attached I had issues with the web site I hope it can still be accepted.

Regards

Grace Haden

Because truth matters

Phone  
mobile  
visit us at





Submissions for

Transparency New Zealand Limited

Civil Justice Limited

Verisure Investigations Limited

Grace Haden - member of certified fraud examiners and am a former police prosecuting sergeant.

Submission With regards to New Zealand

#### Topics

Corruption

Justice

Transparency

#### 1. Corruption

- a. New Zealand has not ratified the UN convention against corruption
- b. To report corruption you place your livelihood and future in jeopardy Questioning corruption in New Zealand.
- c. There is no single body which investigates corruption and matters can fall into a waste area between it being too difficult for the police and not serious enough for the SFO. These matters go untouched and offenders get away with serious offences while speed limits and parking are vigorously enforced on the law abiding.
- d. Those who are well connected can buy justice to prevent being charged or have charges dropped. Ministry opens up in case against US man
- e. Government departments are paying transparency International to do an integrity survey, this in itself is corrupt when these departments are the very ones whose integrity is under scrutiny and they are both members of Transparency International New Zealand and paying for the CEO of Transparency International New Zealand to do the "independent" survey. Transparency International New Zealand -not what it is cracked up to be
- f. We have no official definition of corruption and focus on it being bribery, however instances of bribery reported to the SFO are not properly investigated hence no bribery.
- g. **State capture** is occurring and no one knows what it is
  - i. It has been proved that persons can write legislation for their own business plan,. How to write legislation for your own business plan

- ii. Those in authority can move straight on to other employment which has been set up for themselves while in office.
- iii. Corporates have direct representation in parliament and even have MP's assigned to them.
- h. The **use of public office for private pecuniary gain** is common and many are involved in this practice through the use of non-transparent trusts Is Wyn Hoadley fit to be a Lawyer, A trustee or a councillor?
- i. The office of the auditor general which is also a member of transparency International does not hold departments and local bodies accountable to corruption, few realise that corruption can occur outside bribery and is facilitated through fictitious organisations and matters akin to identity fraud. Many frauds are committed not through accounting methods but through identity or lack of it.
- j. There is a soft touch in enforcement of statutory obligations of companies, trusts, charities, lawyers, perjury which encourage corruption through these areas.
  - i. Company structure is widely abused and is open to fraud, despite this both charities and company's law have a soft touch...
  - ii. Compliance is sought by voluntarily rather than enforcement means subject to penalty.
  - iii. The corrupt have nothing to lose by registering a false company and charity as worst case scenario is that they are struck off.
  - iv. Identities of trustees, directors and shareholders are not verified and can be totally fictitious.
- k. Government departments contract to legal entities other than the one which one the contract and as long as the name is the same they are treated as being one and the same rather than being a separate legal entity.

## 2. Transparency

- a. There is a lack of transparency in local and central governments with obstruction by some in the release of documents which then require intervention of the ombudsmen. Councillors kept in the dark with regards to corruption
- b. The ombudsmen's office, which is also a member of transparency International is overworked under resourced and ineffective, it does not act on matters of corruption Ombudsmen's office totally useless but we will try again.
- c. Local bodies do not have processes in place to prevent procurement and contract fraud; they fail to act when managers are contracting to themselves and officers investigate themselves. Doug Mc Kay investigates himself and responds to Councillors

- d. Charities - there is no consistency in the registering of charities and bodies exist which do nothing and play no active role in society. Charitable funds can be used to conceal crime The Lord Dowding fund how to use charitable funds to conceal crime and Charity Fraud – I should have stayed quite. Enforcement is a soft touch a legal issues are not enforced.
- e. Transparency International a group of less than 100 heavily connected to government group of people encourage business growth and do everything they can to ensure NZ is at the top of the perception index, including deceitful action.

### 3. Justice.

- a. The civil court is being abused. Through the civil jurisdiction which in this definition is anything which is not criminal it is possible to obtain anything from children to real estate.
- b. The system is an adversarial system and it is warfare win at all costs approach is draconian and does not serve justice as it is portrayed to us as existing. Open letter to Judith Collins What justice system?
- c. Evidence plays little or no part and in some instances property and assets are taken from a party without any proof that the other party has any legal claims.
- d. The first and for most step in proceedings document service is undertaken by unlicensed unidentifiable persons who can swear affidavits which are false. Open letter to Chester Burrows – document service resulting in parties not being advised of commencement of proceedings.
- e. Perjury is seldom prosecuted and truth is not sought.
- f. Court is where you go if you want to legally beat someone up - the court facilitates it. Reasonable people don't go to court.
- g. Judges do not have an enforceable code of conduct and the Bangalore principles have only recently been mentioned and their introduction is uncertain.
- h. Lawyers are not properly accountable to the law society, which acts as a protection agency rather than a strict enforcer or accountability agency.
- i. Lawyers as officers of the court frequently treat the court with contempt and are not held accountable for their actions. Brookfields Lawyers continue to act illegally
- j. The courts of record frequently do not record and often restrict access to transcripts; judges have total control of what is recorded and released.
- k. Suicide and depression is high amongst court litigants. Others have said that they would rather suffer a rape or car accident than being kept in the civil court for the prolonged period. Many have ongoing health issues as a result.
- l. The bill of rights act is routinely breached in the civil proceedings in the following manner

- m. Right not to be subjected to torture or cruel treatment- the civil process is draconian , protracted , stressful and unfair , it is not unusual to see this process go on for 7+ years , the only way out is to submit.
- i. Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.- The civil court is all about degrading and discrediting and honest persons are called “vexatious” etc without any evidence and on the say so of the party which has the greater rapport in the court because of an association directly or indirectly with the court.
  - ii. The penalties for losing an application are disproportionately high, the costs imposed are prohibitive and are used to prevent a legitimate defence of the allegations.
  - iii. Innocent parties can without any evidence incur thousands of dollars’ worth of costs which in themselves impose an indirect punishment on the party though the correspondent effects on their solvency and often driving the party into bankruptcy.
  - iv. In family court The rights to half the assets of a long term partnership is frequently denied and in other cases partners lose half their assets to partnerships of less than 3 year duration, this is because of the ability to deceive the court and lack of reliance on evidence.
  - v. It is often difficult to get a protection order resulting in a party being assaulted when this was both predicable and preventable.
  - vi. The right for both parents to have equal access to children is frequently not respected and parents are forced away from their children .
  - vii. The court is a perfect strategy to “ beat someone up “ causing emotional and financial stress , this would be prevented by ensuring that action outside the court has been exhausted before going to court.
  - viii. Whereas criminals have their punishment moderated through statute there are no such limits set through the civil jurisdiction and penalties in one case was near \$1,000,000 for merely expressing a point of view which was both his truth and honest opinion. Yet compensation for persons who are crippled for the rest of their lives is but a fraction of this sum.
- n. Section 13 Freedom of thought, conscience, and religion - the defamation act encroaches on the right of freedom of opinion , when an honest opinion is held and what is expressed as truth the person can still be heavily punished for holding that opinion and speaking that truth. Courts deny the defence of truth and honest opinion to litigants in defamation claims.
- o. Section 14 Freedom of expression - this rule has been breached numerous times. Any one speaking out or highlighting a matter which is of criminal nature will quickly find



themselves in defamation court. White collar criminals have greater access to funds than whistle-blowers and by annihilating the whistle-blower through unfair judicial proceeding the criminal ensures that they remain a respected member of the public.

- i. The government frowns upon those who have blog sites and have looked at ways of obtaining control over these sites.
  - ii. The court prevents people from speaking openly about matters before the court and therefore provide secrecy for themselves. Those who do express views are punished by the court acting against them.. They will never win in court no matter how much evidence they have to support their side.
    - 1. This is particularly true in family court and people do stay silent for fear of losing their children.
- p. Section 17 Freedom of association - you are judged by who you associate with, I have been told a number of times that things will go better for me if I stop seeing or associating with certain people, -these people are not criminals.
- q. Section 21 Unreasonable searches - the court process facilitates both, as a former police officer I have seen warrants executed for fishing expeditions in certain matters.
- i. and seizure- People lose their house every day due to a less than transparent court process in which documents are sometimes not served, the party claiming that they were not served is labelled as having evaded service.
  - ii. The police evict people from their homes using the trespass act when these people are still shown as being the registered owner of properties.
  - iii. Theft is entirely possible using the court any one can claim anything and without evidence obtain what they are seeking just by using the financial penalties and restrictions imposed on the party seeking to defend their rightful property. It often becomes an issue of economics that it is cheaper to give up something than to lose everything by trying to defend what is rightfully yours.
- r. Criminal rights not conferred on civil litigants Section 23 ensures that those under criminal law have a right to be informed cf: Civil litigants can be taken to court without any legal basis for a claim. there is no obligation on lawyers, officer of the court to ensure that there is a legitimate claim before filing court action.
- i. Criminal law provides for right to consult and instruct a lawyer without delay and to be informed of that right legal aid is provided - civil litigants cannot afford lawyers, legal aid is provided with a caveat over the litigants property.
  - ii. In criminal law there is the right to have the validity of the arrest or detention determined without delay in civil law there is no such right and fabricated claims can be determined without the court seeing any evidence if the rules are played by the lawyers.

- iii. Criminal law provides a right to silence in civil law the defence is forced to provide discovery and punished for not doing so. There is no "he who asserts must prove" principle
  - iv. In civil law teams of lawyers can spend weeks putting the submissions together these are forwarded to the defence/respondents just hours before the hearing leaving them little time to address complex legal matters.
  - v. Civil litigants have no ability to obtain legal assistance without costs. The costs of lawyers are prohibitive being per hour more than any family would have to spare per week. if a lawyer is engaged the other party calls on the lawyers time so much to make the lawyers unaffordable. The scorched earth principle is frequently applied to ensure that the most financial person wins.
- s. Section 25 Minimum standards of criminal procedure
- i. There is no provision for a right to a fair and public hearing by an independent and impartial court. Judges have been seen to sit on matters where they have a business relationship with a lawyer appearing before them. Some do not recuse themselves and it is up to the other party to identify the conflict of interest and challenge it.
  - ii. The right to be tried without undue delay:- Civil matters go on for years it is an exercise of bankrupting a litigant and a period of 8-11 months can elapse between the matter being heard and the court providing a decision.
  - iii. the right to be presumed innocent until proved guilty according to law- The court does not look at evidence in civil matters and the statement of claim can be deemed true without proof. In my own personal case I have been sentenced without ever having been found guilty of defamation, the court does not care.
  - iv. In a civil matter if the respondent / defendant does not give evidence the court rules against them as their side of the case is not heard.
  - v. Civil standard of proof is so low it is negligently reckless.
  - vi. The right to cross examine witnesses on their affidavit evidence is not always provided and there is very little chance of any one being prosecuted for perjury.  
**Without truth there can be no justice**
  - vii. In the civil jurisdiction The penalties and costs compound with interest even while the court is deliberating and spending another 11 months coming to a decision.
- t. Section 27 Right to justice
- i. The civil justice system does not recognise natural justice. Natural justice is not served by not examining evidence and by holding a person arbitrarily guilty of claims which have not been proved in any manner or form.

- ii. There is disparity in crime, while one person is prosecuted others are not even investigated for greater offences Disparity in crime.. who you know matters
- iii. Criminals convicted through the court have privacy as to their convictions unless reported in the newspaper. Civil matters are filed on line and are publicly available, including all comments which the judge uses to discredit a party on the uncorroborated allegations of the other party.

I wish to be heard on this submission

Grace Haden

30 July 2013





## Submission to the New Zealand Constitutional Advisory Panel 2013

As a supporter of Amnesty International, I write to add my voice in support of its submission to the current constitutional conversation.

I am concerned that all our human rights are not adequately protected in New Zealand law.

For example, our Bill of Rights Act 1990 only incorporates civil and political rights. Yet, it is widely recognised that human rights are interrelated, interdependent and indivisible; this means that one set of rights cannot be enjoyed in a meaningful way if the other set of rights is not also adequately protected and respected too.

I believe civil and political rights, such as the right to life, cannot truly be achieved without the equal right to work, accessible health care, adequate housing and education, which are enshrined in the concepts of economic, social and cultural rights.

Despite having ratified the International Covenant on Economic, Social and Cultural Rights in 1978, successive New Zealand Governments have failed to fulfill their obligations to respect, promote and fulfil these human rights.

While the Government says economic, social and cultural rights are currently protected by subject specific statutes, current issues involving these rights, such as child poverty, show that the current system is not working to adequately protect our rights. The maze of laws and policies around economic, social and cultural rights make it difficult for New Zealanders to understand and access their rights.

Without a clear framework to guide legislation and policy it also makes it difficult to see if laws policies are actually working to recognise New Zealanders rights. In addition many human rights in New Zealand lack avenues to remedies if they are breached, which limit New Zealanders' access to justice - an essential right of victims of all human rights violations.

I therefore submit the following recommendations:

- The incorporation of economic, social and cultural rights into the Bill of Rights Act 1990;
- The entrenchment of the Bill of Rights Act 1990 so that the weight and importance of these rights is adequately recognised;
- The explicit inclusion of the power for judges to provide remedies when the Bill of Rights Act is violated;
- That New Zealand ratify the Optional Protocol for International Covenant of Economic Social and Cultural Rights, including opting in to its inquiry and inter-state mechanisms, so that New Zealanders have access to an international remedy;
- The establishment of a Human Rights Select Committee to ensure that the impact of legislation on human rights is sufficiently considered;
- The requirement of all levels of Government to take a human rights approach to addressing human rights issues; and
- Increased human rights education initiatives to increase awareness of economic, social and cultural rights.

I believe these recommendations will provide for stronger protections within our constitutional framework for economic, social and cultural rights.

Taking these measures will ensure a strong legal framework in which all rights are equally protected. It will ensure that the Government can take a rights-based approach to addressing rights issues in New Zealand such as child poverty.

New Zealand has an obligation to take steps to progressively realise such rights as the rights to health, education, and adequate housing. Ensuring they are explicitly protected in New Zealand law is a significant step in ensuring that New Zealand is a place where human rights are protected, respected and fulfilled.

