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SUBMISSION TO THE CONSTITUTIONAL
REVIEW ADVISORY PANEL.

NEW ZEALAND DOES NOT NEED
A WRITTEN CONSTITUTION AND
I STRONGLY OPPOSE ANY
LEGISLATION OR REFERENCE TO
THE TREATY OF WAITANGI
SHOULD ONE BE DRAFTED NOW OR
IN THE FUTURE

MAUREEN E. JACQUES

TAURANGA.

4624

From: "Bob Jago" ·
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 12:04 p.m.
Subject: Submission to Constitutional Review.

Dear Sir or Madam,

We, the undersigned New Zealand born fifth generation residents strongly submit the following recommendations,

- There must ALWAYS be one law for ALL New Zealand.....No exceptions.
- The Maori seats MUST be abolished.
- The Treaty of Waitangi MUST NOT be enshrined in a new Constitution for New Zealand OR have no role in a future Constitution.
- The Parliamentary Term should remain at three (3) years with no fixed date necessary.
- The Maori Electoral roll should be abolished and there should only be ONE roll for New Zealanders.
- List Members of Parliament who are for any reason expelled or leave their Political Party during office MUST resign from Parliament immediately.

Bob and Pauline Jago

Narrow Neck,

1906"

Submission to the Constitutional Advisory Panel

From: Melanie Jagusch

Dunedin

Please note: this submission was an essay written for the Department of Politics at the University of Otago.

TREATY POLS ESSAY 2

What opportunities does the Treaty of Waitangi provide for our future constitutional arrangements?

Since 1840, the Treaty of Waitangi has played a significant and controversial role in New Zealand society. The Treaty is both hailed as our founding document, and treated with caution. This hesitancy to directly confront the Treaty's constitutional and legal status has resulted in tense uncertainty, which this Constitutional Review seeks to address. This essay will discuss what opportunities the Treaty has to offer for our future in terms of its role in our constitution and law. I will firstly discuss the Treaty's current constitutional and legal status, and secondly consider what role the Treaty *ought* to have in our constitution. In this second part I discuss several options: whether the Treaty should be inside or outside the law; the effect of including the Treaty in a written constitution with the status of "higher" law; and the effect of incorporating the Treaty into ordinary law. Finally, I briefly consider possible mechanisms for implementing the Treaty into legislation.

The current status of the Treaty of Waitangi in our constitution and law

The Treaty of Waitangi's place in New Zealand's constitution is fundamentally uncertain. New Zealand's constitution is not recorded in a single document; rather it is based on a variety of constitutionally significant statutes and documents, constitutional conventions, norms, attitudes and judicial decisions.¹ The sources of the constitution have not been comprehensively listed or identified, which allows much room for debate as to what is or is not included. The place of the Treaty is particularly unsettled, as there is broad disagreement within society about its constitutional significance.²

That being said, the Treaty has increasingly been acknowledged as a source of the constitution by those exercising public power. Both the current website of the Governor General and the *cabinet manual* state that the constitution "increasingly reflects that the Treaty of Waitangi is regarded as the founding document of government in New Zealand".*** There is also judicial support for this view, with the Privy Council describing the Treaty as an agreement "of the highest constitutional significance".³ The Waitangi Tribunal has expressed that the Treaty "should be seen as a basic constitutional document".⁴ According to Matthew Palmer, who takes a realist perspective, the Treaty *is* constitutional because it does shape and influence the exercise of public power.⁵

The status of the Treaty in *law* is no more straightforward. The Treaty is acknowledged as a valid international Treaty, but crucially, it is not enforceable in our domestic courts unless Parliament says otherwise by enacting it in legislation.⁶ Significantly, Parliament has enacted the Treaty into law generally through the Treaty of Waitangi Act 1975. This Act established the Waitangi Tribunal and provided that it has the power to make recommendations on alleged breaches of the Treaty. However, the Tribunal's recommendations are not binding (except in limited circumstances relating to land redress).⁷ The effect of the recommendations on government action ultimately depends on public opinion generating pressure to act. Although the Act does give the Treaty specified legal status, the Treaty still has no legal force in our general courts unless it has been incorporated into legislation by Parliament.⁸

¹ See Sir Kenneth Keith, 'On the Constitution of New Zealand: An introduction to the Foundations of the Current Form of Government', in Cabinet Office, *Cabinet Manual 2008*, Wellington.

² Janine Hayward, 'The Treaty and the Constitution' in Raymond Miller (ed.) *New Zealand Government and Politics*, (5th ed), Oxford University Press, Melbourne, 2010, pp. 106-107.

³ *New Zealand Maori Council v Attorney General* [1994] NZLR 513, 516 (Lord Woolf).

⁴ Waitangi Tribunal, Ngai Tahu Report (Wai 27), Wellington, 1999.

⁵ Matthew Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution*, Victoria University Press, Wellington, 2008, pp. 234-244.

⁶ *Ibid*, pp. 153-169.

⁷ *Ibid*, pp. 179-181.

⁸ *Ibid*, p. 180.

Parliament has consistently incorporated the Treaty in only a few areas of law, relating to Maori land, language and fisheries.⁹ Beyond these areas, Parliament's approach has been piecemeal, and implemented through a wide variety of unelaborated references to the Treaty that require decision makers to engage in different ways with the "principles of the Treaty".¹⁰ These references allow the Court wide discretion to determine their meaning in a particular case. As result, their legal effect can be significant and, in some cases, unanticipated by Parliament, as was demonstrated in *New Zealand Maori Council v Attorney General* (the *Lands* case).¹¹ In recent years there have also been provisions to "recognise and respect" the Treaty, but the effect of these has yet to be tested in the courts.¹² Overall, Palmer describes the Treaty's legal status as incoherent and inconsistent, with the Treaty being within the law for some purposes, but not others.¹³

What role ought the Treaty have in our constitution?

The Constitutional Review provides the opportunity not only to clarify the Treaty's status, but also to consider what role the Treaty *ought* to play in our future constitutional arrangements. The Treaty's future role is necessarily linked to decisions about the form of the constitution itself. One of the important questions under review is whether New Zealand should maintain an unwritten constitution, or move to a written constitution with "higher law" status. This part of the essay will explore the options for, and effect of, including the Treaty in each of these constitutional arrangements.

The Treaty of Waitangi should be clarified as a source of the constitution. The Treaty has become such an embedded part of our society that it would be unrealistic to exclude it from our future constitutional arrangements. The more difficult question is whether the Treaty should be inside or outside of the law as a source of the constitution. In the past, many Maori have expressed opposition to the Treaty becoming law, because putting it into legislation "would lower the force and dignity of the Treaty of Waitangi".¹⁴ In addition, as ordinary legislation the Treaty would also be vulnerable to amendment by a simple majority of Parliament. However, in the present day context there may be less opposition to the Treaty being within the law. There has been a clear change in attitude toward the Treaty from the executive, legislature and judiciary. Successive governments have acknowledged a duty to settle Treaty claims and provide redress, and the courts have been fundamental in advancing the legal effect of the Treaty. As result there may be less suspicion and resistance to putting the Treaty under the control of Parliament.¹⁵

In my view, the Treaty should be brought within the law in order to increase certainty as to its legal effect. Treaty rights could be enforced consistently at the courts, as opposed to only in specific contexts legislated on by Parliament on a patchwork basis. However, there remain important choices as to whether the Treaty becomes ordinary or supreme law, and how it could be implemented.

The Treaty included in a written and entrenched constitution with higher law status.

In an international context, New Zealand's constitution is distinctive. We are one of only three nations without a written constitution, and the absence of any superior law is unique in the

⁹ Palmer, pp. 180-182.

¹⁰ *Ibid*, pp. 182-183. Examples of the language include the Conservation Act ("give effect to"); State-Owned Enterprises Act ("not in a manner which is inconsistent with"); and the Resource Management Act ("take into account").

¹¹ [1987] 1 NZLR. In this case the Court of Appeal identified the central principles as that of partnership, good faith, and active protection.

¹² Palmer, pp. 183-184.

¹³ *Ibid*, 168-169.

¹⁴ *Ibid*, p. 287

¹⁵ See, Mason Durie *Te Mana, Te Kawantanga: The Politics of Maori Self-Determination*, Auckland, Oxford University Press, 1998. See also Palmer, pp. 338-339.

world.¹⁶ Adopting a written constitution that includes the Treaty of Waitangi would allow the courts to constrain the actions of the executive, and the law-making powers of Parliament. The judiciary would have the power to strike down any laws that are considered to be in breach of the Treaty. This option would be a radical shift in power from Parliament to the judiciary as the final arbiter of our rights. As such, it is a major departure from our core constitutional concept of Parliamentary sovereignty.

There is a strong case that it would be in the best interests of Maori, as the minority, for the Treaty to have the status of supreme law.¹⁷ Currently, Parliament is subject to no legal constraints and can override minority rights by a simple majority. This power was demonstrated by Parliament's enactment of the Foreshore and Seabed Act 2004 following the public outcry against the Court of Appeal's decision in *Attorney General v Ngati Apa*,¹⁸ which held that the Maori Land Court did have jurisdiction to hear and determine claims of Maori title to the foreshore and seabed. Parliament's response in this case reminds us that its adherence to the Treaty is currently a political decision, and not a legal obligation. Parliament is legally able to override the values of the minority, and will do so when there is sufficient public pressure from the majority, as was the case here. However, if this episode were to unfold in a context where the Treaty had the status of supreme law, then the Courts would have the power to review the legislation and declare it void if it breaches the Treaty.¹⁹

From the discussion above, it would be argued that the Courts are the institution that can best protect minority rights from the tyranny of the majority. However, the principle of Parliamentary sovereignty is so embedded in our collective constitutional culture that it is unlikely that New Zealanders would tolerate transferring such power to the judiciary.²⁰ As a nation, we place more trust in our elected officials, who can at least be removed from office every three years, than in judges who are purposely shielded from and unaccountable to the public. Even with the establishment of the Supreme Court of New Zealand as our final appellate court (rather than the Privy Council), it is likely that most New Zealanders would continue to see Parliament as the appropriate body to have final say on our rights.²¹

This societal value is reflected in the continuing absence of any supreme law at all in New Zealand. The closest we have is the entrenchment of some provisions of the Electoral Act, which can only be amended by a super majority of the House of Representatives or by referendum.²² In 1985, Sir Geoffrey Palmer proposed enacting a Bill of Rights for New Zealand that would have the status of higher law, and include a reference to the Treaty.²³ However, this proposal was ultimately rejected in favour of the New Zealand Bill of Rights 1990 (NZBORA) that we have now, which has only the status of ordinary legislation, and has no reference to the Treaty. The concept of supreme law remains as alien to us in the present day as it was then. Ultimately, it is unlikely that New Zealand will shift to a written and supreme constitution any time in the near future.

The Treaty as ordinary law and other solutions for legislative protection

If it is correct that New Zealand is not ready for a supreme constitution, then the remaining option is to incorporate the Treaty into ordinary law. As discussed above, this would provide consistency to the Treaty's legal status and therefore a consistent channel for Maori (and the

¹⁶ Palmer, p. 289.

¹⁷ *Ibid.*, pp. 338-339. See also Hayward, pp. 106-107.

¹⁸ [2003] NZLR 447.

¹⁹ B. V Harris 'The Treaty of Waitangi and the Constitutional Future of New Zealand', *New Zealand Law Review*, 2004, Issue 2, pp. 189 – 216.

²⁰ Palmer, p. 338.

²¹ Mai Chen, 'The Advantages and Disadvantages of a Supreme Constitution for New Zealand: The Problem with Pragmatic Constitutional Evolution', *Reconstituting the Constitution*, Springer Berlin Heidelberg, London, 2011, pp. 123-155.

²² Palmer, pp. 338-339.

²³ Geoffrey Palmer, A Bill of Rights for New Zealand: a white paper, New Zealand House of Representatives, Wellington, 1985.

Crown) to enforce the Treaty in our general courts. However, absent a supreme constitution, Parliament would ultimately have the power to enact legislation that is inconsistent with the Treaty.

There are mechanisms that could be implemented in order to minimise the risk of Parliament overriding the Treaty. Firstly, the Treaty could be protectively entrenched to require a super majority in the House of Representatives to amend it.²⁴ This would not elevate the Treaty to supreme law, but it would signal its constitutional significance by protecting it from amendment by a bare majority. Secondly, a similar reporting mechanism to that contained in NZBORA could be introduced, where the Attorney General has a duty to report to the House if any proposed legislation would be inconsistent with NZBORA, or in this case, the Treaty.²⁵ Thirdly, the Courts could be given a power to make declarations that legislation is inconsistent with the Treaty. The declaration would not affect the validity of the statute, but would allow for the relevant Minister to make a remedial order to remedy the inconsistency.²⁶ While these mechanisms would not prevent Parliament from overriding the Treaty, they would provide procedural protection, and draw attention to Parliament attempting to do so.

Mechanisms for incorporating the Treaty into law

In any constitutional arrangement the question of *how* to incorporate the Treaty will arise. The first option is for Parliament to enact legislation give legal status to the original texts of the Treaty as a whole. However, the meaning of the original texts is notoriously unclear; it would require judicial creativity to give the Treaty a meaning that is relevant to the contemporary context.²⁷ An alternative option would be to incorporate the “principles” of the Treaty into law. This approach acknowledges that it is the spirit of the Treaty, and not the strict terms, that is being given effect. It allows for flexibility, so that the Treaty can be adapted and applied to modern day problems that were not contemplated in 1840.

However, again the problem of ambiguity arises. These are inherently vague concepts, and how they apply to a particular case will only be determined when the matter goes to the courts. In order to overcome these obstacles, Parliament may consider defining the principles of the Treaty more comprehensively in order to increase certainty.

This essay has demonstrated that there are several theoretical options for the Treaty of Waitangi in our future constitutional arrangements. However, the prospect for radical change as result of this Constitutional Review is limited by New Zealand’s constitutional culture, which would resist any move toward a written and supreme constitution. In my view, the Treaty should be incorporated into ordinary law, with additional protections, such as entrenchment or reporting mechanisms for any inconsistencies with the Treaty.

²⁴ Palmer, pp. 340-342.

²⁵ See section 7, New Zealand Bill of Rights Act 1990.

²⁶ Palmer, pp. 340-343.

²⁷ B. V Harris, ‘The Treaty of Waitangi and the Constitutional Future of New Zealand’, *New Zealand Law Review*, 2004, Issue 2, pp. 200 – 216.

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CONSTITUTIONAL ADVISORY PANEL SUBMISSION

MAORI REPRESENTATION IN PARLIAMENT

1. Introduction

This submission to the Constitutional Advisory Panel addresses Maori Representation in Parliament, focusing on the future of the 'Maori seats'. I recommend that the Maori seats be retained and also entrenched (by a 75 per cent majority in the House of Representatives).

This submission will:

- (a) provide a brief overview of the Maori seats;
- (b) discuss the reasons why the Maori seats should be retained;
- (c) examine the common arguments made in favour of abolishing the Maori seats; and
- (d) discuss why the Maori seats should be entrenched.

2. The Maori seats: development and current framework

2.1 A brief history

The four Maori seats in Parliament were established in 1867 in order to enfranchise Maori who were effectively excluded from voting by the (then) property qualifications.¹ The Maori seats were originally intended as a temporary measure, but were extended indefinitely in 1876.² At this time, only Maori candidates were allowed to stand for election in a Maori electorate, and Maori who were of a blood quantum of over 50 per cent were automatically enrolled on the Maori roll.³ The Maori seats were subject to several administrative disparities, but the cause of the greatest grievance was the fixed number of seats.⁴ Until 1993, the number of Maori seats was fixed at four, which was far below what Maori would have been entitled to on a population basis. For example, in 1867, there were 72 seats for 171,000 Europeans, and only four seats for 56,000 Maori.⁵

2.2 The current framework

The current legal framework for the Maori seats has remedied many of the problems described above. Since 1975, voters of indigenous Maori descent have had the *choice* of enrolling on either the general roll or on the Maori roll through the Maori Electoral

¹ The New Zealand Constitution Act 1852 granted the franchise to all males over the age of 21 years who held a freehold estate to the value of 100 pounds, or a leasehold with an annual value of 10 pounds, or a tenement with an annual rental of 10 pounds. See Parliamentary Library *The origins of the Māori seats* (Wellington: Parliamentary Library, 2009) at 2-4. For further information see MPK Sorrenson 'A history of Maori Representation in Parliament', Appendix B in Royal Commission on the Electoral System, *Towards a Better Democracy* (Wellington, Government Printer, 1986).