Mandy Hager  
Paraparaumu  
New Zealand

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 11:15 p.m.  
**Attachments:** Ratana Archive andResearch.docx

4 523

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Arahi .R.Hagger Organisation Name: Ratana Archive and Research Email:  
Phone: Postal AddressA:  
Postal AddressB: Postal City: Whanganui Postal Region: Manawatu Postal  
Post Code: Postal Country: New Zealand Submission: Submission Upload: Ratana  
Archive and Research.docx

Submitted on the 31 July 2013 at 23:14

Ratana Archive and Research  
Ratana ICT Hub

Mr Arahi Hagger

Whanganui  
31 July Wednesday 2013

Ratana ICT Hub  
Cell Phone  
Home

I enclose for the information of my letter to the Constitution Conversation, that New Zealand was true to its highest principles that the Tiriti O Waitangi should be embodied in the Statute Book of New Zealand in order all may know that the Tiriti O Waitangi is operative, also to preserve the ties between Pakeha and Maori and all those who dwell in New Zealand. This would preserve the ties of brotherhood between Pakeha and Maori for all times.

The Ratana's Treaty Petition sort to see the Treaty to be embodied in Statutory Law in the laws passed in Parliament and recognised in Parliament. This was very important, because it reflected the petition that Tirikatene Te Koata Te Omeka presented to Parliament in 1932. The Ratana Petition was and is a powerful petition, the most powerful; ever presented by a Maori group in Parliament.

The Treaty of Waitangi should be published as a sacred reaffirmation of the agreement signed by Governor Hobson on behalf of the British Crown and the Maori representatives.

In assuming ownership concerning the Tiriti O Waitangi the Crown and Tangata Whenua, should share in their commercial value, the value of the water, the minerals the sea the foreshore would persist.

Maori, Pakeha all who reside in New Zealand should have a royalty policy, to share in the Treaty of Waitangi royalty. What a classical policy to undertake, we would not want anything from taxes of government funding or grants. We would have the WEALTH from a royalty, which was our due, Te Tiriti O Waitangi.

Nothing less than a commitment from the New Zealand Government could repair the broken promises of Maori expectations of the Treaty on Waitangi, to repair the broken promises made by earlier governments, these were the conditions.

Kind Regards  
Arahi .R. Hagger  
Ratana Archive and Research



## Submission to the New Zealand Constitutional Advisory Panel 2013

As a supporter of Amnesty International, I write to add my voice in support of its submission to the current constitutional conversation.

I am concerned that all our human rights are not adequately protected in New Zealand law.

For example, our Bill of Rights Act 1990 only incorporates civil and political rights. Yet, it is widely recognised that human rights are interrelated, interdependent and indivisible; this means that one set of rights cannot be enjoyed in a meaningful way if the other set of rights is not also adequately protected and respected too.

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While the Government says economic, social and cultural rights are currently protected by subject specific statutes, current issues involving these rights, such as child poverty, show that the current system is not working to adequately protect our rights. The maze of laws and policies around economic, social and cultural rights make it difficult for New Zealanders to understand and access their rights.

Without a clear framework to guide legislation and policy it also makes it difficult to see if laws policies are actually working to recognise New Zealanders rights. In addition many human rights in New Zealand lack avenues to remedies if they are breached, which limit New Zealanders' access to justice - an essential right of victims of all human rights violations.

I therefore submit the following recommendations:

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- The establishment of a Human Rights Select Committee to ensure that the impact of legislation on human rights is sufficiently considered;
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Taking these measures will ensure a strong legal framework in which all rights are equally protected. It will ensure that the Government can take a rights-based approach to addressing rights issues in New Zealand such as child poverty.

New Zealand has an obligation to take steps to progressively realise such rights as the rights to health, education, and adequate housing. Ensuring they are explicitly protected in New Zealand law is a significant step in ensuring that New Zealand is a place where human rights are protected, respected and fulfilled.

Samuel Hagmann  
New Plymouth  
New Zealand

3049

[newzealand.govt.nz](http://newzealand.govt.nz)

Our constitution is the set of rules that determines how this country is governed and how we all live together.



Tell us your aspirations for our country and let us know what's important to you about how this country is run:

No spying on citizens (internet or phone)  
No suppression of Trades Unions  
Fair taxation (more from rich)  
No bribing wealthy immigrants  
to come here.

You can find out more about the Constitution Conversation and make a fuller submission online at [www.ourconstitution.org.nz](http://www.ourconstitution.org.nz)

MAIL SERVICES  
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Constitutional Advisory Panel  
C/o Ministry of Justice  
PO BOX 10088  
Wellington

Name(s):

Renefer Haig

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Tick box to receive regular updates by email

Nelson

6088.1



2672

Submit at the 27 April 2013 Constitutional Review Panel's *Constitution Conversation*,  
or email: [constitutionalreview@justice.govt.nz](mailto:constitutionalreview@justice.govt.nz).

Website [www.ourconstitution.org.nz](http://www.ourconstitution.org.nz) to submit on-line, or call 0508411 411

To Professor John Burrows, Co-Chair, Constitutional Advisory Panel, Secretariat, C/-  
Ministry of Justice, DX SX10088, Wellington:

#### SUBMISSION

My Name: Jennifer Haig

Name of Organisation: Civics Education Action Group – Nelson

or Nelson

Postal or email address: \_\_\_\_\_

We ask that any constitutional document, either singular or through a set of  
constitutional principles that may emerge from the Constitutional Review of 2013:

- Have in any Preamble and elsewhere, New Zealand be declared a secular, sovereign, representative democracy with citizens' participation by way of plebiscites and direct community consultations.
- New Zealand has no death penalty be included in the Bill of Rights Act and under a Suffrage section in any singular document appended to any single constitution.
- The South Pacific Nuclear Free Zone Treaty signed in Suva, Fiji in 1985 and the New Zealand Nuclear Free Zone Disarmament and Arms Control Act of 1987 be stated in Territories or appended to any constitution, with the inclusion (as have the Palauan Islanders done) of clauses against use, testing, storage or disposal of nuclear, toxic chemicals, gas or biological weapons intended for use in warfare, plus transit of the same through our Territories.
- New Zealand follow the example of the Philippines Constitution in stating it "renounces war as an instrument of national policy" and there also be carried a clause requiring not less than three fourths of votes cast in a referendum against docking, military bases and engagement in war, except as ratified by a majority of votes by the people in a plebiscite held for that purpose.

Please take this submission forward to your Secretariat by 31 July 2013.  
My name can/cannot be used in publications.

Signature: \_\_\_\_\_



14F2

**From:** "Elaine & Doug Haigh"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 20/06/2013 11:39 a.m.  
**Subject:** Constitutional Review

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The Secretary,  
Constitutional Advisory Panel.

New Zealand does not need a written constitution and we strongly oppose any legislation or reference to the Treaty of Waitangi should one be drafted now or in the future.

Signed

Douglas John Haigh  
Elaine Doris Haigh

D.J. & E.D. HAIGH,

PAPAMOA  
Ph.

3952

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 28/07/2013 3:02 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Oliver Francis Gibson Hailes Organisation Name: Email:

Phone: Postal AddressA: Postal  
AddressB: Postal City: Dunedin Postal Region: Otago Postal Post Code: Postal  
Country: New Zealand Submission: Four days out from the closing date, I make this submission as a twenty year old law and politics student who very much believes that a 'constitution conversation' is a conversation worth having. However, I begin my submission with the concern that it is naive to believe a largely apathetic population will become engaged with such important issues with a few ad hoc television advertisements. As a recent product of New Zealand's primary and secondary schools, I find that a robust civics programme is sorely lacking. Many lay persons are unaware that New Zealand even has a constitution; just one symptom of this gap in the education system. Furthermore, we can see much ignorance manifest in the recent popularity of the so-called Pakeha Party. I was personally opposed to many affirmative action measures in New Zealand, such as preferential entry into competitive academic courses, before I was made fully aware of grossly disproportionate representation of tangata whenua in every undesirable statistic (e.g. poor health, crime, lack of education) and have come to embrace the notion that individual injustices are a necessary evil when a nation is forced to address large-scale postcolonial iniquities.

A measure of a good society is that a citizen should feel personal affront whenever a fellow member of that society is denied a decent life. However, the trend towards privatisation and user-pays necessities (e.g. healthcare) fosters separatism because private citizens are reluctant to contribute to the state coffers when they are forced to rely on their after-tax income to ensure a decent existence for their family. I believe that many middle-class New Zealanders would embrace progressive taxation if they did not have to worry about doctors' bills and saving to send their kids to university. This raises the further problem of tertiary education; surely it is folly to pile debt upon students, forcing them to chase larger overseas incomes upon graduation? It makes better sense to foster a sense of civil obligation through free tertiary education. These may seem to be peripheral political concerns but I submit that these are the true issues that shape New Zealand's identity and aspirations (and it would be artificial to ignore the fact that this 'conversation' has a wholly political origin in the 2008 confidence and supply agreement between National and the Maori Party). These are problems which New Zealanders have the capacity to have a conversation about because, despite the Panel's best efforts and intentions, the bulk of New Zealand lacks the knowledge and maturity to settle a written constitution.

I will briefly address some of the salient questions posed by the Panel. I am aware that many of my opinions are unoriginal but they warrant restatement nonetheless.

Do we need a written constitution?

No, we do not. As I have noted, mainstream New Zealand lacks the interest or understanding to even begin to consider an entrenched written constitution. Thus, to rush in would be a grave mistake. The balance of power would likely shift from the legislature to the judiciary because having rights and other values protected by a supreme law would likely entail judicial review of primary legislation. This limits the democratic power of our sovereign legislature,

perhaps involving the increased politicisation of the judiciary and anachronistic hurdles for future legislatures. In short, I believe it to supremely arrogant to force today's mores on future New Zealanders in such an unconsidered and unnecessary way. Although Westminster-style constitutions can be captured by governing elites who are apt to force changes for which there exists no widespread public support (e.g. the recent GCSB bill), the ownership of our current fragmented constitution rests with the citizens through their elected Parliamentary representatives.

The risk of a rogue legislature does not warrant a written constitution.

Should the Maori seats be retained?

Yes, they should be retained in order to ensure representation of the interests of Maori, many of whom wallow in poverty. There is a bitter irony to the fact that the most politically-ignorant are those who are most affected by electoral outcomes and policy

decisions, such as welfare and health spending. However, it would be a mistake to entrench Maori seats when we have recently witnessed the mobilisation of contrary opinion, with the Pakeha Party echoing Brash's sentiments at Orewa. Rather than telling these malformed opinions to go away, this should be seen as opportunity for defenders of Maori seats to reiterate the many justifications for their retention, best demonstrated by exposing statistical evidence of the very real inequalities faced by Maori.

Should we keep the electoral system as it is?

MMP allows a plurality of interests to be represented in the legislature but we still see business interests are served ahead of many ordinary New Zealanders. Retention of the status quo would provide a good template for the politicisation of New Zealand.

Should we keep the Treaty of Waitangi as part of our constitution (where referenced in law), and as a guide for Maori-Crown relations?

The Treaty provides a symbolic touchstone for relations and highlights the bicultural origins of New Zealand. However, judicial decisions of Treaty principles, imported via construction of primary legislation, give the Treaty its potency and have guided government decisions in an admirable way. Removing reference to the Treaty in law would not advance equality at this point in New Zealand's journey and Maori interests still have a place in executive decision-making.

Should the Bill of Rights Act have a higher status than other laws?

The test administered by New Zealand's courts is a satisfactory way of balancing individual rights and public interests. As I mentioned above, the supremacy of the legislature is a value worth preserving over the decisions of unaccountable judges. I do not feel that the step of anointing a rights instrument as supreme law is necessary because the judiciary are doing a fine job without full judicial review of legislation.

Submitted on the 28 July 2013 at 15:02

3606

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/07/2013 7:13 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Name:	Sheree Hailey	Organisation Name:	Email:	Phone:
Postal AddressA:				
Postal Region:		Postal Post Code:		Postal City:
Gisborne				New Zealand
Submission: Te Tiriti o Waitangi needs to be fully implimented into this constitution. Although not always honoured by the crown, it is the english version that created a framework for Maori and the crown to be partners in decision making in New Zealand. It is VERY important that we keep the Treaty in existance and alive so that there is a constant reminder that within this &quot;bi-cultural&quot; country (that has multiple numbers of cultures reisiding in it), of the obligations that the crown must honour. There are many that believe without the Treaty we are potentially inviting and opening doors to create a holocaust for Maori. It is said that Maori are marginalised and although through the immigration of other cultures we are now a miniority group that should have and should always have a big voice and an equal seat in decision making for all matters concerning citizens of Aotearoa.				

Sent on the 15 July 2013 at 19:12



2324

**From:** Jill Haines"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 6:16 p.m.  
**Subject:** CAP Submission

To whom it may concern,  
I want to submit that the Maori Seats be abolished. We are all New Zealanders after all so there should be an end to seats decided on race. Everyone should be treated as equal  
Kind Regards  
Jill Haines

Information from ESET NOD32 Antivirus, version of virus signature database 8518  
(20130702)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

--  
I am using the free version of SPAMfighter.  
SPAMfighter has removed 14992 of my spam emails to date.  
Get the free SPAMfighter here: <http://www.spamfighter.com/en>

Do you have a slow PC? Try a Free scan <http://www.spamfighter.com/SLOW-PCfighter?cid=sigen>

657

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 28/04/2013 9:37 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Logan Haines Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City:  
Postal Region: Waikato Postal Post Code: Postal Country: New Zealand Submission:  
I think it would be the best idea for New Zealand to have a new constitution that make's every New Zealander equal in every way with the same rights no matter what race or relidgen. The worst thing that could every happen to New Zealanders would be if any of the treaty of waitangi was used to make up the new constitution. The treaty of waitangi is the biggest cause of problems New Zealand has. How many times do we have to pay for the treaty , No one race or relidgen should ethically or morally be aloud to own the sea bed , foreshore the wind beaches etc its ridiculous. As a country we need change from the old and antiquated to a new modern fair to all constitution.