² Parliamentary Library, above n 1, at 9-10.

³ See Andrew Geddis *Electoral Law in New Zealand* (Lexis Nexis, 2007) at 97-98.

⁴ Parliamentary Library, above n 1, at 11-16.

⁵ See Geddis, above n 3, at 97.

Option (MEO).⁶ This choice gained further significance in 1993, when the number of Maori electorates was made to vary accordance with the numbers on the Maori roll. As result, the number of Maori electorates steadily increased from four in 1993 to seven by 2002.⁷ There remain seven Maori electorates at present. Any enrolled voter can stand as a candidate in a Maori electorate.⁸ In this sense, the Maori seats do not ensure the presence of indigenous Maori in Parliament; rather they ensure constituencies of exclusively Maori voters.

3. Why should the Maori seats be retained?

3.1 Effective political representation of Maori as a minority group

Maori are the largest ethnic minority group in New Zealand and, at the time of the 2006 census, made up 14.6 per cent of the total population.⁹ However, as discussed above, Maori representation in Parliament has historically been limited. The introduction of the Mixed Member Proportional (MMP) system, together with increased designated Maori seats, has finally enabled Maori to achieve roughly proportional representation in Parliament. The first MMP election in 1996 saw an immediate rise in the number of Maori in Parliament to 13 per cent.¹⁰ This level of representation has continued, with 17 per cent of MPs in the current Parliament self-identifying as Maori.¹¹ This descriptive representation allows for Maori perspectives to be heard in Parliament, for distinctly Maori issues to be promoted by Maori MPs, and for Maori to be involved in the decision-making process of our nation.¹²

The current *combination* of Maori seats and MMP have allowed for Maori to gain representation relative to their population size. Yet, these developments have also ignited argument that the Maori seats are no longer necessary because Maori can achieve significant representation through the ordinary MMP process.¹³ Because of the importance of the party vote, political parties will be compelled to select Maori candidates for both high list places and constituency seats in order to appeal to Maori voters.¹⁴ However, I consider that this view is flawed (for reasons discussed below). If the Maori seats were abolished, it is highly unlikely that Maori could attain the same levels of representation.

⁶ Electoral Amendment Act 1975. The definition of “Maori” now includes “any descendant of such a person” per s 3(1) Electoral Act 1993. The MEO will ordinarily be carried out in the same year as the National census. See Electoral Act s 77 (2), (4) and (5).

⁷ Parliamentary Library, above n 1, at 17.

⁸ Electoral Act s 47 (1).

⁹ Statistics New Zealand *Maori Population Estimates*, available at http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/maori-population-estimates.aspx (last accessed May 23, 2013).

¹⁰ Parliamentary Library, above n 1, at 23.

¹¹ Parliamentary Library *The 2011 General Election* (Wellington, Parliamentary Library, 2011) at 2.

¹² For a discussion on forms of Parliamentary representation see W. L. McGuinness, Project 2058 and Sustainable Future (Organization) Effective Maori Representation in Parliament: Working Towards a National Sustainable Development Strategy (Sustainable Future, 2010) vol 8 at 14-18.

¹³ See Philip A. Joseph and New Zealand Business Roundtable *The Maori Seats in Parliament* (New Zealand Business Roundtable, 2008).

¹⁴ *Ibid*, at 9-14. See also the *Report of the Royal Commission on the Electoral System: Towards a Better democracy* (Wellington, Government Printer, 1986) at 102.

First of all, history shows that it is highly difficult for Maori to be elected in general electorates, with very few ever being successful.¹⁵ In the 2008 election, only 2 out of the 20 Maori in Parliament were elected from a general electorate.¹⁶ These results demonstrate that the general seats can still not be relied on to return many Maori MPs. Furthermore, while MMP has *encouraged* political parties to select Maori candidates for high list places, there is no guarantee or obligation for them to do so. Rather, the selection of Maori candidates for either position would be dependent on the political calculation and goodwill of political parties. Maori representation would be left vulnerable to the political climate, which is always dangerous for a minority group whose interests will give way to majority opinion.¹⁷

More fundamentally, Maori MPs that are elected from the party list or in a general seat do not necessarily represent Maori interests because they are not accountable to a constituency of exclusively Maori voters.¹⁸ A Maori MP in a general electorate will be representing the interests of both Maori *and non-Maori* voters, with Maori likely to be a minority. Not only will the MP inevitably have less time to devote to distinctly Maori issues, but they may also be reluctant to promote certain Maori concerns if it would be unfavourable among the majority. Maori MPs elected through the party list would be similarly restricted, and may be unwilling or unable to sway the opinion of their political party on particular Maori issues. It is also possible that a Maori MP elected through the list or a general seat will have no particular desire or interest in representing Maori voters. On the other hand, an MP who is accountable to an exclusively Maori constituency will have more incentive, and flexibility, to represent Maori interests.

In short, without the Maori seats there is no guarantee that Maori will be elected to Parliament at all. And, even *if* Maori were able to gain proportionate numbers in Parliament through the ordinary process of MMP, this would not be the same as having Maori MPs who are elected *by Maori and for Maori*. In order for Maori to be truly represented, the Maori electorates must be retained, so that there will be Maori MPs who are accountable solely to Maori voters.

3.2 The Treaty of Waitangi and tino rangatiratanga

It is important to recognise that Maori differ from other minority groups in two very significant aspects. Firstly, Maori are the indigenous people of New Zealand (*tangata whenua*). Secondly, Crown-Maori relationships are governed by the Treaty of Waitangi (the Treaty), which was entered into by Maori chiefs (Rangatira) and the British Crown in 1840. The Treaty gave the Crown the right to govern (kawanatanga) in New Zealand, in return for a guarantee by the Crown to protect Maori *tino rangatiratanga* (chieftainship) over lands, estates, forests and *taonga*.¹⁹ Maori were also extended all the rights and privileges of British citizens under Article Three. For these reasons, the Royal Commission concluded that Maori have a "special constitutional status" in New Zealand.²⁰

¹⁵ For a list of elected Maori MPs see Parliamentary Library, above n 1, at 23-29.

¹⁶ W. L. McGuinness, above n 12, at 36.

¹⁷ See generally Ann Sullivan 'The Treaty of Waitangi and Social-Well-being: Justice, Representation, and Participation in Belgrave, Michael and others *Waitangi Revisited: Perspectives on the Treaty of Waitangi* (Oxford University Press, 2005).

¹⁸ See Andrew Geddis "A Dual Track Democracy? the Symbolic Role of the Maori Seats in New Zealand's Electoral System" (2006) 5 Election Law Journal 347 at 365-366.

¹⁹ For further reading on the Treaty of Waitangi see Matthew Palmer *The Treaty of Waitangi in New Zealand's Law and Constitution* (Victoria University Press, 2008).

²⁰ *Report of the Royal Commission on the Electoral System: Towards a Better democracy*, above n 14, at 81.

The Maori seats ought to be retained because they are an important symbolic representation of Maori status as *tangata whenua* and an expression of their rights under the Treaty of Waitangi. Although the Treaty of Waitangi made no specific reference to political representation, Article Two guarantees Maori *tino rangatiratanga*, which can be seen as the right to greater autonomy or self-government.²¹ The Maori seats are the most available means of giving effect to Maori self-determination *within* the existing national framework.²² Maori have certainly come to regard the Maori seats as “an important concession to, and the principal expression of their constitutional rights under the Treaty of Waitangi”.²³ The Maori seats may not have been originally established for this purpose, but they have become a “symbol of the Treaty position”.²⁴ The Maori seats now represent the wider goal of Maori self-determination as a distinct people within New Zealand.²⁵ In my view, the Maori seats must be retained for as long as Maori see them as the primary manifestation of their constitutional rights.

Furthermore, the Maori seats provide an appropriate mechanism for the Crown to satisfy its duty to ‘actively protect’ Maori interests, which has become one of the central principles of the Treaty.²⁶ In the Maori Electoral Report 1994, the Waitangi Tribunal found that:

The Crown is under a Treaty obligation to protect Maori citizenship rights and in particular, existing Maori rights to political representation conferred under the Electoral Act 1993. This duty of protection arises from the Treaty generally, and in particular from the provisions of Article Three.²⁷

At the High Court, Justice McGechan agreed that the Crown is under an ongoing positive obligation to protect and facilitate Maori representation.²⁸ While this duty does not necessarily have to be satisfied through the means of Maori seats, it is difficult to imagine how the Crown could actively protect Maori without them. The Maori seats are the most practical and effective way for the Crown to meet its Treaty obligations.

4. Abolishing the Maori seats: are the arguments convincing?

4.1 The principle of equality and reverse discrimination

Opponents have long argued that the Maori seats contravene the basic principle of equality: that every person is to be treated the same.²⁹ Maori and Non-Maori are treated *differently* in that they may be enrolled on separate rolls, but this system does not create any advantage for Maori voters. The same electoral laws apply to voters on either roll, and each vote has equal weight in determining the outcome of an election. It is true that

²¹ See Mason Durie ‘Tino Rangatiratanga’ in Belgrave, Michael and others *Waitangi Revisited: Perspectives on the Treaty of Waitangi* (Oxford University Press, 2005) at 4-5.

²² *Ibid*, at 14-17.

²³ *Report of the Royal Commission on the Electoral System: Towards a Better democracy*, above n 14, at 86.

²⁴ Justice McGechan in *Taiaroa v Minister of Justice (No 1)*, unreported, High Court, Wellington CP 99/94, 4 October 1994 at 69.

²⁵ See Geddis “A Dual Track Democracy? the Symbolic Role of the Maori Seats in New Zealand’s Electoral System”, above n 18.

²⁶ In *New Zealand Maori Council v Attorney General* [1987] 1 NZLR the Court of Appeal affirmed the principle that “the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable”.

²⁷ Waitangi Tribunal *Maori Electoral Option Report* (Wai 413, Wellington, 1994) at 3.8.

²⁸ *Taiaroa v Minister of Justice*, above n 24.

²⁹ See Joseph, above n 13.

Non-Maori are prevented by law from voting in Maori electorates, but this does not create any real disadvantage. In practice, it is no different from *any* voter being prevented from voting in a constituency other than the one where they are registered.³⁰

The next claim is that Maori *as a group* are unfairly advantaged by the system, with Philip Joseph describing it as an “insidious form of reverse discrimination”.³¹ These arguments are based on a strictly formal notion of equality that does not recognise that “the starting point for some people is more equal than for others”.³² Maori are consistently in a lower socio-economic position than most New Zealanders, and as a minority, must be given *equal access* and equal rights to participate in democracy in order to achieve outcomes equal with the majority.³³

At the base of arguments of ‘special privilege’ or ‘reverse discrimination’ is often the simple discomfort about having separate representation based on ethnic grounds. However, as the Royal Commission noted, a democratic system should value any minority representation, including minorities based on ethnicity.³⁴ I consider that such ‘separation’ is a realistic response to the fact that Maori continue to identify as a distinct group. Many countries have used methods of reserved representation to accommodate identifiable ethnic or religious minorities. For example, Lebanon divides its Parliamentary seats proportionately between Muslim (Shi’a and Sunni) and Christian candidates,³⁵ and India reserves seats for candidates from particular tribes.³⁶ These methods acknowledge that certain groups retain their own identity, and seek to give them their own voice, rather than force them to assimilate into a national identity that they do not share. The Maori seats should be retained for as long as Maori retain a distinct sense of group identity.

4.2 Do the Maori seats marginalise Maori issues?

It has been argued that the Maori seats marginalise Maori issues because having separate Maori representatives implies that all other MPs are not required to represent Maori.³⁷ The Royal Commission found that separate representation had weakened the influence of Maori MPs and reinforced their political dependency on the attitudes of the majority.³⁸ However, the introduction of MMP has altered the dynamics. Political parties are now encouraged to compete for a higher share of the party vote, and therefore have an incentive to represent Maori interests in order to appeal to Maori voters. Therefore, all MPs now have a reason to consider Maori concerns. Furthermore, it is also crucial that the numbers of Maori who are *choosing* to enrol on the Maori roll are steadily rising. This

³⁰ See Geddis “A Dual Track Democracy? the Symbolic Role of the Maori Seats in New Zealand’s Electoral System”, above n 18 at 361-363.

³¹ See Joseph, above n 13 at 5.

³² Ann Sullivan ‘Minority Indigenous Representation’ in Mulholland, Malcolm and Tawhai, Veronica M. H. *Weeping Waters: The Treaty of Waitangi and Constitutional Change* (Huia Publishers, 2010) at 259.

³³ *Ibid*, at 260-263.

³⁴ *Report of the Royal Commission on the Electoral System: Towards a Better democracy*, above n 14, at 93.

³⁵ W. L. McGuinness, above n 12, at 36.

³⁶ *Report of the Royal Commission on the Electoral System: Towards a Better democracy*, above n 14, at 93.

³⁷ Joseph, above n 13, at 13.

³⁸ *Report of the Royal Commission on the Electoral System: Towards a Better democracy*, above n 14, at 90-91.

trend suggests that Maori themselves are satisfied with the system, and are exercising their right to elect their preferred form of representation.³⁹

5. Why should the Maori seats be entrenched?

There remains one important difference between the law regulating the Maori and general electorates. The provisions relating to the general electorate seats are entrenched by s 268 of the Electoral Act. Consequently, any change to them would require a 75 per cent majority in the House of Representatives (a ‘super majority’) or a majority vote at a national referendum.⁴⁰ Yet, there is no equivalent entrenchment of the provisions relating to Maori electorates. At present, the Maori seats could be abolished by a simple majority of the House of Representatives. This disparity has been described as “perhaps the most discriminatory measure of all in the application of the law to Maori representation”.⁴¹

The Maori seats ought to be entrenched in the same way as the general seats in order to protect and preserve Maori representation in Parliament. Entrenchment would shield the Maori seats from being abolished by a governing party (and its coalition partners) that form a simple majority in the House of Representatives. Such a move, in absence of prior consultation and agreement, would severely damage Crown-Maori relations and have detrimental political ramifications for New Zealand as a whole.⁴² Constitutionally entrenching the Maori seats would prevent them from being used as a political tool. In the past, political parties have exploited the tension over Maori representation in order to garner public support.⁴³ Furthermore, entrenching the Maori seats would symbolise the ongoing relationship between the Crown and Maori as Treaty partners, and afford appropriate recognition to the status of Maori in our constitutional structure.⁴⁴

Conclusion

The Maori seats ought to be retained (and entrenched) because they are an important symbolic recognition of Maori status as *tangata whenua*, and are a limited concession to their right to *tino rangatiratanga* as guaranteed under Article Two of the Treaty. Furthermore, retaining the Maori seats is the most available means for the Crown to uphold its duty to actively protect Maori interests. If the Maori seats were abolished, Maori would not achieve the same level of representation in Parliament. Not only would the quantity of Maori MPs be at risk, but also the quality of representation would diminish without those Maori MPs being directly accountable to exclusively Maori votes. Entrenching the Maori seats would protect them from being abolished by a simple majority in the House of Representatives, and thereby ensure that Maori representation in Parliament is preserved into the future.

Submission by: Mel Jagusch

³⁹ See Geddis "A Dual Track Democracy? the Symbolic Role of the Maori Seats in New Zealand's Electoral System", above n 18 at 361.

⁴⁰ See Geddis *Electoral Law in New Zealand*, above n 3 at 46-48 and 99-100.

⁴¹ Ranganui Walker, cited in Parliamentary Library, above n 1, at 17.

⁴² See Palmer, above n 19, at 324.

⁴³ See generally Ann Sullivan ‘The Treaty of Waitangi and Social-Well-being: Justice, Representation, and Participation’ at 128.

⁴⁴ See Palmer, above n 19, at 324.

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1-10

Tauranga

18-06-13.

I disagree strongly with the idea that
N.Z. needs a written constitution,
especially one that attempts to
incorporate the Treaty of Waitangi in
its legislation. The whole concept is
unnecessary and I foresee problems with
race relations.

Yours faithfully

Alison James.