Sent on the 28 April 2013 at 21:36

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 1/07/2013 2:29 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** 20130701140848153.pdf

2017

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Simon Haines Organisation Name: Submitting my own views (not client or firm views) Email: [webmaster@ourconstitution.org.nz](mailto:webmaster@ourconstitution.org.nz) Phone: Postal AddressA:  
Postal AddressB: Postal City: Auckland Postal Region: Postal Post  
Code: Postal Country: New Zealand Submission: Submission Upload:  
20130701140848153.pdf

Sent on the 1 July 2013 at 14:28





2017

SUBMISSION ON THE "CONSTITUTION CONVERSATION" - BRIGON HAINES**INTRODUCTION**

1. I am grateful for the opportunity to take part in New Zealand's "constitution conversation".
2. It is worth noting that it would not have been possible for the Constitutional Advisory Panel (CAP) to be canvassing the views of New Zealanders as broadly and as effectively as it is doing for this project, but for the internet and the ubiquity of communications devices in New Zealand.
3. This highlights the fact that technology is changing the way in which New Zealanders can engage with their state and each other as citizens to such an extent as to be constitutionally significant. Equally, technology is consistently adding new dimensions to our society that challenge our legal frameworks and constitutional assumptions. The implication of technology as a force of change is that it will be almost impossible to adopt a rigid and inflexible constitution and expect it to meet the needs of future generations. More specifically, we are talking about future generations that will have to deal with:
  - (a) The global population doubling within the next 50 years, while having the same physical space and natural resources;
  - (b) Moore's Law in effect i.e. the capacity of computers doubling and the costs halving every two years, giving rise to technological tools that we cannot currently conceive of; and
  - (c) a New Zealand with a disproportionately aged population, due to social and technological advances increasing longevity.
4. CAP should therefore consider whether New Zealand's constitutional arrangements need to be adjusted to take these phenomena into account, and whether our constitution needs to somehow expressly acknowledge technology as an ongoing force for constitutional change.
5. With this in mind there are four sub-issues that I would like to comment on:
  - (a) Constitutional assumptions that technology challenges;
  - (b) How technology provides the means for New Zealanders to engage in democratic processes from remote locations;
  - (c) The need for New Zealand to be compatible with a global paradigm;
  - (d) The concept of a written constitution with resets.
6. Appendix 1 then provides some views on the specific questions asked by CAP, based on the discussion in this submission.
7. Appendix 2 provides some ideas for next steps.

## CONSTITUTIONAL ASSUMPTIONS THAT TECHNOLOGY CHALLENGES

Assumption 1 – Important constitutional and Government activities require the players to be physically located in one place

8. To date, nations have erected special public buildings in their capitals where laws get passed. The expectation has always been that to be involved in the passage of a law, a political player has to be physically present in the correct building in the capital. Currently, this largely continues to be the case in modern New Zealand. MPs have to generally be onsite at Parliament to vote if need be.
9. In some ways this situation results in an awkward outcome. MPs are constantly on the move as they try to split themselves between their role in Parliament, their role with their constituents (which may be in a different part of New Zealand) and the need to be seen at public events (which could be somewhere else again e.g. Auckland). Attempting to juggle the pressure of needing to be in several different places at roughly the same time would likely require the average MP to catch at least two flights per week, during weeks when Parliament is sitting.
10. There is a parallel situation that applies to Courts. Courts generally also work on the paradigm that in-person physical appearances are critical. In a more subtle way this also requires parties and judges to move around to inconvenient locations, to enable them to gather in one place.
11. Technology now provides us with the ability to question this need to be physically present in specific places to carry out public and constitutional activities:
  - (a) As a matter of reality, today we are already nibbling away at the edges of the assumption that everything has to be done in a specific place. We already allow children to give evidence in Court from remote locations using video conferencing. We have interlocutory and procedural issues resolved with telephone conferences, rather than requiring parties to assemble in Courts for those matters. Select Committees are accepting electronic submissions. Political parties are allowed to cast some proxy votes on legislation rather than having to have all members physically be present in Parliament (presumably relying on telephone contact to ensure that absent MPs agree to vote in the way that is being represented). Television enables events taking place to be observed from remote locations.
  - (b) Going forward one step, better video technologies could allow more witnesses to give evidence remotely, with the same level of clarity and ability to read reactions as though the witnesses were physically present. MPs could be allowed to participate more in Parliament in absentia by relying more upon telecommunications and video links. MPs may also find that they can engage more constituents faster and more effectively through use of social media and SKYPE than by going to events, so the need to travel may lessen as a consequence.
  - (c) Thinking radically and looking forward, it is possible to imagine a Parliament where all MPs' desks are replaced by TV screens so that they can appear before Parliament via their screen from wherever they like. With Courts it is



possible to envisage Smart Meeting rooms being used to allow different participants to choose the city that they appear in (Smart meeting rooms consist of mirror rooms in different locations with very high definition television technologies, to allow participants to engage with people in the "other room" in a very real way).

12. The last set of ideas may seem strange and unlikely at this point. However, the current situation of MPs spending their weeks flying back and forth is worth calling into question if the technology is there to make this no longer necessary.

Assumption 2 – most decisions need to be made by elected representatives

13. Another core assumption of Westminster style democracies is that the general citizenry should be at one remove from participation in most decisions of the state. The main right of citizens is to vote for the representatives, not to do the actual debating or decision making. Historically it is easy to see why things had to be done this way. It would have been impossible to canvass the views of a very large population that is dispersed around a nation. We now have the tools to challenge this.
14. Television, texts and social media enable vast numbers of people to observe and comment on matters in almost real time. Occasionally situations are even arising to allow social media to coordinate such powerful push back to events in Parliament as to change decisions. The New Zealand Internet Blackout in which famous celebrities around the world started blacking out their pictures in opposition to a proposed insertion into the Copyright Act, with Parliament backing down in the face of that situation, is an example of this in practice.
15. Going forward, rightly or wrongly, it would be theoretically be possible for social media to canvass more opposition to something that New Zealand Parliament wishes to do, than there are people in New Zealand (because the communities on social media are global). Thus overall the tools are there to let more people take part in decisions despite being dispersed, and they might just start doing it even if they are not invited to, just as Stephen Fry did.
16. What this actually means is that the level of public consultation on issues has to keep increasing in line with social evolution and expectations. It will also be much easier to gather enough support for a referendum or for citizens to cast votes on matters, than would have been in the past with the tools we now have. Maybe the constitutional arrangements needs to take note of this.
17. In a similar vein, today participation in social media is a matter of choice. In the future, the ability to participate on-line and by way of certain social media could become so central to identity and a person's ability to participate in society, and a person could become so locked out of their social group if he or she is banned from participation, that it should be a matter worthy of social protection in a constitution.

Assumption 3 – Constitutions can accommodate institutions with life members

18. Many constitutions have two houses, with the upper house being made up of life members. Such a model is becoming unsustainable. Life-spans are now increasing to the point where the consequence of having life members means that nations would either be very limited in terms of when they can add a new member, or they will have to manage an ever expanding body.
19. The UK House of Lords is facing such a crisis. My understanding is that they now have around 800 Lords filling a space that is identical in size to New Zealand's debating chamber (which can snugly accommodate around 120 seats with desks). This means that the UK House of Lords will either have to change the rules of membership, get a larger building, or move to more of a virtual model that does not require everyone to physically be present in one room.
20. While New Zealand does not face such a crisis because it does not have an upper house, the consequences of longevity are such that we should probably at least question any aspects of our constitution that either appoint a person for life, or for very long periods of time. For example if New Zealand's judiciary are relatively young, there are legitimate questions to be asked around how to keep that pool of talent refreshed if it seems as though it will remain relatively static for a significant period of time.

Assumption 4 – Laws and constitutions are based on writing

21. Just as there are special buildings in which Government processes take place, there are assumptions that constitutions are based on written documents. There are even special authoritative documents and parchments on which laws are written down and which have to be kept in a safe and secure place. For example the office of the Master of Rolls in the UK has historically been concerned with being the keeping the rolls of parchment on which statutes are recorded. However, writing is now being replaced with data, which means that the content of documents is becoming more permanent and more ubiquitous. It is now also possible to capture material that is not written and use that as a permanent constitutional source to draw on if it was desirable.
22. As an example, if there was a historic handover of power to implement a new constitution, there is no reason why the video of that event could not be the authoritative constitutional material, and there may be no need of a piece of paper to record the event.

Conclusions

23. Set out above are some examples of how technology creates options for reconsidering things that have always been assumed about how our constitution operates. At this stage in the submission I am not advocating any particular change other than an acknowledgement that technology will have an ongoing impact on our constitutional needs and going forward we need to be free to change our arrangements to take fresh developments into account, whether they are opportunities to make processes more efficient, or moves to counter new risks.



# **RECOMMENDATIONS ARISING FROM THE ABILITY TO ENGAGE IN DEMOCRATIC PROCESSES FROM REMOTE LOCATIONS**

24. Looking back on what has already happened, technological change has already radically transformed the ability of citizens to engage with their state. A clear cut example of this is the willingness of Select Committees to call for submissions on Bills over the internet.
25. In the past, twenty years ago say, an ordinary person (or business) located at a remove from the capital would have faced a significant convenience hurdle to overcome if he or she wanted to personally engage on a piece of legislation that was being progressed. He or she may have had to physically travel to Wellington to follow what was being said in detail and to comment in a submission. In real terms, distance would thus have had the practical effect of limiting the ability of New Zealanders who were not in Wellington from directly engaging with Government on legislative matters that interested them.
26. Now anyone, anywhere in the world can directly engage with Government on any piece of legislation that interests them without having to travel or go to any real expense because of the electronic processes that are now available. This reflects a very significant step forward in the ability for ordinary people (or businesses) to express a democratic voice.
27. What is true for Bills is probably also true for a great many other publically led processes. Things that once required a person to travel to engage upon can now easily be done remotely in almost real time because of the internet.
28. As noted above, there are also other ways in which technology has made improvements to the ability of people to engage with their state. Parliament TV enables people to watch exactly what is happening in Parliament from afar. There are also a multiplicity of media platforms that can not only publish comments on matters being debated or progressed in almost real time, but that also provide avenues for feeding back.
29. At a more operational level, a vast number of Government to citizen transactions can now be undertaken electronically, rather than requiring a trip, for example the incorporation of a company can be done with a few clicks of the mouse.
30. I would suggest that the technological changes that we have seen over recent years have become so fundamental to how New Zealanders now expect to be able to engage with their state as to be of constitutional significance. Two questions arise from this situation.
31. First, there have been a number of instances recently where Government has denied people the opportunity to engage on Bills by passing legislation under urgency, or by requiring submissions to be lodged within very narrow timeframes. (No doubt there have also been other public processes in which the relevant institution has tweaked a process with the consequence of limiting the ability of people to engage easily. ) I consider that the passing legislation (or making any other public decision ) in a way that bypasses normal opportunity for public comment runs contrary to the

expectations that New Zealanders rightly now have to engage. Accordingly, there should be more constitutional safeguards around when and how this can occur.

32. Second, just as some institutions of the state appear to be embracing technologies and choosing to provide new means by which citizens can engage, other institutions are moving forward more slowly (like Courts with respect to how they gather information). While there may be good reasons for why some institutions choose to embrace technological change rapidly while others do not, the decisions appear as though they are being made in an unplanned fashion and without any clearly stated underlying principles.
33. I therefore suggest that:
  - (a) There should be greater constitutional checks on when matters can be heard under urgency (or when normal avenues for participation in public processes can be bypassed) because it denies citizens the ability to participate, and it often reduces the quality of the legislation passed if a broader range of views are not canvassed;
  - (b) There should be a stated commitment by Government to continuously improve and facilitate the ability of citizens to participate in democratic processes as technology improves, so that we can be sure that further enhancements to what is technically possible are actually implemented in a timely manner; and
  - (c) Institutions (including Courts) should have clearly articulated principles to guide choices as to how to evolve with technological change, or to provide a transparent basis for making a choice not to embrace change.

#### **THE NEED FOR NEW ZEALAND TO BE COMPATIBLE WITH A GLOBAL PARADIGM**

34. There are five factual observations to make:
  - (a) First, New Zealanders are now part of a global community with friends, family, colleagues and business interests in other countries. Engaging at an international level is now part of the New Zealand identity, and it therefore matters to our people that we can do this well.
  - (b) Second, New Zealand is a very small nation that is geographically isolated from the rest of the world.
  - (c) Third, New Zealand has to be able to transact effectively with the rest of the world for its long term well-being.
  - (d) Fourth, a nation's constitutional arrangements are not only relevant for internal governance reasons, but can impact significantly on the way in which the rest of the world perceives a nation.
  - (e) Fifth, New Zealand is the only country with a Maori culture.
35. These factual issues add weight to a number of constitutional considerations.



The need to promote a framework that is comprehensible and consistent to the rest of the world,  
while also enhancing a unique national identity

36. As noted above, New Zealand has to be able to transact effectively with the rest of the world for its long term well being.
37. However, a small geographically isolated nation, New Zealand has to work harder and smarter to attract overseas investment, to sell its goods and services to the rest of the world, and to assert its national identity.
38. Key factors that can assist with these issues are:
  - (a) The extent to which our constitution and laws make sense to people in other nations and are consistent with a global paradigm; and
  - (b) The extent to which our constitution and laws provide an attractive and distinctive New Zealand brand.
39. In terms of compatibility, other nations will find it much harder to invest time and money into New Zealand, if our constitution and laws impose requirements that have effects, which seem alien to people in other nations or which give rise to red tape that does not exist in other jurisdictions. Even worse are instances where New Zealand designs laws that run contrary to normal practice in other jurisdictions, without good reason. A commitment to adopt standard laws with the rest of the world (where possible) especially in relation to rules that relate to global systems and international standards, and that protect rights that are normally protected in other jurisdictions would be useful.
40. However, there may also be brand value in incorporating some distinctive elements into New Zealand's constitution, so long as they do not impede the ability of other jurisdictions to feel comfortable engaging with us. As a result, there may be value for all New Zealanders in giving some constitutional acknowledgement to New Zealand's Maori strand in a document. Being the first country to actively endorse technology as a constitutional consideration may also be a brand enhancing decision.

Importance of rule of law and quality of our legal framework in an international context

41. The rule of law and the quality of our legal framework are not only important topics in their own right, but they also impact very significantly on New Zealand's international brand and competitiveness.
42. In fact, New Zealand's international reputation for fairness and respect for laws is one of New Zealand's key assets. More specifically:
  - (a) Our cities consistently rank among the best in the world to live in, in large part due to the lack of corruption, the political stability and safety;
  - (b) International organisations like the World Bank consistently rank nations in accordance with principles such as the protections of investors and New Zealand always scores among the best nations in these. These rankings then in turn impact on the willingness of overseas investors to invest; and

(c) Our ability to have our goods accepted by other jurisdictions turns on the extent to which our processes for quality control and security are respected.

43. Many of these characteristics against which our state is assessed, and with which our nation competes on the international stage, are simply products of a well functioning legal system that respects the rule of law. This is a distinct aspect of New Zealand's identity that we should continue to preserve and that we cannot compromise. We need to ensure that any changes to our constitution do not impact negatively on this.