1882'

Postal Address:

Address:

City/Town*:

Region:

Post Code:

Country:

Submission:

Your submission (submission may be a url):

Or upload a text file (txt,rtf,doc,docx,pages,odt,pdf):

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3994

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 28/07/2013 10:31 p.m.

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

Full Names: Brendan James Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City:

Postal Region: Waikato Postal Post Code: Postal Country: New Zealand Submission:
Yes, I believe our constitution should be written in a single document. I also believe our constitution should be philosophically akin to the US constitution which was designed as a guardian to peoples freedoms and rights. Today, with so much international or global focus on terrorism and the paranoia in governments with overkill legislation with regards to so-called protection those freedoms which are basic human rights, for example free speech, freedom to congregate and/or protest, freedom of expression with regards religion and politics, are all under seige. A written constitution guaranteeing these rights and freedoms is urgent and a priority before they are lost.

Submitted on the 28 July 2013 at 22:30

863

From: David &
To: <constitutionalreview@justice.govt.nz>
Date: 17/05/2013 9:04 p.m.
Subject: CAP Submission
Attachments: Submission to the Constitutional Advisory Panel.docx; constitution handout.docx

The attached submission is from David James.

David James

Phone

Submission to the Constitutional Advisory Panel

David James, MA, QSM

I make this submission as a Pakeha who has been engaged for more than fifty years in educating adults, more than twenty-five of those years specifically in connection with the Treaty of Waitangi as it affects a range of organisations including local government, government departments, health providers, police, and many non-government organisations. In 2011 my wife and I received the QSM for this work. More recently I have conducted a range of community workshops on the constitutional review, and we contributed to the process which resulted in the Peace Movement Aotearoa publication "Time for Change".

General comments

There must be doubt as to the immediate effectiveness of this constitutional review, given that the government is unable to bring itself even to do the necessary tidying up of the MMP system before the next election, and is certainly uncommitted to more constitutional change. Moreover, the tone of much media coverage has been decidedly lukewarm, much of it amounting to "If it ain't broke, don't fix it". (I attach a document of mine, owing a great deal to the writing of Geoffrey Palmer, which sets out just how much it is broke.) Along with this, there has been a well-resourced and orchestrated campaign against any meaningful recognition of the place of the Treaty of Waitangi in our constitution, which has for example dominated question time in the Te Papa debates. Our schools provide no civics education, and we are increasingly a nation of idiots in the original Greek sense, people who live entirely private lives with no engagement in public affairs.

However, I see the review as part of what needs to be a long-term constitutional dialogue. In that respect it is welcome, and I acknowledge the work the Constitutional Advisory Panel has done in providing information and public meetings.

In what follows I have tried to respond to the questions the Panel has set out.

My aspirations for Aotearoa New Zealand

- A nation with a clear sense of identity and fundamental unity in diversity
- A nation able to accept differences with good grace, and not to attack or ridicule those with other needs and views
- A nation with long term goals established by consensus and pursued in cooperation, without unproductive competition and policy U-turns
- A nation in which governments commit to all citizens receiving an income that meets their essential needs
- A nation with an agreed and stated commitment to values of fairness, equality, community, freedom, peace, and human rights for all
- A nation whose citizens are educated for citizenship and democracy and are informed by independent public service media
- A nation willing to build on international best practice to lead innovation towards its long term goals rather than limp behind others
- A nation which is a good global citizen, in terms of contributing more than equally to solving global challenges of climate change and sustainability, peace, justice, health and the elimination of poverty.

How might our country be run?

- With recognition of the dual structures of the Māori world and the Crown's world, rangatiratanga and kawanatanga, allowing for negotiation of major issues on equal terms, taking into account the importance of issues for one or other partner as well as weight of numbers; and extending the principle of co-governance into all public structures
- Balancing the need for effective and coherent government policy and action against the need for accountability and genuine democracy
- Resisting the trend to yet more centralisation of power and influence, by making local government less dependent on central government, and by empowering resilient local communities which are able to cope with disasters and with long term social and climate change – through a policy of subsidiarity, making decisions as close as possible to those affected by them
- By multi-party processes of long term national decision-making, informed by expert consideration of research and evidence, scanning of best practice, and evaluated pilot programmes, leading to national guidelines and evaluative processes but leaving different communities freedom to implement these as best fits their situations
- By reducing the control of the executive over parliament, for example by limiting voting on party lines to matters of confidence and supply, and by a written constitution overseen by the courts.

Should our constitution be written in a single document?

Yes. I acknowledge the argument that the present system allows for evolution; however, it is confusing for citizens, it enables the executive to push the boundaries too easily, it leaves the Treaty of Waitangi in an ambiguous situation, and it reduces accountability. Moreover, it leaves no space for a statement of shared values or vision, which would be highly desirable. Nor does it recognise our bio-region, Papatuanuku, as a stakeholder in the constitution (on the model of some constitutions which are developing in Latin America, e.g. Bolivia). We are beginning to see recognition of certain regions and natural features (e.g. the Urewera national park area, and the Whanganui river) as having their own authority rather than being anyone's property, and requiring co-governance for their management: it would not be too great a stretch beyond that to recognise Papatuanuku as a constitutional stakeholder with her own rights, and it would make it easier to see human society and the economy as subject to what the environment will allow, rather than the environment being a subset of the economy.

Who should decide on the consistency of legislation with the constitution and the Bill of Rights Act?

While the legislation is in process of being passed, parliament is the appropriate forum, assisted by a written constitution and a Bill of Rights Act as supreme law. Once passed and signed off, the role passes to the courts, which would be in a much stronger position with a written constitution by which to measure legislation.

Should the constitution and the Bill of Rights Act become supreme law?

Yes. To make them supreme law would bar the executive from convenient tinkering, and parliament from overriding the Bill of Rights Act as it can and has done. Flexibility can be achieved by allowing for amendment by a large majority of parliament, say 75%, or by an equally large margin in a referendum.

Should the Treaty of Waitangi have a role in our future constitution?

Yes; in fact the constitution depends ultimately on the Treaty, and especially on Te Tiriti as the proposal which made sense to the Māori leaders of the day. As Paul Temm put it, the right of our parliament to pass legislation depends firstly on parliament's creation by the New Zealand Constitution Act 1852, and the legitimacy of that Act in turn depends on the Treaty. (The contrary view, expressed by Doug Graham and Simon Upton, that the legitimacy of our system depends on the length of time it has existed following a "revolutionary seizure of power" by the Crown, has not gained much of a following.) Or, as Geoffrey Palmer expressed it, if we deny the Treaty, we deny our own right to be here.

So it is less a matter of finding a place for the Treaty in our constitution, rather of working out what kind of constitution could be derived from the Treaty. Naturally I am aware of the intense and orchestrated campaign against any role for the Treaty, which asserts that to recognise it makes non-Māori New Zealanders into second class citizens. This assertion depends on a mischievous muddling of the elements of the Treaty. The third article addresses individual citizenship rights, and makes it clear that Māori are on an equal footing with the non-Māori "tangata o Ingarani" (i.e. those of whatever origin who have allegiance to "te Kuini o Ingarani".) The demand for one law for all is well covered in the third article.

With the first and second articles of Te Tiriti we are on different ground. They are government-to-government undertakings which establish or recognise two different kinds of authority, the kawanatanga of the Crown and the tino rangatiratanga of the rangatira and the hapū. Without going into detail about the relative meanings of the two terms, they provide for the partnership which was noted by the Court of Appeal in the 1987 Māori Council judgement. It is a relationship which should extend well beyond nominal consultation into co-governance at all levels, and which should affect the shaping of those laws which all should obey equally. Māori constitute a people (or peoples) with both indigenous rights and Treaty rights, a very different matter from being a minority grouping of individual citizens.

Exactly how the Treaty can be recognised and embodied in the constitution is a matter for genuine long term dialogue. In the short term it could be recognised in domestic law, but as a different kind of supreme law, one which can be interpreted as circumstances require but cannot be repealed or amended.

Māori representation

It should be recognised that all the present structures of our system are part of the Crown's kawanatanga authority, and that Māori occupying any positions within the system, up to and including the Governor-General, are constrained to work by the rules and logic of kawanatanga. They can therefore represent Māori voters, in a minority way, but cannot directly represent the rangatiratanga structures. Nevertheless their inclusion in parliament etc is important, and the combination of MMP and the Māori seats has provided a more proportionate Māori presence in parliament than either

would on its own. It would be desirable to entrench the Māori seats on their present basis and so secure them from expedient party interference. If Māori voters come to move on a larger scale to the general roll, the Māori seats will naturally diminish or expire, and that would properly be a Māori choice.

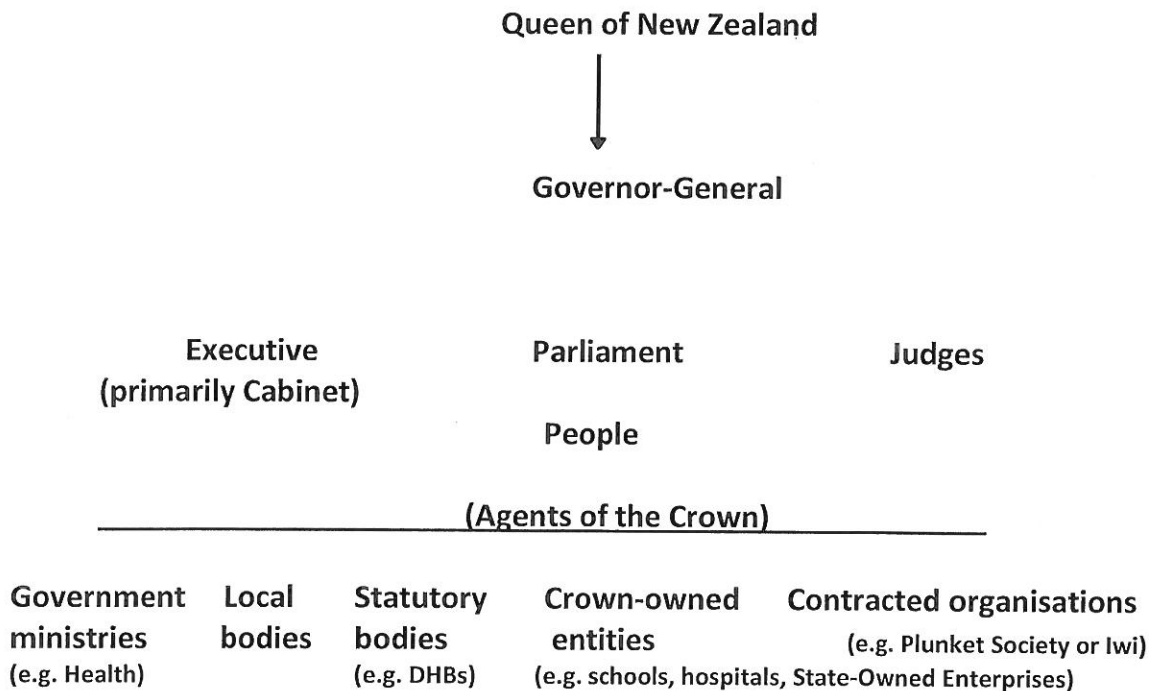
Electoral matters

These are all relatively minor issues.

- We need at least the present number of MPs to do their jobs well.
- A term of four years would be a move towards longer term thinking, but would be safe only if parliament and the courts were able to hold the executive accountable, and if other ways to ensure long term policy consistency on a multi-party basis had been put in place.
- The date of general elections should be fixed rather than chosen by the executive, except where the government had lost the confidence of parliament.
- List MPs are selected by their parties, and should be required to resign if they lose the confidence of the party. Lists should be drawn up by the party membership at large, as is done by the Green Party.

Our Constitutional System

The Theory



- We follow the British tradition, very unusual among nations, of not having a written constitution. In fact our constitution is based heavily on the British one, so it is a mix of ancient documents (Magna Carta, the 1688 Bill of Rights, etc) and "constitutional conventions" (the way things have traditionally been done).
- The people elect our Parliament, and we are therefore in principle a democracy.
- Parliament makes and unmakes our laws by legislation; but legislation must be signed off by the G-G or the Queen before it becomes law.
- The Queen and the Governor-General act only on the advice of their Ministers, so cannot refuse to sign laws which Parliament has passed.
- The main part of the Executive is the "Ministers of the Crown" (mainly in Cabinet).
- The Ministers are all MPs and remain part of Parliament; they introduce all new legislation other than Private Members' Bills.
- Legislation in most circumstances goes through a Select Committee process, where anyone can make a submission for or against it, and can ask to appear in person to speak to their submission.
- The Ministers are each responsible for one or more portfolios, e.g. Health. They are responsible for the administration of their portfolio, which is carried out through the various "agents of the Crown". They are accountable to their Minister through legislation or contractual obligations.
- The Judges hold warrants as "the Queen's Judges" and these cannot be withdrawn except in the most exceptional circumstances. This keeps them politically independent.
- The Courts cannot challenge a law passed by Parliament, but must interpret it to fit the cases that are brought to them.
- When there is no relevant legislation, the Courts apply the Common Law. In Aotearoa New Zealand there are two sources of Common Law: one based ultimately on the customary law of England, handed down from time immemorial but re-interpreted by senior judges in every generation to fit new circumstances, therefore often described as "judge-made law"; and also, in former British colonies such as ourselves, the customary law of the indigenous people of the country.

Why it doesn't work in practice

Why are we so dissatisfied with our elected representatives? Why does Parliament make laws which in some cases are opposed by the majority of the people?

- Most nations have two houses of Parliament, and one important function of a second chamber is to make the government slow down and think more carefully about some of its legislation. Our second chamber was abolished in 1951. By taking "urgency", a New Zealand government can pass all the stages of a piece of legislation very fast. The present government has used urgency 17 times in two years, a much increased rate over previous years. Legislation is often shoddily drafted and needs amending later on.
- Because we have no written constitution, our government is always tempted to push the boundaries of constitutional convention. Also, our Courts cannot challenge or strike down legislation by finding it unconstitutional.
- Because we have a small number of MPs by international standards, the Ministers form a large fraction of the ruling Parliamentary parties, and through numbers, more information, and control of patronage and promotion, can control their back-bench colleagues to an extent no British government (for example) could dream of.
- New legislation and policy often begins with a small number of the Cabinet Ministers who actually have the trust of the Prime Minister of the day. It then goes for approval to the whole Cabinet, and once it has been voted on there, the doctrine of collective Cabinet responsibility demands that all Cabinet Ministers support it, even if they actively opposed it up to that point.
- The next stage is that before anything reaches Parliament, it goes to a Caucus meeting, in other words to a meeting of all the MPs of the party, in which Ministers can exert their controlling voice. Again, when Caucus approves a measure all its members have to speak and vote in favour of it, just as all Opposition MPs have to follow the decision of their Caucuses. Only in a few special cases (usually about liquor or moral issues) are MPs allowed to vote according to their consciences and beliefs.
- The Select Committee process is meant to be a democratic safeguard, a place where citizens and expert resources can have a say about impending legislation. However, governments normally hold a majority in each Select Committee, and the Committee's report is referred to Caucus before going back to Parliament. Over 90% of submissions on the 2004 Foreshore and Seabed Bill opposed the Bill, and despite that it went straight through into law. That is fairly typical; so are other manoeuvres to blunt the effect of the Select Committee process.
- The result of all this is that the Executive is in fairly complete control of Parliament and our laws. Proportional representation under the MMP system has made some improvements in the quality and variety of our MPs, and has enabled some minor parties to be represented and to take part in Government, but has not changed the total picture. Parliament itself is effectively sidelined into being a permanent election campaign, hence the excessive competition and empty noise.
- Meanwhile Ministers are subject to many pressures for policy and legislation, few of which have much to do with the people. The pressures come from our international obligations and treaties, from international business groups and other governments, from local corporates and business groups, and from a multitude of lobby groups. About 25% of new legislation, for example, comes from those international obligations and treaties.
- The people do not select the candidates they choose among. That is done by the political parties, whose total membership may be perhaps 10% of the voting population. The really active party members, those who influence policy and selections, may be 10% of that membership. It's a very narrow base.
- What the people know about what government does is mainly transmitted through TV, radio and the press. TV and the press live and die by advertising revenue, and competition for that, in the absence of real public broadcasting except for National Radio, leads to superficial and sensationalised treatment of public issues. Even if issues are presented without undue bias, coverage is so brief and bitty that the public is left confused. Without much need for conspiracy theories, the result is what Noam Chomsky described as "manufacturing consent" – or at least making coherent and broad-based dissent extremely difficult.
- The end result is what Geoffrey Palmer (former Prime Minister and public law expert) has referred to as "elected dictatorship".