#### A WRITTEN CONSTITUTION DOCUMENT WITH IN-BUILT RESETS

44. The problem with written constitutions is that they can never predict the issues that future generations will face. Even the most seemingly certain values and principles can change over time. For example, a few generations ago voting and participating on juries were not thought to be rights that should be extended to women. Equally, for a person living in a wild frontier nation a few hundred years ago it must have seemed certain that you needed rights to bear arms and maintain militias guaranteed in your constitution forever because you constantly lived under threat.
45. Further, once a matter has been interpreted as being captured by a constitutional right, it becomes very different in jurisdictions with written constitutions to take a different approach. For example in the US it was very difficult to pass minimum wage laws for many years as these were seen as infringements on freedom.
46. Equally looking forward it is difficult to know what rights and freedoms future generations will need. Needs in relation to data protection is a good example of a topic that is difficult to settle now. On one hand the relative freedom of being able to access and use data means that we can achieve fantastic things, for example, Google's ability to process information in the internet now means that it can predict outbreaks of flu epidemics up to ten days before disease control and prevention units. It is this kind of progress that no constitutional law should impede.
47. On the other hand, there is clearly great evil that could be born out of the fact that every, Eftops transaction, every email (including information about when and where the communication or transaction took place), everything that a person has created or downloaded onto their computer or phone, everything on a social media website about a person exists somewhere in permanent form. Equally in cities like London the ubiquity of security cameras means that a large part of people's lives is in actually captured on video. All that information can in technical terms be accessed and used without a person necessarily ever knowing about it.
48. Trying to permanently define the content of your constitution in the face of so much good and evil potential before issues have fully emerged is impossible.
49. That said having a written constitution provides a stronger statement of a nation's values and identity than an absence of a written constitution.
50. One idea to consider therefore is having a written constitutional document that is required to be reset at regular intervals, so that it becomes more of a statement of current values that our society currently stands behind, rather than something that



attempts to entrench a particular approach to certain topics beyond their natural lifespan.

51. Such an approach would also enable a little more risk taking in the rights that we choose to give special weight to for a period, say 5 years, because there would be opportunity to wipe the slate clean at the next reset if the path taken transpired to be the wrong path.
52. It would also be useful to get Governments to stand behind these statements of current values. An ideal situation would be one where an incoming Government's first task is to pass its statement of values legislation that it will pledge to stand for the electoral term. Such legislation would be an interpretive aid similar to our current Bill of Rights (probably replacing it). It would not create an ability for Courts to strike down Acts of Parliament that are inconsistent, but there would be greater accountability because the Government of the day would have specifically committed to the principles contained in the statement. It would make sense to extend the electoral cycle given the introduction of this task.

#### APPENDIX 1 – ANSWERS TO SPECIFIC QUESTIONS

**Should New Zealand have a written constitution?** It is important that New Zealand does not adopt a traditional written constitution, which limits New Zealand's ability to change position on topics. My view is that the next 20 years will bring with it so much technological and social change to New Zealand that it will be almost impossible not to regret some choices about rights that appear sensible now.

However, I would support some form of written constitutional document that enshrines rights or guiding principles that last for a limited period, and then which get reset once that period has elapsed. This would enable periods of certainty followed by a regular opportunity for change.

It would be good to have such a reset of the constitutional statement of values tied to the electoral cycle so that incoming Governments have to stand behind and publically commit to each new reset. (It seems sensible that if there is a document that sets out values of the day, Parliament should be forced to engage with, commit to and even draft it upfront). This approach would likely necessitate a longer election cycle.

The principles set down in the constitutional document should be used as tools of interpretation and public accountability. However, it should not be possible to strike down a piece of legislation that has been passed, on the basis that it is inconsistent with the principles laid down.

**Should the Treaty of Waitangi be incorporated into the constitution?** If we had a constitutional document that could be reset periodically (as described above) I would support incorporating some sort of Maori strand into it to see how it then played out.

However, like many New Zealanders, my desire to see our Maori culture acknowledged in our constitution is mingled by uncertainty as to how it would actually play out in terms of the social outcomes it would give rise to. Therefore I would not support the inclusion of a Maori strand, unless there was opportunity to reset if the practical outcome was undesirable.

I find the wording of the Treaty of Waitangi itself to be difficult and unclear. (Its meaning needs to be extrapolated by Courts and there are arguments over translation.) Therefore I would rather incorporate specific concepts taken from the treaty into the statement of values document, rather than the actual content of the Treaty itself. The Treaty would of course continue to exist in the background as a force exerting soft pressure on how society operates.

What else should be incorporated into a constitutional document? There should be a stated commitment by Government to continuously improve and facilitate the ability of citizens to participate in democratic processes as technology improves, so that we can be sure that further enhancements to what is technically possible are actually implemented in a timely manner.

There should be a commitment to uphold the rule of law nationally and abroad.

There should be a commitment to adopt standard laws wherever appropriate on matters that impact on global systems.

What other changes should be made to the Constitution? There should be tighter rules around when the House can go into urgency, with possibly an independent adjudicator to decide whether there are is good reason for urgency.

There should be consideration given to using telepresence technologies in lieu of physical appearances in Parliament and Courts.

How long should the electoral cycle be? I would support a longer cycle of 5 years. There is significant disruption to the business of Parliament every election. Further, it is very rare for any Government to be ousted after one term, indicating that we are having to revalidate too soon. A five year term would be sufficient to lock in a set of constitutional rights for.

## APPENDIX 2 –SUGGESTIONS FOR NEXT STEPS

There are two distinctly different strands to the constitution conversation. One strand is about making amendments to essentially the same operating model e.g. How long should the electoral cycle be? How many MPs should we have in Parliament? The other strand is more open ended and contemplates very far reaching rethink of how the constitution works. These two strands should be treated differently.

For the operational changes, I would suggest conducting a broad survey using questions and sending it to businesses and schools (for distribution to employees and parents). Then based on the data, CAP should be in a position to recommend some immediate improvements for an appropriate agency to take forward and recommend as Bill to Parliament.

For the complex strand I would recommend:

Publishing a paper that sets out common themes and interesting ideas for further comment.

If possible, it would be good to establish a number of virtual (say 3 or 4) constitution models and then test/role play how they might play out against scenarios that they are challenged with (some

real and some made up). Reactions to that testing may then provide a basis for preferring a particular model and ultimately for choosing one to put forward for debate in Parliament followed by a referendum if it is to be put into effect.



2468.

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 9:22 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>

Full Names: Graeme & Robyn Hains Organisation Name: N/A Email:  
: Phone: Postal AddressA: Postal  
AddressB: Postal City: Postal Region: Bay of Plenty Postal Post Code:  
Postal Country: New Zealand Submission: For many years NZ has developed as a society of  
equality and fairness and we oppose any law change promoting racial division. It will help nobody,  
least of all those it is aimed at.

We reject any reference to the Treaty of Waitangi or its principles in any constitutional document and  
request that such references are removed from all existing legislation.

We ask that race-based Parliamentary and local body seats be abolished.

Thank you

Sent on the 4 July 2013 at 09:21



4357

**From:** Gale Hainstock  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 9:34 a.m.  
**Subject:** Submission to Constitution Conversation  
**Attachments:** Constitution conversation.doc

Hi, please find attached my submission. Thank you for your time.

Kind Regards  
Mrs Gale Hainstock

Nelson



## Submission to Constitution Conversation

**Tēnā koutou**

**Ko Wyvern 1856/Chariot of Fame 1862 te wakas**

**Ko Aoraki te maunga**

**Ko Matakītaki te awa**

**Ko Ngati Airihi te iwi**

**No Akaroa toku whaea**

**Whakatu ahaue e noho ana**

**Ko whāereere tuaono whakatipuranga**

**Ko Gale Hainstock toku ingoa**

Ki ōku nei whakaaro e koekoe te tūi, e ketekete te kākā, e kūkū te  
kererū. Kia māhaki, tangata takahi manuhiri he Marae puehu.

Haere tīkina he kāheru ki a au, notemea he pai kē kia tangohia nga  
kono i te aho i mua i te maroketanga nāna i tuitui nga iwi hai tauira  
whakakotahi

(Excuse errors in translation please)

In my opinion the tui chatters, the parrot gabbles, the wood pigeon  
coos. Be humble, do not flaunt your knowledge, the person who  
mistreats his guest has a dusty Marae.

Go and get me a spade because it's best to get the knots out of the  
fishing line before it dries out, and thread the tribes into a  
harmonious pattern.

### **What are your aspirations for Aotearoa New Zealand?**

To be a self-sufficient and debt free Commonwealth nation where, to the best of our  
capacity, our citizens are content and able to live out their lives within the axiom  
'harm none do what you will' - to be a truly egalitarian society please.

For those who are elected every three years to represent our people and our land, for  
them to lay aside their private animosities and pour oil on the waters of division,  
separatism and elitism so we can go forward as one people sound in our history and  
strong in our Turangawaewae.

### **How do you want our country to be run in the future?**

*Politically* as it is now but lets have binding referendums please. Although I  
preferred first past the post as a representation of the majority of voters it seems those  
days are past and we are now have 'king makers' and deal breakers, from the smallest  
minorities, cest la vie it is the will of the people. However along with the other  
81.5% of the population I would like to see the number of MPs dropped back to 99,  
with all the belt tightening and downsizing everywhere else it seems to me that  
Parliament should lead by example.

*Educationally* – free Cambridge exam options for all schools - they inspire  
achievement for those who wish academic achievement and provide global  
recognition. Follow the democratic schools lead and enable our tamariki to thrive –  
free education for all our citizens would be Shangri-La.

*Society* – Provision for dignity in old age, people now who have paid taxes all their lives are being told the goal posts have moved. Their taxes should have paid for their retirement too, not fair that ‘the aging population’ is getting blamed for ‘increased burden on the taxpayer’ they paid their dues. We have a right to a decent standard of living once we become super annuitants too.

*Taxwise* – Remove GST from Council Rates, all food and books (aka the English system) - its double dipping and unfair that Government is making money off the basic necessities of life - if the English with 60million people can make it work so can we.

*Sustainability* – For us to follow the Norwegian example and own our own oil and gas fields then we wouldn’t have to worry about our burden of debt ever again and we can become self sufficient. I would like us to be akin to a South Pacific Switzerland not getting blown in the breeze politically by whoever is in town or wherever the Prime Minister happens to be at the time or what China or the US want from us. Find a clean way to use the 20,000 years worth of coal we’re sitting on and give the boys down the coast their jobs back (oh and fair retribution for the loss of their loved ones commensurate with other ‘accidents in the workplace’ dignity please). Stop foreign ownership of our land, New Zealand Citizens only, and to become a New Zealand citizen other passports (apart from Commonwealth) must be revoked.

### **Do you think our constitution should be written in a single document?**

#### **Why?**

No, NZ does not require one (as we are a Commonwealth country and I wish us to remain so) because:

- It was agreed to give the Queen 'te kawanatanga katoa' ‘the government of the land’ in the Treaty of Waitangi<sup>1</sup> – so the Treaty makes us Commonwealth.
- Commonwealth is defined as “a voluntary association of independent states in the business of promoting democracy, good government, human rights and economic development”<sup>2</sup> and that sounds pretty good to me.
- Our constitution is based on a collection of statutes and conventions including: Constitution Act 1986, the New Zealand Bill Of Rights Act 1990, the Electoral Act 1993, the Treaty of Waitangi and the Standing Orders of the House of Representatives<sup>3</sup>. That’s a lot of Statute to cover every eventuality that a ‘single document’ would not.
- Under our constitution Parliament is Sovereign. Parliament represents the whole population of New Zealand therefore we are a people governed by the people already and get great benefits by being a Commonwealth country too and not just another island republic in the south pacific with its own constitution that means nothing on the world stage.
- Plus we get to attend the Commonwealth Heads of Government, Commonwealth Games and other such events which our elite athletes, politicians and other representatives enjoy attending.
- Plus as a Commonwealth partner we enjoy a 50% trade advantage over non-member countries<sup>4</sup>.



1. [http://news.bbc.co.uk/2/hi/europe/country\\_profiles/1554175.stm](http://news.bbc.co.uk/2/hi/europe/country_profiles/1554175.stm)
2. <http://www.nzhistory.net.nz/politics/treaty/read-the-Treaty/differences-between-the-texts>
3. <http://www.justice.govt.nz/publications/global-publications/t/the-new-zealand-legal-system>
4. <http://www.thecommonwealth.org/news/34580/34581/230349/300910tradese-minar.htm>

**Do you think our constitution should have a higher legal status than other laws (supreme law)? Why?**

No, this Statute should not have higher legal status. With the exception of the Bill of Rights (1990), which is the 'supreme law', all other statutes are equal in their power, they are laws, which govern our country and make it what it is. The Constitutional Statutes are central and that's the way the system works and works well for benefit of all our citizens. We have one of the least corruptive legal systems in the world, please use the adage that since 'it isn't broke don't go trying to fix it'.

**Who should have the power to decide whether legislation is consistent with the constitution: Parliament or the Courts? Why?**

Parliament - because it is Sovereign. An integral feature of our legal system is the separation of powers among the three different branches of government (Legislature, the Executive and the Judiciary). This division of power seeks to ensure that no one branch can act unconstitutionally. Parliament is sovereign and our electoral system tends to keep Ministers honest I hope. Therefore it is for Parliament to decide upon consistency with our Constitution, during the process of creating statute law. It is for the Courts to apply the law only, with the exception of the Privy Council in London for final appeal to perceived judicial injustices.

**Does the Bill of Rights Act protect your rights enough? Why?**

Yes – because if it is adhered to and the Attorney General does his/her job well then we will continue to live in a free and democratic society.

**What other things could be done to protect rights?**

Educate, educate, educate<sup>1</sup>

1. <http://www.cyf.govt.nz/info-for-kids/your-rights.html>

**Do you think the Act should have a higher legal status than other laws (supreme law)? Why?**

Yes I think the New Zealand Bill of Rights Act (1990) should have a higher legal status and be deferred to by all other Statutes because and I quote the Human Rights Commission website "The New Zealand Bill of Rights Act places limits on the actions of those in government (including government departments, the judiciary, state-owned enterprises and local authorities) that interfere with the rights of individuals. The Bill of Rights Act also protects the rights of non-natural persons, for



example, companies and incorporated societies”.

**Who should have the power to decide whether legislation is consistent with the Act: Parliament or the Courts? Why?**

To repeat myself - Parliament - because it is Sovereign. An integral feature of our legal system is the separation of powers among the three different branches of government (Legislature, the Executive and the Judiciary). This division of power seeks to ensure that no one branch can act unconstitutionally. Parliament is sovereign and our electoral system tends to keep Ministers honest I hope. Therefore it is for Parliament to decide upon consistency with our Constitution including the Bill of Rights (1990), during the process of creating statute law. It is for the Courts to apply the law only, with the exception of the Privy Council in London for final judicial appeal.