By Wedn 5pm 31 July 2013

POSTAL

Submissions

Secretariat, Constitutional Advisory Panel

C/o Ministry of Justice

DX SX10088

Wellington

EMAIL constitutionalreview@justice.govt.nz with "CAP submission" in the subject line.

You can attach documents to your email.

Personal Submission of Gilbert D. James on the Constitutional Review

Introduction

My name is Gilbert Douglas James. I am and have been a mussel farmer since 1983 and I am Chairman of the Coromandel Marine Farmers Association Inc. I have held this office since 1981. I farm Mussels in the Coromandel through my company

It is a successful business. It also creates quality seafood and employment in farming and in processing. The Company produces Mussels for important North island (including a supermarket chain) markets as well as export markets. I have participated and supported many parts of my community and its development.

Another Constitution, or not

Wikipedia rightly states that "A **constitution** is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. *constitute*, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a *written* constitution; if they are written down in a single comprehensive document, it is said to embody a *codified* constitution."

New Zealand already has a written constitution thanks to our Constitution Act 1986 and related laws, but NZ simply does not have a codified constitution.

New Zealand is not a Federations of States but rather is a single country with a single house of parliament for law making, that has the freedom to act speedily and simply as required in emergencies but otherwise provides for the most reasonable balance between democracy and expeditious efficient action in making and giving effect to our laws. We need not and should not have any more of a Constitution than we now have.

The following was written on 6 June on the Constitution Conversation Facebook site and appears to have been authored by the facilitators. It seems as per their other dialogue to be single-mindedly pro some (unspecified) more detailed and codified Constitution.

"Which is why many argue in favor of a written constitution. As it would entrench certain inalienable rights. The consequence of that could then be that certain laws are challenged to be in breach of these written rules. A court of some type would then be needed to interpret the rules and decide the outcome. Under our system of govt we just do adhere to that latter check and balance."

Our comments are that the above is symptomatic of this whole review, ie it;

- Is inaccurate in that we actually do have a written constitution
- One-sidedly fails to explain the success of our present system nor the losses (including; democracy, time, money, certainty) that would come about by opening up our laws to much wider Constitutional challenge (and which such challenges are typically for the benefit of the wealthy and powerful that can afford to challenge)

- Does not explain the losses that would arise if we made NZ Courts also responsible for interpreting the properness of our laws nor how that would actually successfully function. It is much simpler and better that our courts just stick to interpreting and applying our laws.
- Does not indicate what “inalienable rights” will be enhanced
- Does not offer/propose the balance between entrenchment and flexibility as times change
- Has a narrow focus on “new-written-rules that will act to constrain our Parliament” but makes no mention of any the wider brief given by its original terms of Reference from the national and Maori Parties (“Consideration of Constitutional Issues”) and which could have formed the basis to discuss options such as the wider use of technology for more democratic decision making
- Overall such a new Constitution will be of benefit to the powerful but not the ordinary person

We are concerned that this discussion paper’s questions (Appendix I) really subverts the questions asked of it (Appendix II) by the Gov which were much less about a new written Constitution and much more on considering changes to the particulars of our existing Constitutional arrangements and also has only presented some of those questions and in a slanted way.

The consultation also makes no mention of the process by which a new written (and enduringly binding) Constitution should fairly be adopted. The politicians behind this review appear to contemplate a simple Parliamentary majority (eg National plus Peter Dunne) but that would be most unreasonable. Implicitly a new written Constitution could not be overturned by a simple majority and for that reason alone cannot be adopted by simple majority.

Correspondingly however we accept that the need for change is ongoing and our current Constitutional arrangements should be open to moderate, but not radical, reform.

The Treaty and the Constitution

We oppose “biculturalism” (if anything NZ is simply multicultural) and any moves such as via Constitutional arrangements to recognise any form of it. We oppose making any so-called “principles* of the Treaty” of Waitangi as a formal part of our constitution. This would mean that all Acts of Parliament would be tested against these principles and the “rights” claimed as being in the treaty (eg 20% of modern marine farming) will be able to be enforced by Iwi-Maori in a way that’s not possible at present. In effect such power will legally enforce Waitangi Tribunal decisions as well. The governance of New Zealand could be radically changed away from democracy. This would challenge New Zealand’s social cohesion.

*the Treaty was and remains no less and no more than a straight-forward recognition of;

- One law for all of NZ
- Enduring property rights
- Equal citizenship

Race and NZ’s Constitution

We submit that it is timely to review and inevitably repeal race based arrangements in NZ law such as Maori seats in Parliament. They are not appropriate.

Conclusions

We;

- **Oppose a new written Constitution (we already have one).**
- **Accept reasonable modest changes (by suitable Parliamentary majority) to our existing written Constitution**
- **Require that if NZ is to move to a significantly new form of written Constitution that it must do so by a fair majority of New Zealanders (not just by a narrow majority of MPs), such as through a binding referendum.**
- **Oppose any proposal to place the “principles of the Treaty (of Waitangi)” in a written constitution.**
- **Oppose “biculturalism” and any moves such as via Constitutional arrangements to recognise any form of it.**
- **Support the fullest reasonable expression of democracy including by One person One vote.**
- **Encourage the repeal of the Maori seats, and which have disproportionately (unfairly) low voting and also can facilitate disproportionate outcomes if voters split Party votes from Electorate votes.**
- **Support NZ law being “colour-blind” although welcome the targeting of Governmental/societal benefits on the basis of need (but not by colour).**

I make this submission in a personal capacity, as a concerned citizen, who has knowledge and experience of NZ society, business, Governance, and of Iwi/Maori/Treaty matters.

I seek the opportunity to speak to the Constitution Review Panel on this submission.

Yours sincerely

Gilbert

Gilbert James

Appendix I

Constitutional Advisory Panel questions, as follows.

What are your aspirations for Aotearoa New Zealand?
How do you want our country to be run in the future?

Submission Questions About New Zealand's Constitution

d Do you think our constitution should be written in a single document?
Why?

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

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

Submission Questions About New Zealand's Bill of Rights Act

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

d What other things could be done to protect rights?

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

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

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

Submission Questions About the Treaty of Waitangi

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

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

Submission Questions About Māori Representation

d How should Māori views be represented in Parliament?

d How could Māori electoral participation be improved?

d How should Māori views and perspectives be represented in local government?

Submission Questions About Electoral Matters

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

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

d How should the election date be decided? Why?

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

d What should happen if a member of Parliament parts ways with the party from which he or she was elected? Why?

The Panel may report on other topics if there is sufficient public interest.

d Do you have any other comments or suggestions about New Zealand's constitution?

Appendix II

The part of the agreement between the National Party and the Maori Party for a consideration of Constitutional issues that led to the formation of the Panel, launched on December 8, 2010.

Subject matter of the Consideration of Constitutional Issues

11. The Consideration of Constitutional Issues will include the following topics:

Electoral matters

- Size of Parliament
- The length of the term of Parliament and whether or not the term should be fixed
- Size and number of electorates, including changing the method for calculating size
- Electoral integrity legislation

Crown-Māori relationship matters

- Māori representation, including Māori Electoral Option, Māori electoral participation, Māori seats in Parliament and local government
- The role of the Treaty of Waitangi within our constitutional arrangements

Other constitutional matters

- Bill of Rights issues (for example, property rights, entrenchment)
- Written constitution.

12. Other issues are likely to arise during public engagement. The Deputy Prime Minister and the Minister of Māori Affairs will report to Cabinet on these matters, advising whether the issue appears to be of widespread interest and merits further consideration.

13. The Deputy Prime Minister and the Minister of Māori Affairs will be mindful of other Government initiatives with constitutional implications, and will aim not to duplicate or undermine these initiatives. The Deputy Prime Minister and the Minister of Māori Affairs will also keep their ministerial colleagues informed on progress with the Consideration of Constitutional Issues with the aim of ensuring wider Government initiatives with constitutional implications are cognisant of progress.