**What additional rights, if any, could be added to the Act? Why?**

Human Rights should apply on-line; recently Brazil has formulated an Internet Bill of Rights<sup>1</sup>. Some of the articles could apply and formulate an addition to the Bill of Rights for the New Zealand Internet. However of most importance is ensuring the Bill of Rights Act is adhered to within all other statutes including the current GCSB legislation<sup>2</sup> currently before Parliament.

1. <http://www.article19.org/resources.php/resource/3389/en/brazil:-civil-rights-framework-for-the-internet>

2. <https://internetnz.net.nz/news/blog/2013/Prepared-Statement-InternetNZ-Intelligence-Security-Committee-GCSB-Bill>

**Thinking of the future, what role do you think the Treaty of Waitangi could have in our constitution?**

The Treaty of Waitangi was signed in 1840, as an agreement between the British Crown and a large number of the Maori of New Zealand (albeit only North Island Maori to be a pedantic and parochial Mainlander). Today the Treaty is widely accepted to be a constitutional document anyway, which establishes and guides relations between the Crown in New Zealand (as embodied by our government) and Maori. The Treaty of Waitangi had at its heart a promise to protect a living Maori culture; to enable Maori to continue to live in New Zealand as Maori, while at the same time conferring on the Crown the right to govern in the interests of all New Zealanders.<sup>1</sup>

Maori represent only 15% of our population, yet our culture is now steeped in Te Reo and hybrids of ancient traditions and protocols, which makes us unique in the world and that's great. However to take the step further to encourage extremist thoughts of Maori Sovereignty and the newly current practice of having to cede every idea/decision/change in the way things are done, be it by-laws to Statutes by 'having a conversation just with Iwi' before commencement of any project is quicksand. This isn't in the best interests of all New Zealanders.

Everyone has a right to speak on laws/by-laws/judgements before they become final. I do not condone Maori/Hapu/Iwi having "first refusal" as appears to becoming the case for the Executive arm of our legal system before commencing any reviews of by-laws for example. Parliament is Sovereign - it represents the entire population of this country and acts in the best interests of *all* our people (depending on who is electing whom of course). The Executive arm – our public servants and Councils, enforces and administers the Acts, The Treaty ceded government of the land to the Crown, fait accompli, not "lets have a hui about it first then we'll let you know if you can go ahead and review the laws Ms Public Servant".

1. <http://www.justice.govt.nz/publications/global-publications/t/the-new-zealand-legal-system>

**Do you think that the Treaty should be made a formal part of the constitution? Why?**

To follow on from the previous paragraph, in answer to this question. No. I oppose any laws that establish or promote racial distinction or division. To further entrench the Treaty within our current constitutional arrangement would only fuel greater dissent from the majority and to quote Judge Anthony Willy "It has been demonstrated repeatedly in other countries, which do not enjoy a truly representative system of government that this will lead to widespread resentment and given the necessary spark will lead to civil unrest. *This is particularly so of New Zealand which historically has presented as a truly egalitarian society having its settler roots in rebellion against unrepresentative ingrained privilege.*"

I include the above quote because I'm Irish and I remember how much my Great Grand Aunt hated Cromwell, he took our hereditary lands in County Meath left us dispossessed and starving - we didn't come here to repeat history. Some did obviously (probably not Irish), but not all non Maori settlers were gun toting redcoats, my ancestors just settled in Akaroa, worked together with the locals to make a life together in peace, my Great Grandad drove a bullock train delivering stuff to and from ChCh and round the Peninsula and my Grandad worked for the local Council, I've been a public servant for the majority of my life, we've all worked for the good of all – not just the few.... and if the few decide they want to have it over the many well that's just Feudalism and belongs in the dark ages not the 21<sup>st</sup> century.

So I agree with the premise that it is out of the question that our constitution should recognise and enforce racial distinction. That would forever condemn our country to a future of racial division and I don't want my great great great great grandchildren to inherit a civil war because right now 1% of the 15% of the population want to 'rule/be sovereign over' the other 99%. Really it would be nice in the future if the Treaty was just revered as one of our founding historical documents for peace in this beautiful country not a 'flag' to be burnt or shot through in 250 years time.

In a constitutional context The Treaty of Waitangi has served its purpose by transferring government over New Zealand to the British Crown. That is a done deal, and therefore that element of the Treaty has expired and has no continuing force. The obligation of the Crown to act toward Maori with justice and good faith remains and it does - it bends over backwards and jumps through hoops on a daily basis as I see it.



But the old language of separatism remains, and some it seem wish to keep it that way. Of course they are welcome to their beliefs and to live their lives as they choose, just as I am privileged to live in free democracy where I can say well no, I think that is of the past and I choose a more inclusive society. South Africa came from a separatist society and didn't we protest apartied - all of us. Now we have separatism appearing here all over the place, separate schooling, calls for separate parliament, separate justice etc. Nelson Mandela fought so hard to unite all his people, and yet here are cries to defer to Maori in all things (akin to the minority Dutch rule in South Africa), some want to make us the majority live under the yoke of a separatist minority society apparently, I don't want us to do that.

I appreciate what everyone has put in the basket of knowledge from our history and too little of our Celtic history is left to dust, too many of our early stories are 'not for the public eye anymore' our language and the way we raise our children has changed. More Pakeha are learning Te Reo than their Maori counterparts and the poor, the underprivileged and dispossessed include more Pakeha than ever its 'white' kids going to school with bare feet as well - its white kids getting bullied by Maori kids – will a constitution change that? Will embedding the Treaty into any constitution change that? I don't think so I think it will make things worse.

Our future way lies in how we educate and care our children and I for one will be making sure my daughter knows our history here, that she raised with love, security, support and all rights in my power to give her. I just wish more effort and tax dollars was put on protecting our children, our tamariki instead of just endeavouring to indoctrinate them in a history that has been sanitised in sepia tone – we *all* made mistakes, we all regret them now can't we just move on and enjoy the culture we have now and count our blessings we don't live in Iran, Syria or Egypt these days, please?

#### **How should Maori views be represented in Parliament?**

By election of MPs who may be Maori in the general election. Because Maori MPs currently represent 18.9% of sitting MPs anyway, and presumably they are promoting their views as Maori while they are working for their constituents who elected them.

#### **How could Maori electoral participation be improved?**

By abolishing the Maori Electoral Roll and Maori seats, which are separatist (reminds me of apartied South Africa its appalling) and no longer required, given current representation by Maori descendents in Parliament. Subsume the current Maori Seat MPs into whichever party they currently represent. With everyone on the General Roll, everyone knows what's going on there's no confusion as to what roll to be on and can vote together to elect the Parliament we all want.

Spend more time educating Tamariki in primary school the role of Government as a body representing all New Zealanders and that their participation counts, the kids teach the parents (well nag the parents) to go. Have resources around Children's Bill of Rights, UN Bill of Rights etc...children are the voters of the future – good things take time.

#### **How should Maori views and perspectives be represented in local government?**

By election of Councilors who may be Maori in the local body elections.

**How many members of Parliament should we have? Why?**

99. As previously mentioned along with the other 81.5% of the population (88% the referendum before that I think) I want the number of MPs reduced to 99 how many times do we have to tell Parliament to make the change? With all the cost cutting, public servant stripping and belt tightening, MPs should be leading by example. It borders on corrupt that with even with overwhelming public support to decrease MPs twice - there is no change – what is the point of holding a referendum if it is not binding. Dropping 21 MPs would save \$m of our hard earned tax dollars.

**How long should the term of Parliament be? Why?**

3 years. With no Upper House or Citizens' Veto of unacceptable legislation, holding elections every three years is the only way of holding the government to account. Unless New Zealand's Upper House of Parliament - the Legislative Council is reinstated.

**How should the election date be decided? Why?**

Status Quo, because its nice to have election days on Saturdays, and surprises and snap elections are good too.

**What factors should be taken into account when the size and number of electorates are decided? Why?**

Currently the process for deciding the number and size of electorates is based on the South Island always having 16 electorates. After each five-yearly census, the Representation Commission divides the number of people living in the South Island by 16, to get the "population quota." I think that's fair enough; again if it isn't broken don't fix it.

**What should happen if a Member of Parliament parts ways with the Party from which he or she was elected? Why?**

Compulsory by-election - because the person was elected as a representative of a party - if they no longer are a member of that party then the constituents should have the right to choose someone else to represent them from that party or to vote for that person to remain their independent representative, it's the peoples right to choose the representative for their electorate under the Electoral Act. If the incumbent loses then he/she is out of parliament.

**The Panel may report on other topics if there is sufficient public interest.  
Do you have any other comments or suggestions about New Zealand's constitution?**

No, I think I'm done.... well you wanted a conversation ;o)..... did I mention my Irish loquacity? I thank you for the opportunity to research to compile this my submission on behalf of my ancestors. I have learnt an immense amount. I wish the panel well in its deliberations and reporting and look forward to the outcome of this 'conversation', in the hope that the majority views will prevail.

**No Reira Tēnā koutou, Tēnā koutou, Tēnā koutou katoa**

References:

The World Wide Web Google Search engine (data mining hence the spade) including pages from: The Maori Party, The Mana Party, Ministry of Justice, Learning Media, Maori Dictionary, Rangahau, NZCPR, InternetNZ, Te Ara, NZ Human Rights Commission, Child Youth and Family, The Commonwealth.org, and the United Nations.



1798

R G Hainsworth

**WANGANUI**

15 June 2013

The Secretariat  
Constitutional Advisory Panel  
C/- Ministry of Justice  
DX SX10088  
**WELLINGTON**

**SUBMISSION ON THE PROPOSED CONSTITUTIONAL CHANGE**

My submission is attached for your genuine deliberation and consideration please.

Yours sincerely

R G Hainsworth

## **PROPOSED CONSTITUTIONAL ISSUES/CHANGE, INCLUDING MAORI REPRESENTATION**

I have read the *Terms of Reference* document for the Constitutional Advisory Panel, arising out of the Relationship and Confidence and Supply Agreement (2008), between the National Party and the Maori Party. And while I appreciate the opportunity to make a submission for incorporation into your findings and report, I must never-the-less at the outset, state my distrust at the inherent agenda and precarious potential for the minority, elite faction to gain increased and disproportionate political influence and control in New Zealand, by this process.

Therefore, at the beginning of my submission, I make this paramount, non-negotiable statement:

**Any suggested Constitutional change must only be made and implemented after full and real, nation-wide consultation and debate, followed by fair, proper and binding public referendum.**

\* \* \* \* \*

## **SPECIFIC QUESTIONS**

Specific questions have been raised for public debate and consideration, as part of the 'Constitutional Review'. My responses are set out below and are then followed with a number of measured comments that I ask the Constitutional Advisory Committee to seriously consider, endorse and convey to the political factions promoting this initiative.

### *Written Constitution*

**The present constitutional procedure consisting of written statutes, conventions, and common law rights, serves New Zealand satisfactorily so there is no need for a formal, documented constitution.**

#### *Comment:*

The present system works satisfactorily so the maxim "if it aint broke, don't medal with it", must prevail.

As a justification for adopting a written constitution, undue emphasis has been placed on the fact that NZ is one of only a few countries that does not have a written constitution. Please consider that while the USA has a prominent, written constitution, the UK does not; in my observation, this proves neither one nor the other of those big countries better governed than the other. And further, in a number of countries throughout the world that do have a written constitution, their respective government takes little or no heed of the written commitment to various responsibilities and rights stated within their respective constitution and consequently, many inhabitants live in depravity and continual fear! So, what is the tangible purpose of a written (New Zealand) constitution?

### *The Treaty of Waitangi*

**There is no place for the Treaty of Waitangi within modern constitutional arrangements.**

#### *Comment:*

The Treaty of Waitangi is an historic, British/Maori negotiated agreement – it has no place within New Zealand constitutional arrangements today.

The Treaty of Waitangi has repeatedly and improperly been advocated as a means to improperly extract moneys from successive NZ governments. For too long now it has been defended as justification for, initially Britains' and more latterly New Zealanders, to be coerced into paying fiscally to off-set continuing and repetitive, questionable claims. Any such on-going valid claims presented are rightfully for the British to consider/pay out on – they are nothing to do with the New Zealand government of today. [It should not readily be forgotten that it was that same British government, of the time, that allowed the deprivation, starvation and reckless and negligent forcing out of their home country, the forebears of so many New Zealanders living in, and positively contributing to, this country today!].

So-called Treaty of Waitangi claims paid out on over the past 150 odd years have been (at the time of claim), agreed as full and final claims. And yet, repeatedly, additional new claims have been presented and paid out on. Successive NZ governments have so squandered NZ resources – and those transferred resources have not even reflected in improved health, living conditions or social advance in the overall claimant population.

The government must put an immediate stop to this biased and unfair on-going practice of robbing New Zealand's resources to meet the on-going invalid claims of this one particular privileged race of people. **Instead**, sincere attention must be given, and appropriate resources allocated, to issues such as: stopping the prevalence of abuse and violence in family homes; failing health, country-wide – obesity; the escalating incidence of diabetes in particular; and other multiple health issues; unemployment and the unemployable (lack of personal initiative and motivation), proper parenting, etc, etc, etc - these are just a sample of priorities for the country's prime commitment and resourcing. Causes of these concerns must be identified and fair and proper strategies established that will bring about necessary change/improvement.

#### *Number of MP's*

**The number of MP's should be decreased.**

#### *Comment:*

The past 30 years in NZ have seen severe retrenchment, re-organisation and re-structuring in the departments of all sectors of government. This has also been reflected in business enterprises throughout the country. Now, it is timely for such retrenchment in government/politics. Recognising the technologies now available, the whole process of governance/parliament could and should be similarly 'cut back to size'. Indeed, a recent national referendum gave majority support for a substantial reduction in the number of MP's - nothing has happened!

To achieve this, the "list" system of members in parliament, which is not democratic, should be abolished. We need people of practical experience who are democratically ELECTED to parliament (as against career academics who 'sneak in by the back door', at times even after being declined the support of an electorate). Such 'appointed' MP's are so often nobbled by the limited, narrow bureaucratic education and then government systems they have been exposed to; they lack crucial experience and practical understanding.



#### *Length of Term of Parliament and Timing of Elections*

**The Parliamentary term should remain at 3 years and the election date should stay flexible as at present.**

##### *Comment:*

In an ideal world, a longer term of government could be desirable, however, the present 3 year term encourages more accountability of the government, to the electorate – a critical element in these times when government is not too inclined to listen to the wishes of the people, but to follow its own political agenda.

The flexible election date appropriately provides flexibility within that 3 year term, for the Prime Minister of the time to act – as a statesman, in accordance with circumstances prevailing.

#### *Electoral Integrity Legislation*

**There should not be a need for electoral integrity legislation.**

##### *Comment:*

Having said that, experience shows otherwise! So firstly, as I've previously said, abolish the list MP system. We must bring back democracy ie. electorate elected MP's only. And when the electorate elects an MP there is surely an implicit contract: do the job for the full 3-year term as elected to do; or break the (inherent) contract and resign and get out altogether, making way for a proper by-election. Surely, that does not require legislation – just simple honesty and personal integrity?

#### *Size and Number of Electorates*

**The number of electorates in the South Island should remain the same. The number of electorates in the North Island should not necessarily continue to increase with increasing population.**

##### *Comment:*

With declining population in the South Island, it is never-the-less necessary to retain the long established criteria for representation in parliament for that large area of the country ie. 16 electorates. However, with increasingly smaller numbers of people in each of those South Island electorates, North Island electorates do not need to reflect those same numbers. More densely populated North Island electorates should quite adequately be able to be represented by their respective MP. Modern technologies have greatly improved communication for both more sparsely, and densely populated electorates, irrespective of geographics. Therefore, the method of calculating the size of North Island electorates needs to be modified so that overall, a considerably reduced number of MP's prevails.

#### *Maori Representation – Maori Seats in Parliament and Local Government*

**Abolish the Maori seats in Parliament. Separate racial representation is unacceptable. Certainly, no other nationalities are separately so represented (and should not be).**

##### *Comment:*

No one race should have special treatment. All peoples in this country must live under one law and share equal representation for governance. All must equally contribute to, and subsequently reap benefit from services provided. There is definitely no place for a separate Maori roll and so it and the resultant Maori MP positions should be abolished. The same must apply in local government.



### *The Bill of Rights*

**Leave it as it is – it should not be entrenched and the protection of property rights need not be included.**

#### *Comment:*

I cannot identify justification to change the existing legislation.

**Consequently, in concise summation of the above, I fully support the *#Declaration of Equality* and ardently commend it for enactment by Parliament** (and I have accordingly signed the online petition supporting this initiative).

**# "We New Zealanders of all backgrounds, having founded and developed our society in equality, fairness and comradeship, oppose any laws which establish or promote racial distinction or division.**

- 1. We reject references to the Treaty of Waitangi or its principles, in any constitutional document.**
- 2. We ask that such references be removed from all existing legislation.**
- 3. We ask that race-based Parliamentary seats be abolished.**
- 4. We ask that race-based representation on local bodies be abolished.**
- 5. We ask that the Waitangi Tribunal be abolished.**

**Therefore, in the interests of New Zealand we call on the members of the House of Representatives to implement the principles of this Declaration of Equity to ensure that there is one law for all.**

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### CONCLUSION

In the whole scheme of things seriously needing attention here in New Zealand at present, I have to ask: *what is the true priority for this fatuous, politically motivated, intellectual notion of adopting an unnecessary written Constitution?* So many urgent, down-to-earth and sensible issues need to be addressed instead of such academic and dangerous brinksmanship.

I firmly believe that at this time of severe economic challenge and resultant need for stringency, there is absolutely no place for tax-payer funded elitism and wasteful academic ponderings on such impulsive, politically motivated notions. This initiative will not serve our country. Indeed, as a result of its promotion, there are already clear indications of increasing divisiveness and disgruntlement manifested as a result of material published to support the initiative!

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### EXAMPLES OF NECESSARY IMPROVEMENT

As referred to at the outset, I now set down just some examples to where Nation-wide improvement should be focussed:

Statesmanship/Leadership – in today's environment, the existing political party system, combined with MMP, inculcates a culture that deters these vital qualities. Our politicians spend too much of their time and energies placating other political parties, to win their favour

and support, in a continuing effort to retain/strengthen their own power base. Important issues are too often simply ignored, overlooked, by-passed, or 'watered down'.

Compulsory Voting - I promote serious consideration of the introduction of compulsory voting to secure government that truly reflects democracy: the wishes of the population as a whole. (Among other contemporary initiatives, modern technologies should enable ease and practicality of also voting online.)

'Political Correctness' - there is an urgent need to deal to the so-called 'politically correct' society we have become in New Zealand in recent years. Rights of the individual have become paramount, with scant regard given to the responsibilities that must first earn those rights (as a society, we seem to have ignored the reality that for every right, there are at least two responsibilities). A decent society acknowledges responsibilities first, before claiming any rights, but this decree is now generally ignored as we sink deeper into a dangerous and weakening welfare society. Clear priorities should be brought into our everyday living eg. family responsibility for children – it seems that so often adult 'wants' take priority over family 'needs'; pets are so often reared and fed before people ("child poverty"); the core roles of both national government and local government are 'lost sight of' while grandiose 'wants' take precedence over (perceived as more mundane) 'needs'; the personal behaviour of politicians in parliament too often reflects lack of responsibility for the position they hold - as a population, we should be able to expect statesmanship and soundly considered leadership and example from our democratically elected MP's.

Archaic Traditions - without denying (an albeit **substantially reduced**, with reasonable perspective), place for tradition, antiquated symbolic traditions should no longer take precedence and rule the way we govern, manage and present as a country in this modern age. As a forward looking, united and broadly multi-cultural country we must recognise that we live in New Zealand in this modern age: *today*. Our protocols, behaviour, the image we present to ourselves and the world, and daily living practices must be brought to reflect our **present modern country**, without obsolete traditions (religious, ethnic - English and Maori etc, etc.), prevailing over common logic, rationale, statesmanship and responsible leadership. For sure, we learn from the past, but it is essential that we live in the *New Zealand* present, look to the future and set goals and make our endeavours, directed to the future. Ancient traditions have no place in the way we manage ourselves and our country today and into the future. This habit of forever looking back is dragging us backwards!

Parliament - the whole operation of our parliament needs to be brought up to date and made more cohesive: we need to move beyond the combative and confrontational style of party politics that wastes time, energy and opportunity - a system where the population can more directly have input into who is elected Prime Minister and then the Prime Minister appointing the 'best elected member for the job', (regardless of party – free from party politics). We must have politicians with knowledge, experience and expertise to take responsible leadership for specific governance functions.

The full presence of members in parliament should be a requirement. What purpose can the (so called) debating system serve if not all politicians attend and take opportunity to participate in the full process? And so in the end, how can they really know and fully understand what is being voted upon and therefore how best to vote, in the interests of New Zealand? This is a negative result of the 'party' system, where regardless, members of each specific party are required to 'tow the party line' and vote accordingly. Not good governance!

Pay for Politicians – politicians pay should be set by the same body/organisation as for all workers throughout the country and accordingly, increases from time-to-time, should be equally/fairly reflected in all wages/salaries throughout the country.



Debt - Government (and indeed, also personal) debt must be addressed/drastically reduced as a key issue to be dealt with so that we can become masters of our own destiny, as a unified nation. Internationally, dire messages are plainly evident – we must heed this and act urgently to avoid the downfall that presently confronts many European countries that have continuously ignored growing debt.

Banking and Contracts - ever so importantly, the question needs to be satisfactorily answered and addressed: why does the New Zealand government, and indeed local bodies, not bank with New Zealand banks? We are enslaved to overseas banks that are draining our country of our domestic earnings! Similarly, more rational consideration needs to be given to awarding government and local body contracts to suppliers/contractors within New Zealand, to ensure retention and development of our domestic skill-base, domestic employment, and government (taxation) income.

\* \* \* \* \*

**So to close, I say it is time to establish sound and up-to-date priorities for our country – the introduction of an unnecessary written Constitution is certainly not one of those priorities. There is so much to be done to improve the life of so many in New Zealand. Please let our governance get on with establishing a sound framework for that to happen.**

✓ R G Hainsworth

June 2013

4961

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 26/07/2013 2:34 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Angela Hair Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City:  
Postal Region: Hawke's Bay Postal Post Code: Postal Country: New  
Zealand Submission: I think there should be a single Constitutional document that embraces the  
Bill of Rights, Constitutional Act and Treaty of Waitangi.

We have all arrived as travellers, some coming many years before others. New Zealand has a unique essence which comes from the first travellers to arrive. We should continue to celebrate Maori and Moriori arrival through appropriate place names and embracing Te Reo as our unique language.

The injustices of the past need to be recorded as an appendix to our founding documents and the mitigation that have been negotiated through various Treaty Agreements, also recorded.

Our future needs to embrace the intelligence, emotional, creative and physical resources of all the peoples that call Aotearoa home.

Sadly our recent history has seen the disempowerment of many people who once had land, access to resource and cohesive community to manage those resources.

Our document needs to protect people from the abuse of global industries that seek to strip resources and leave chaos behind them. The recency bankrupt city of Detroit is a clear example of this exploitation by powerful industry.

The greatest challenge facing the world is Climate Change and we need to embrace the concepts of resilience, collective responsibility, and sustainability. Our founding document could contain aspirational statements such as these, to direct our future.

Unless we work together to reduce our reliance on fossil fuels and sequester carbon through forestry and farming, our survival is threatened.

I see our founding document as both inspirational setting the compass for the future and a record of



where we have come from.

The ability for citizens to challenge, through the courts, the political decisions of government that do not uphold the long term survival of our unique culture and our physical resources, is also important.

Submitted on the 26 July 2013 at 14:33

142

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/04/2013 9:54 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: reece james haire Organisation Name: private Email:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: auckland Postal Region: Postal Post Code: Postal Country: New  
Zealand Submission: the treaty of waitangi is being misused by the maori people claiming land and  
all things of value brought to this great land for there own personal gain not for the advancement of  
the nation !!!!!!! i would like to see the treaty scraped and replaced with  
a constitution so i am no longer a forgeiner in my own country

Sent on the 9 April 2013 at 09:53

142a

**ConstitutionalReview - <http://www.ourconstitution.org.nz/> form submission**

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**From:** [constitutionalreview@justice.govt.nz](mailto:constitutionalreview@justice.govt.nz)  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 10/04/2013 9:42 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

---

Sent from The Constitution Conversation.

**Full Names:** reece james haire

**Organisation**

**Name:**

**Email:**

**Phone:**

**Postal  
AddressA:**

**Postal  
AddressB:**

**Postal City:** auckland

**Postal Region:**

**Postal Post  
Code:**

**Postal  
Country:** New Zealand

**Submission:** i would like to know how this constitution can be made as my country in effect is still part of the commonwealth and has never declared independance from ENGLAND. i am a nz european and view this as an avenue for the moari activists to claim more of my country that my fore fathers paid and obtained with all legal rite,fought wars to protect,and give me the freedom i enjoy today.

Sent on the 10 April 2013 at 09:41

4110

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**CC:**  
**Date:** 29/07/2013 9:34 p.m.  
**Subject:** Constitutional Review  
**Attachments:** Constitutional Review.docx

Kia ora anei nga whakaaro

Te Aranga Hakiwai



## Constitutional Review

29/07/2013 by Te Aranga Hakiwai of

, Waipukurau ,

I dream of an Aotearoa / New Zealand in which the Treaty of Waitangi has been constitutionalised into the waft and woof or fabric of the socio-political landscape. This would mean that New Zealand would become an independent Republic with all the covenants of The Treaty written into binding law and jurisprudence.

My hope and vision for Aotearoa from 2014 onward is of a nation which honours the rights of Maori , Women , Children the differently abled the mentally ill the aged and prisoners and refugees. I further hold that no person shall be discriminated against because of their sexual orientation , preference or ambiguity. It is of a Nation or Republic which contributes to international eradication of the exploitation of women and children through employment practices and trafficking .

The Constitution makes explicit a code of principles practices and political tenants which uphold the rights of all citizens to life liberty and the pursuit of happiness akin to the USA Constitution.

The future leaders must have the integrity and courage to continue to examine all that they hold dearest despite possible approbrium and alienation. My belief is that our legacy to our Grandchildren and subsequent heirs is of being visionaries with the courage of our convictions possessing faith in the unseen and belief in a theology or ideology which enables its citizens to find meaning purpose and hope in transcendent and immanent ultimate reality and truth.

4717

ID:

***LAWS 420 – Submissions to the Constitutional Advisory Panel 2013: Re Maori  
Representation in Parliament, The Maori Seats.***

**Jennifer Hale**

**ID:**

“Declaration: I have read and understood the University plagiarism policy. I declare that this assignment is entirely my own work, all sources have been properly acknowledged, and that I have not previously submitted this work, or any version of it, for assessment in any other paper”.

**Date: 24/05/2013**

**Signed:**

***Submissions to the Constitutional Advisory Panel 2013: Re Maori Representation in Parliament, The Maori Seats.***

**Submission:** provisions relating to the Maori seats as per the Electoral Act 1993 should be constitutionally entrenched. That is they should require a supermajority, 75%, support by the House of Representatives to be amended.

*1. Introduction*

The Maori seats have been an important aspect of Maori representation in Parliament since 1867. The Maori Representation Act 1867 provided for the establishment of four Maori seats in Parliament, one in the South Island and three in the North Island.<sup>1</sup> However the introduction of MMP and the enactment of the Electoral Act 1993 changed the number of Maori seats so that they became proportionate to and could fluctuate with the Maori Electorate population. As a result the number of Maori seats has gradually increased from four to seven seats.<sup>2</sup> There appears to be a common misperception that the existence of the Maori seats results in an unfair and disproportionately high representation of Maori in Parliament. Despite this, the special constitutional importance of the Maori seats and the role that they play in securing Maori representation in Parliament means that abolishing the Maori seats would only result in further disenfranchising Maori and potentially decreasing Maori electoral participation. This submission to the Constitutional Advisory Panel will argue that existence of the Maori seats, that is the provisions in the Electoral Act 1993 that relate to the Maori seats should be constitutionally entrenched. In support of the above argument this submission will discuss the history of the Maori seats, the negative consequences of hypothetically abolishing the Maori seats and the reasons behind why entrenching the Maori seats would give effect to the special importance of the Maori seats.

<sup>1</sup> Parliamentary Library Research Paper, *The Origins of Maori Seats* (May 2009) at 2-3, 6.; Andrew Geddis, "A Dual Track Democracy? The Symbolic Role of Maori Seats in New Zealand's Electoral System" (2006) 5(4) *Election Law Journal: Rules, Politics, Policy* 347 at 352.

<http://www.elections.org.nz/voting-system/m%C4%81ori-representation>

<sup>2</sup> Electoral Act 1993, s 45; <http://www.elections.org.nz/voting-system/m%C4%81ori-representation>

## 2. *Basis for Maori Seats*

### 2.1 *Origins of the Maori seats*

The origins of the Maori seats are rooted in the New Zealand Constitutional Act 1852 (NZCA) and the Treaty of Waitangi 1840. Section 71 of the NZCA stated that certain districts within New Zealand were to be set apart where Maori laws, customs and usages were maintained "for the government of themselves, in all their relations and dealings with each other", provided that they were "not repugnant to the general principles of humanity".<sup>3</sup> Article III of the Treaty of Waitangi 1840 affirmed the equality of Maori and afforded them the status a rights of British citizens.<sup>4</sup>

### 2.2 *The granting of franchise*

In 1853 the NZCA granted franchise for provincial councils and the House of Representatives to all males who owned or leased freehold land over a certain monetary value.<sup>5</sup> This did not disqualify Maori from voting however they were essentially excluded as Maori owned land communally and under customary title. As such, many Maori were unable to vote unless they individualised their land.<sup>6</sup>

### 2.3 *The Maori seats*

The initial voting qualifications discriminated against Maori participation in the electoral system. The Maori seats were initially established to resolve this problem. Parliament enacted the Maori Representation Act 1867 which provided for four set Maori seats in Parliament.<sup>7</sup> The original purpose behind creating the Maori seats was an inherently temporary one. The fact that the seats existed longer than they were intended to is partly

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<sup>3</sup> Parliamentary Library Research Paper, above n 1, at 2-3.

<sup>4</sup> Ibid, at 7.

<sup>5</sup> Ibid, at 3.

<sup>6</sup> Ibid, at 3, 5.

<sup>7</sup> Ibid



due to the fact that Maori took so long to individualise their land.

#### *2.4 The Maori electoral option*

The Maori electoral option is provided for by sections 76 - 79 of the Electoral Act 1993 and occurs every five years, usually coinciding with a census.<sup>8</sup> The Maori electoral option is a four month period which gives all Maori that are eligible to vote,<sup>9</sup> the option of choosing to enroll on the Maori electoral roll. Only those enrolled on the Maori electorate roll may vote for the Maori seats.

### *3. Hypothetical: removing the Maori seats*

It would seem that there is a general conception that the existence of Maori seats in the MMP system leads to a disproportionate representation of Maori in Parliament.<sup>10</sup> The thought is that there are too many Maori seats, and that Maori get 'too much' say in Parliament. Indeed, David Round argues that "[s]eparate seats are now unnecessary to secure effective Maori representation [...] They are a form of racial discrimination, no less so for being 'reverse discrimination' [...] they thus give a Maori party holding those seats an utterly disproportionate over-representation in Parliament."<sup>11</sup> This position leads to the conclusion that retaining these seats would be unfair and unnecessary: as a result, the seats should be either reduced or abolished.<sup>12</sup>

#### *3.1 Reducing the Number of Maori Seats*

Arguably, reducing the number of Maori seats is an untenable option as it would undermine the movement towards recognising that Maori seats should adjust with the population. This movement was borne out of desire to ensure a proportionate

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<sup>8</sup> Ibid, p 17.

<sup>9</sup> Section 3 of the Electoral Act 1993 provides a definition of 'Maori'.

<sup>10</sup> Murial Newman, "The Future of Maori Seats" *New Zealand Centre for Political Research Weekly*, 23 June 2008; Philip Joseph, *The Maori Seats in Parliament* (New Zealand Business Roundtable, 2008), at 17.

<sup>11</sup> Ibid, at 2.

<sup>12</sup> Joseph, above n 9, at 19.

representation of Maori: thus undermining this movement could arguably be viewed as denying proportionate representation to Maori.

### 3.2 *Abolishing the Maori Seats*

Abolishing the seats and merging the population with the general electoral population is a move that arguably many New Zealanders would support (see above regarding the purported unfairness and disparity of the Maori seats). This would be in line with the argument for 'One New Zealand' united and not divided along cultural, ethnic, or historical lines.<sup>13</sup>

Currently there are 16 general electorate districts in the South Island and 46 general electorate districts in the North Island as well as the additional 1 Maori electorate in the South Island and 7 Maori electorates in the North Island. Abolishing the Maori seats would require the Maori electorates to be incorporated into the general electorates to ensure that the size of each electorate is roughly the same. This would result in 17 electorates in the South Island and 54 electorates in the North Island and a total electorate population of approximately 56,936 people (based off the 2006 census data<sup>14</sup>).

The basis for doing so is the assumption that Maori can be effectively represented through the ordinary operation of MMP voting – i.e. that the operation of the electorate votes and party votes would ensure that the number of Maori Members of Parliament is proportionate to the Maori population of New Zealand. The Maori seats are, in short, superfluous: Maori therefore confront no barriers to effective representation under MMP.<sup>15</sup> The abolition of Maori seats is also supported by the idea that Maori seats can be viewed as a discriminatory privilege<sup>16</sup> and that the Treaty of Waitangi does not guarantee

<sup>13</sup> See for example the One New Zealand Foundation which on the 23 March 1995 proposed a citizen's initiated referendum on the question "Should the laws of New Zealand apply equally to all New Zealanders irrespective of ethnic origin?"

<sup>14</sup> Statistics New Zealand, *The Mathematics of Electoral District Allocation in New Zealand Based Off the Outcome of the 2006 Census and the Maori Electoral Option 2006* (January 2013)

<sup>15</sup> Joseph, above n 9, at 12.

<sup>16</sup> Ibid, at 14

separate Maori representation as a right.<sup>17</sup>

### *3.2.1 Positive Consequences of Abolishing Maori Seats.*

Theoretically, abolishing the Maori seats and merging them into the general electorate would be fair. It would provide for 'One New Zealand', and no division in voting power or perceived disparity between Maori and non-Maori votes. Maori are not being removed from the electoral districts; they are just being included in the normal electorates. Furthermore, there is a suggestion that Maori often do not regard themselves as being equal within society. Finally, abolishing would likely encourage the major parties to confront Maori issues in order to gain Maori voter support.

### *3.2.2 Negative Consequences of Abolishing Maori Seats.*

Despite the potential for major parties to deal with Maori issues in order to win Maori support, there is no guarantee that the major parties would ever follow through with Maori policies. This could encourage even more 'lip-service' towards Maori issues in order to win votes for each electoral cycle with very little reason to keep to those promises. This could leave Maori in 'limbo', never being able to fully identify or rely on major political parties.

Furthermore, there is distinct possibility that could be no 'Maori-centric' party (or parties) that would be solely or primarily concerned about Maori issues should the Maori seats be abolished. Currently the Maori Party holds four of the seven Maori seats with Mana and Labour holding the remaining three seats (one and two seats each, respectively).<sup>18</sup> The 2008 election saw broadly similar results: the Maori Party held five seats and Labour held two (the Mana party did not exist at that time).<sup>19</sup>

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<sup>17</sup> Ibid, at 17.

<sup>18</sup> Electoral Commission, *Official Count Results -- Electorate Status* (10/12/2011) available at [http://www.electionresults.govt.nz/electionresults\\_2011/electoratestatus.html](http://www.electionresults.govt.nz/electionresults_2011/electoratestatus.html)

<sup>19</sup> Electoral Commission *Official Count Results -- Electorate Status* (22/11/2008) available at [http://www.electionresults.govt.nz/electionresults\\_2008/electoratestatus.html](http://www.electionresults.govt.nz/electionresults_2008/electoratestatus.html) visited 24 May 2013.



Maori electorates can arguably be viewed as ‘guaranteed’ electorates for the Maori Party and Mana Party, and this is often used to support the argument that Maori receive disproportionate representation.<sup>20</sup> Nevertheless, the fact remains that without the Maori electorates, it would arguably be difficult for a Maori MP to win an electorate. Maori comprise only 17% of New Zealand’s population spread out over all of New Zealand, and only 5% of the South Island. The Maori voter population is simply not enough to guarantee that a Maori MP would win an electorate when competing against MPs from the major parties. Without these seats, Maori Party and Mana MPs would only be able to win seats by winning 5% of the party vote.

Abolishing the Maori seats and merging them with the general population does not seem to be a viable option. The final section of this submission will discuss why this is not an option, instead suggesting that the existing Maori seats should be constitutionally protected through entrenchment and given a modicum of power to ensure that Maori views are heard in the House.

#### *4. Entrenchment of the Maori seats*

Section 3 of this submission discussed the possibility and consequences, both positive and negative, of abolishing and removing the Maori seats from Parliament and merging those seats into the general electorate. While in theory this would seem to solve a number of perceived problems about the Maori seats this submission asserts that the Maori seats should be constitutionally entrenched. This position is not without its critics: indeed, Philip Joseph wholeheartedly recommends against entrenching the Maori seats as “[s]eparate Maori representation was not critical to the integrity of the electoral system and a legitimate subject of constitutional entrenchment.”<sup>21</sup>

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<sup>20</sup> Joseph, above n 9.

<sup>21</sup> Joseph, above n 9, p. 19



#### 4.1 Constitutional entrenchment

Constitutional entrenchment of the Maori seats and Maori representation is still a major discrepancy in New Zealand's electoral law that has yet to be resolved.<sup>22</sup> Entrenchment would mean that the provisions in the Electoral Act 1993 pertaining to Maori representation and Maori seats<sup>23</sup> would be open to amendment only by a supermajority vote (75 percent) of the House of Representatives. This is a privilege that the provisions pertaining to the general electorate in the Elections Act 1993 have enjoyed.<sup>24</sup> This discrepancy has been described as being "perhaps the most discriminatory measure of all in the application of the law to Maori representation".<sup>25</sup>

#### 4.2 Why constitutionally entrench Maori representation?

It has been suggested that the Maori seats were initially established by "ad hoc"<sup>26</sup> legislation in a vacuum and "involved no high intentions or moral principles".<sup>27</sup> The initial reason behind the establishment of the Maori seats was to allow Maori to vote without the requirement of needing to own or lease freehold land. Arguably this issue is no longer current as that requirement no longer exists and the discrepancies between the ability of Maori and non-Maori have mostly been settled.<sup>28</sup> Essentially it has been asserted that the Maori seats existed more as a token of Maori representation, a "representational safety net"<sup>29</sup> compensation and as placating Maori rather than having any important symbolic or actual importance in New Zealand society.<sup>30</sup>

<sup>22</sup> Parliamentary Library Research Paper, above n 1, at 17

<sup>23</sup> Sections 3(1), 45, 76-79 and 84 of the Electoral Act 1993.

<sup>24</sup> Electoral Act 1993, s 268.

<sup>25</sup> Ranginui Walker, *The Māori People: Their Political Development*, in Hyam Gold (ed.), *New Zealand Politics in Perspective* (Longman Paul Ltd, Auckland, 1992) at 383.

<sup>26</sup> Reference to the Maori Representation Act 1867, (1)p2.

<sup>27</sup> Parliamentary Library Research Paper, above n 1, at 3.

<sup>28</sup> *Ibid*, at 17.

<sup>29</sup> Geddis, above n 1, at 348.

<sup>30</sup> Waitangi Tribunal, *Maori Electoral Option Report*, Chapter 2 - *Maori Representation in Parliament: An Historical Overview*, Chapter 2.1 - *The Waitangi Tribunal*, p 3. Parliamentary Library Research Paper, above n 1, at 7.

However it should be acknowledged that the Maori seats were special seats in that they gave Maori the right to vote regardless of the requirement to own or lease freehold land, a requirement that continued to exist for pakeha.<sup>31</sup> The special enactment of the Maori seats in 1867 can be viewed as a "thread of idealism, present in the treaty-making"<sup>32</sup>. That the establishment of the seats recognised the Crown's moral duty to give Maori voting rights due to the large landholdings held by Maori and their sizeable tax contributions. Most importantly the creation of the Maori seats affirmed the equality of Maori under Article III of the Treaty of Waitangi and the NZCA.<sup>33</sup> Maori have come to regard the Maori seats as an important recognition by Government of their status as the indigenous people of New Zealand.<sup>34</sup>

It is a misconception that the number of Maori seats is disproportionate to the Maori Electoral Population. Maori account for roughly 17% of New Zealand's total population.<sup>35</sup> Currently the 7 Maori seats account for about 17% of the total number of Parliament seats. Thus the idea that the Maori seats afford Maori a more disproportionately powerful vote than non-Maori is misconceived. Rather it is a lack of education in regards to the way in which the electoral system in New Zealand, that is MMP, works that should be held accountable for this view. Maori only account for 17% of New Zealand's total population. The constitutional importance of the Maori seats means that they need to be protected. Without entrenchment, Maori seats have realistically no protection against the whim of the majority and therefore could easily be done away with. Maori are only 17% of the population and 17% of the seats in the House - a simple majority is all that is needed to do away with the seats as it currently stands.

The Maori seats are special. They have an important historical, cultural and constitutional background that cannot be ignored. The right of equality for Maori was established by article III three of the Treaty of Waitangi, a founding legal document of

<sup>31</sup> Ibid.

<sup>32</sup> Claudia Orange, *The Treaty of Waitangi* (Allen & Unwin Port Nicholson Press, Wellington, 1987) at 184.

<sup>33</sup> Parliamentary Library Research Paper, above n 1, at 7.

<sup>34</sup> Ibid, at 2.

<sup>35</sup> Percentage worked out from figures provided by Statistics New Zealand:

[http://www.stats.govt.nz/surveys\\_and\\_methods/methods/research-papers/mathematics-of-electoral-district-allocation/maths-2006-electoral-district-allocation.aspx](http://www.stats.govt.nz/surveys_and_methods/methods/research-papers/mathematics-of-electoral-district-allocation/maths-2006-electoral-district-allocation.aspx)

New Zealand. Their importance cannot be ignored.

### *5. Conclusion*

This submission proposes that by entrenching Maori representation and giving the Maori seats some small degree of power to ensure that they are able to really represent and bring Maori issues to the forefront of law and politics. Additionally, increased education of Maori in particular, but of New Zealand as a whole on the importance of the Maori seats and of Maori issues will help to dispel the misconception that Maori have a disproportionate say and encourage greater participation of Maori in politics.

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Electoral Commission *Official Count Results -- Electorate Status* (22/11/2008) available at [http://www.electionresults.govt.nz/electionresults\\_2008/electoratestatus.html](http://www.electionresults.govt.nz/electionresults_2008/electoratestatus.html) visited 24 May 2013.

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Waitangi Tribunal, *Maori Electoral Option Report*, Chapter 2 - *Maori Representation in Parliament: An Historical Overview*, Chapter 2.1 - *The Waitangi Tribunal*.

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[http://www.stats.govt.nz/surveys\\_and\\_methods/methods/research-papers/mathematics-of-electoral-district-allocation/maths-2006-electoral-district-allocation.aspx](http://www.stats.govt.nz/surveys_and_methods/methods/research-papers/mathematics-of-electoral-district-allocation/maths-2006-electoral-district-allocation.aspx) visited 20 May 2013.

Elections New Zealand:

<http://www.elections.org.nz/voting-system/m%C4%81ori-representation> visited 20 May 2013.



Journal articles:

Geddis Andrew, "A Dual Track Democracy? The Symbolic Role of Maori Seats in New Zealand's Electoral System" (2006) 5(4) *Election Law Journal: Rules, Politics, Policy* 347 at 352.

Joseph Philip, *The Maori Seats in Parliament* (New Zealand Business Roundtable, 2008).

Newman Murial, "The Future of Maori Seats" *New Zealand Centre for Political Research Weekly*, 23 June 2008.

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Legislation:

Electoral Act 1993

Maori Representation Act 1867

New Zealand Constitution Act 1852

5115

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 3:58 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Cliff Hall Email: Phone: Postal AddressA:  
Postal AddressB: Postal City: Auckland Postal Region:  
Auckland Postal Post Code: Postal Country: New Zealand Submission: Treaty of  
Waitangi

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I do consider the Treaty to be one of the founding documents for NZ.

The Treaty is flawed because there are different versions. Maori and the Crown each agreed to their preferred version so there was not really a "meeting of the minds". This makes the contract invalid in my opinion.

I do not accept the idea that because the Crown had the upper hand in negotiations with Maori (assuming this is true) therefore the Maori version of the Treaty takes precedence. At most, this difference in bargaining power would amount to coercion and would

further invalidate the Treaty, not choose one version over the other.

We cannot enshrine a flawed, invalid document in a constitution or any other law. To do so is foolhardy and asking for trouble. FIX IT, then enshrine it.

Electoral Matters

How long should the term of Parliament be? Why?

I think the parliamentary term should be increased to 4 years. If the first year is spent finding your feet, and putting out fires, and the last year is spent getting re-elected, then the current 3 year term allows only 1 year to DO something. The "overhead"

(non-productive time) is 66%. If the term is increased to 4 years then the productive time increases to

50% (still poor but improved). I don't want to extend the term beyond 4 years because that is too long to suffer under a bad government.

#### Maori Representation

Maori seats should be abolished. I think all people should be equal and have one vote under one system.

Submitted on the 16 June 2013 at 10:45

752

**From:** Daisy Hall  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/05/2013 7:44 p.m.  
**Subject:** CAP submission

As a new zealander I'm going to put in my two cents. Enshrining the treaty of waitangi in a constitution is ludicrous. It is a completely out of date document that has been taken advantage of for too long. The maori's wanted muskets and potatoes, they got them, the currency of the time. By handing New Zealand's assets to the maori you are handing them to China, where does all that money go? Is it shared with the maori community? I think not. Be weak and politically correct, hand it over. Before you know it New Zealand wont be kiwi anymore, and who do you think is going to take the blame for this?? Certainly not the maori. The time for the treaty is well over, stop holding nz back, it has served it's purpose, it is now antiquated and useless. I cannot stress this enough. The national bird is and always will be the kiwi, and we don't need a new flag.



2526

**From:** Derek Hall  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 11:04 a.m.  
**Subject:** CAP Submission

Abolished!!!!

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382

**From:** .  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/04/2013 7:43 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Denis Stuart Hall Organisation Name: Email: [denis@stuarthall.co.nz](mailto:denis@stuarthall.co.nz)  
Phone: Postal AddressA: Postal AddressB: Postal  
City: Postal Region: Horowhenua Postal Post Code: Postal Country: New  
Zealand Submission: I categorically object to the Treaty of Waitangi or the  
"principals" of the Treaty being included in any way in any New Zealand  
Constitution. The constitution of our country should hold all people equal and not single out any race  
for special mention  
or special rights. This should be self evident to all right thinking people.

Sent on the 15 April 2013 at 19:43

3829

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/04/2013 7:44 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Denis Stuart Hall Organisation Name: Email:  
Phone: AddressA: Postal AddressB: Postal  
City: Postal Region: Horowhenua Postal Post Code: Postal Country: New  
Zealand Submission: I categorically object to the Treaty of Waitangi or the  
"principals" of the Treaty being included in any way in any New Zealand  
Constitution. The constitution of our country should hold all people equal and not single out any race  
for special mention  
or special rights. This should be self evident to all right thinking people.

Sent on the 15 April 2013 at 19:43

3826

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 15/04/2013 7:46 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Denis Hall Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Levin  
Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: I categorically object to the Treaty of Waitangi or the ""principals" of  
the Treaty being included in any way in any New Zealand Constitution. The constitution of our country  
should hold all people equal and not single out any race for special mention  
or special rights. This should be self evident to all right thinking people.

Sent on the 15 April 2013 at 19:45



31

ConstitutionalReview - <http://www.ourconstitution.org.nz/> form submission

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**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/03/2013 4:33 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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Sent from The Constitution Conversation.

**Full Names:** Grace Hall

**Organisation**

**Name:**

**Email:**

**Phone:**

**Postal  
AddressA:**

**Postal  
AddressB:**

**Postal City:**

**Postal Region:**

**Postal Post  
Code:**

**Postal  
Country:** New Zealand

**Submission:** I accept that a change in electoral system any time in the near future seems an unlikely outcome, given the recent support indicated by the referendum on New Zealand's electoral system for MMP.

I recognise that under the FPP system there were very few checks on the exercise of power by the controlling political party, other than via the three yearly general election. However, I also recognise that under this system there were clearer policy positions adopted by the parties, and thus clear policy choices made and implemented. Within the MMP environment, often, given the need for compromise and negotiation, policy decisions can seem somewhat unclear.

While a change to another electoral system seems unlikely in the near future, I think greater awareness of how electoral systems would influence policy choices and outcomes needs to be promoted to the general public of New Zealand. In respect of the MMP system I think too much has been made of representation, when in reality the policy

choices that are made do not necessarily always represent the real standing and views of the political parties in power.

I am concerned by the apparent speed at which legislation is enacted in this country, which is a view echoed by a number of academics - labeling New Zealand as the fastest legislator in the West and so on. I think given the short tenure of the Parliamentary term there is a tendency for the political parties to try and push as much legislation through the House as they can within a 3 year period. I accept that this was of not much difference under the FPP system. What I think this then indicates is that there is a need for the term of Parliament to be increased - but not only should the term of Parliament be increased (as it is certainly arguable if the term was increased from 3 to 5 years the political parties in power will likely continue to pass as many bills into legislation as possible during this time), I do think there is a need for greater checks and balances to be implemented in the legislative process in New Zealand, so that greater scrutiny is given to legislation. This will in effect ensure that greater representation is achieved within the legislative process; more so than representation merely achieved through the current electoral system.

I also think there is a real need for some guidelines to be implemented around the enactment of urgent legislation. The Canterbury Earthquake legislation reveals that there is a practical possibility of legislation being enacted under urgency, and as experience with this legislation has revealed, there is possibly a need for greater scrutiny of such legislation, while recognising that in some circumstances such legislation may be necessary. The concern should be ensure that there are strident and clear guidelines in place for the process that should be followed where urgent legislation is deemed to be absolutely necessary.

I also have concerns about the apparent willingness of government to intervene with democracy at a local government level, and to reduce the functions of local government. Local government needs to remain strong and viable in New Zealand - it is at a local government level that some of the most far-reaching and impacting decisions for communities are made. Greater effort needs to be made to promote the significance of local level decision making, particularly to young people.

Grace Hall

04/03/2013

Sent on the 4 March 2013 at 16:20





3/a

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 17/05/2013 10:07 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Grace Hall Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Postal Region: Postal  
Post Code: Postal Country: New Zealand Submission: Civics Education should be  
compulsory for all New Zealanders from a young age. The Constitution is something that affects all  
New Zealanders every day in so many ways. It's as imperative as English, Maths etc that people have  
an understanding of the way  
in which government works, given the huge impact that it has on people's lives.

At present there's a real lack of focus on educating people on the one thing that perhaps affects them  
more than any other.

Sent on the 17 May 2013 at 10:05



37 20

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 21/07/2013 4:52 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Neville James Hall Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City:  
Postal Region: NTH AUCKLAND Postal Post Code: 0910 Postal Country:  
New Zealand Submission: the treaty should not be part of the constitution

it no longer applies to the New Zealand of today,

and it is now causing a division in the population.

we are all New Zealanders and treating Maori as

a separate race with separate privileges is racist .

Submitted on the 21 July 2013 at 16:51

Kic 21/5/13

## Quick Submission

Your name:

Mrs Robin Hall

Name of the organisation you represent (if applicable):

Postal address or email address:

Nelson

1867. The same needs to be in Local Government - we can have the right to make submissions on all topics of interest. I am doing that now! Electoral matters: The number of electorates in the South Island for example taken on population statistics makes a Member of Parliament's duties very difficult. The geographical area needs to be considered more with less emphasis on population statistics.

I have a concern about flat crable land going into buildings particularly industrial in the Tasman area. Would also like less negativity about saving of water in a dam e.g. Lee Valley.

The Constitution conversation is so broad. Thank you for the opportunity to hear Professor Borrows in Stoke, Nelson. It would be so good if the general public could concentrate on the positives more emphatically and not all the negatives. An aspiration maybe that goes with living in harmony

**Privacy and Confidentiality** Thank you.

Your personal information will be held in accordance with the Privacy Act 1993. This Act outlines the requirements for transparent collection, ethical use and secure storage of personal information.

The personal information you provide in this submission form will be used for the purposes of the Consideration of Constitutional Issues only.

**You can also make a submission online at [www.ourconstitution.org.nz](http://www.ourconstitution.org.nz)**

Aspirations: for all to live in harmony with less emphasis on the Treaty of Waitangi but with respect for people, land and environment. Constitution: Not in one document but with some flexibility for our future with Parliament having most effectiveness. Bill of Rights: It might be prudent to include some clauses relating to property, economic rights. The privacy Act seems more than adequate in some instances to a person's privacy. Treaty of Waitangi: Needs to step back a little as it will rule N.Z. and shape us. We are becoming a multi-cultural nation and need to celebrate that. Maori Representation: like everyone else and not with V.I.P. treatment. The ownership of land has changed since



2149

**From:** " ray hall" >  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 10:26 a.m.  
**Subject:** CAP Submission

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Dear Sir/Madam,

Since MMP ; it has not been necessary to have Maori seats in the house of representatives. In fact it is quite un democratic. I well aware of the contrary arguments and reject them. The Maori seats give Maori voters more voting power than others.

I submit that the Maori seats.....

1. In no circumstances be entrenched and
2. That they be abolished forthwith

Ray Hall

CHRISTCHURCH

1521

**From:** Roger Hall <:>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 22/06/2013 3:21 p.m.  
**Subject:** cap submission

> 1. I do not consider a written constitution necessary.  
It has the potential to cause many more problems than it will solve. One only has to look at the USA to see that the Constitution is more of a yoke than a benefit.

What would be better would be to bring back an Upper House.

In Canada the upper house is there to "provide a sober second look at proposed legislation". One might query the word "sober" but the point is well made. Currently, NZ Governments so often rush through bills under urgency, and the result can be sloppy (and often costly as a result) legislation.

2. If there was an Upper House, then bring in a four-year term. Currently one year in three is an election year. Which means that legislation which would be good for the country is not proposed because of its feared reception by the electorate.

3. MMP has its flaws, which, by and large, the public responses to the recent referendum managed to solve. The Government ignored the wishes of the people.

4. Maori seats should be abolished (but maybe one at a time). The Treaty of Waitangi should not be part of any written Constitution.

Roger Hall CNZM, QSO

Takapuna

4576

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/08/2013 1:07 a.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Vincent Hall Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Dunedin  
Postal Region: Postal Post Code: Postal Country: New Zealand Submission: Hi, I had a  
read of the submission made to the CAP by the Law Commission, regarding Human Rights (page 12).

As an NZ citizen I would like to endorse and support this submission. I am extremely concerned about the current government's anti-democratic legislation which directly contradicts and contravenes the UDHR as voted upon by NZ representatives in 1948. Please give this submission your fullest level of scrutiny and attention.

Thank you!

Vincent Hall

Submitted on the 3 August 2013 at 01:06

2409

**From:** "Margaret Hallenberg"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 7:22 a.m.  
**Subject:** CAP Submission

Abolish Maori Seats. Will we have Chinese seats? Indian setas? Refugee Seats? One system for all.  
~~Please marg Hallenberg~~

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3899

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 25/07/2013 8:22 p.m.  
**Attachments:** Submission onConstitutional Review.pdf

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

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Full Name: Thomas Scott Halliburton Organisation Name: Email:  
Phone: Postal AddressA: ad  
Postal AddressB: Postal City: upper Hutt Postal Region: Postal Post Code:  
Postal Country: New Zealand Submission: Submission Upload: H:\Tom\Submission  
on Constitutional Review.pdf

Submitted on the 25 July 2013 at 20:21

## **Submission on Constitutional Review**

Tom Halliburton, 25<sup>th</sup> July, 2013

~~I do not believe that New Zealand should have a written constitution.~~

Successful societies adapt to changing times. A fixed, written constitution makes change more difficult. An example of this is the right to bear arms, which appears to be a part of the United States' constitution. This may have been a necessary right in the 18<sup>th</sup> century, but it is doubtful whether this is a desirable right now. History shows many examples of societies which collapsed due to their inability to change. The present is very different to the past, and the future will be more different than we can imagine, in many respects.

### **Size of parliament**

I believe that the number of MPs should stay the same for at least the next several years.

### **Length of Parliamentary term**

This should remain at 3 years, in part due to the absence of an upper house to limit the power of Parliament.

### **Size and number of electorates**

The number of electorates should stay the same so that the current split between electorate and list seats remains unchanged.

### **Maori Representation**

Maori representation should be abolished to reduce the influence of minority factional interests in Parliament. The interests of all New Zealanders are similar, and Maori people have no difficulty being elected to represent those of other ethnic backgrounds.

Local government Maori representation should be abolished – race has no part to play in local body processes.

### **The Role of the Treaty of Waitangi**

The Treaty is an outdated document, which was written before modern concepts of democracy were developed. It is no longer relevant to the current age. Those who signed this document had no democratic legitimacy. Like many other treaties, it is no longer relevant. The Treaty should play no part in the governance of New Zealand.

### **Property Rights Entrenchment**

Private property rights must be overridden in special circumstances by the greater public good. It would not be in the wider, long term interest of New Zealand for private property rights to be any stronger than they currently are.

### **Further Comment**

For any written constitution to be legitimate, it would need overwhelming public support. This could only be demonstrated by means of a referendum, with at least 75% of voters agreeing with the proposal.