2644¹

From: Judy James
To: <constitutionalreview@justice.govt.nz>
Date: 5/07/2013 9:07 a.m.
Subject: CAO submission

Both my husband and I strongly do not believe the treaty of waitangi should have any relevance whatsoever to a New Zealand constitution.

The document does not reflect in any way modern New Zealand.

Furthermore we strongly believe all references to the treaty must be abolished. Also maori representation in parliament is racist and is dividing New Zealanders, and must end.

New Zealanders are one people, and we fear elite maori are intent on splitting our race into two, maori and non maori.

2930

From:
To: <constitutionalreview@justice.govt.nz>
Date: 8/07/2013 8:22 p.m.
Subject: CAP Submission

Dear Sir,

We do not agree with race based law in any form.
All citizens of New Zealand must be treated equally and classified as New Zealanders.

Sincerely
Lyn and Richard James

Taupo NZ

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.

Ruth James
Auckland
New Zealand

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.

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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.

Toivo James
Auckland
New Zealand

4063

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 29/07/2013 3:41 p.m.

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

Full Names: Dr William Ronald James and Mrs Beverley Frances Sutton Organisation Name:
Email: Phone: Postal AddressA:
Postal AddressB: Postal City: Rotorua Postal Region: Bay of Plenty Postal Post Code:
Postal Country: New Zealand Submission: Submission by Dr W.R. J. and Mrs B. F. Sutton.

New Zealand does not need a written constitution. Having one will not improve our lives. It is very likely to be costly and could be used to delay developments.

Parliament determines our laws. True, it can pass laws very quickly but it can just as quickly cancel or change those laws if there is some unforeseen consequence. A written constitution could mean that the courts determine some laws and not parliament. A written constitution could be a gravy train for the legal profession.

We are very opposed to the Treaty of Waitangi being used as the basis of our laws. From what we understand the English version of the Treaty differs slightly from that written in Maori. Which version should have precedence? Another gravy train for the legal profession?

We do not support the proposal for a New Zealand written constitution and do not support the Treaty of Waitangi being used as our "founding document".

29 July 2013

Submitted on the 29 July 2013 at 15:40

526

From:
To: <constitutionalreview@justice.govt.nz>
Date: 18/04/2013 8:49 a.m.
Subject: [RELEASED FROM QUARANTINE] [SUSPECT SPAM]
<http://www.ourconstitution.org.nz/form submission>

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

Full Names: Jamie Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City: Postal Region:
Postal Post Code: Postal Country: New Zealand Submission: Equal Rights is all I want for
New Zealanders!! Maori are abusing there rights all over the country and it is going to end up in civil
war!! Don't take this warning lightly as everyone always does!! If they want their land back give us our
muskets and
if you want to keep going the way your going then it will be awfully unfortunate when good people
start dying for what they have done!! I have made my point now you need to think about it and make
yours!!

Sent on the 16 April 2013 at 17:53

2936

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 9/07/2013 9:40 a.m.
Subject: http://www.ourconstitution.org.nz/ form submission
Attachments: Submission for NZConstitutional Review.doc

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

Full Names: Catherine Ann Jamieson & Robert McHarrie Emerson Organisation Name:
Email: Phone:
Postal Address: Postal AddressB: Postal City: Katikati
Postal Region: Bay of Plenty Postal Post Code Postal Country: New Zealand
Submission: Submission Upload: Submission for NZ Constitutional Review.doc

Sent on the 9 July 2013 at 09:39

Submission for NZ Constitutional Review.

Asperations That all New Zealand citizens, regardless of Race, Gender or Religion share the same rights, conditions, laws and representation in Government. That New Zealand respects individual rights and cultures but positions itself as One Nation able to share in a Global economy and sports arena, with one voice.

I want to be proud of my country and its democracy. I want to feel free to share and enjoy the Haka and Maoridom as part of my country. Not as something separate to me because I have the wrong coloured skin.

Treaty Status

The Principals of the Treaty should stand as they do today as part of our founding documents – not be a formal part of the constitution and individual laws.

The New Zealand Government has honoured The Treaty and acknowledged with Treaty Settlements via the Tribunal that some advantage was taken by a more educated single voice majority over individual Maori Tribes in the past and has granted compensation in order to honour the intentions of the Treaty and put us back on track. The Treaty called for the sharing of one country, one nation by all the peoples living there at the time in an equal and mutually beneficial partnership.

We must move forward as one people, proud of our History of signing and living by a Treaty, rather than conquering by force as has happened in most countries throughout the world and even here in early Maori History. Let's not give away that unique heritage by turning it into a modern day bargaining tool.

Let us embrace the Spirit of the Treaty, with pride, as a given in our heritage and written into our founding documents. Not try and rewrite or legislate it amidst antagonism and activism, nearly two centuries later, in a very different world and different mix of cultures.

Maori Representation

Maori seats and the Maori Roll should be phased out and Maori candidates be heard in the same way as all other candidates. They can still have a Maori Party but stand in all electorates. That would not exclude non-Maori from voting for that party. An equal footing and seeking votes from all electors would give genuine Maori politicians more credibility and may eliminate Maori Parties that are purely self-proclaimed activists, not politicians. A politician must always consider the rights and well being of all New Zealanders.

Having made compensation for past unfairness and as a Nation that gives the same opportunities for education and advancement to all people, based on effort and merit, not birth, race, religion, income or gender, we should not be condescending to one particular

Race in offering them a quota system of representation (as though they are less capable). Nor do we need to include the Treaty in every (or any) law that is passed, or have any law or by-law have to pass through a system of approval by any one race or religion. The Treaty is acknowledged by including all people, regardless of race or religion or gender or representation as having equal rights without discrimination (either for or against Maori, European or other race) – it is part of our founding documents and history – it does not need to be re-negotiated over and over again.

Maori can and must stand tall as a strong, contributing aspect of New Zealand Culture, on the same footing as all other New Zealanders. To continue singling them out as somehow disadvantaged or less able, is demeaning to them and to New Zealand. It is also divisive to the Nation and if not checked will have the opposite result to that called for in the Treaty – it will lead to two classes of people and could lead to serious division.

663

From:
To: <constitutionalreview@justice.govt.nz>
Date: 29/04/2013 8:55 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Ronald Spencer Jamieson Organisation Name: N/A Email:
Phone: Postal AddressA:
Postal AddressB: Auckland Postal City: Auckland Postal Region: Postal Post Code:
Postal Country: New Zealand Submission: [1] I am against a formal written constitution

[2] In large part because I do not want a significant increase in "court" involvement in our governance

[3] I do not want the "treaty" enshrined in a written constitution or enhanced further from where it currently stands

[4] I am comfortable with the form / structure of the governance we currently have which has worked well over time

[5] I am against having separate seats for Maori (and Pacific groups) in Parliament and within territorial authorities

[6] I support a 4 year parliamentary term primarily because I believe it will result in better "management" of the country's affairs

[7] In due course (after the passing of the current Queen) I believe we should move to a "republic" with the head of state not being a function of political parties; i.e. being politically benign.

Notes:

One of the best (short) pragmatic commentaries I have recently listened to was from Ron Marks on TV3 "Vote" where he most effectively described New Zealand, race relationships and the like within his environment

and

Far too much emphasis is being put on Maori (and now increasingly Pacific) without addressing a unifying "New Zealand" people viewpoint. [I am 6th generation of Anglo Saxon descent married into a "Maori / iwi" family so have a relaxed "blended" viewpoint]. I often remind some family members that they should be more respectful and understanding of their dominant ethnic foundation being non Maori and more often than not Anglo Saxon.

and

My major concern from this constitutional review process is that it will further encourage differences (and grievances) that is so much a reflection of our current society as compared to bringing the country together as "New Zealanders"

Sent on the 29 April 2013 at 08:54



stamp

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

Equality of all people & respect for all people in the diversity & integrity of our differences

Adjust the email address:
Tell us your aspirations for our country and let us know what's

important to you about how this country is run:

RELATIONSHIPS BETWEEN ALL OTHERS

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WILSON AND I WILL SELF-DETERMINATION

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COMMUNITIES.

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INENCES + DISPUTES

✕ INVULNERABLE PROTECTION OF HUMAN

ENCLOSURE

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You can find out more about the Constitution Conversation and make a fuller submission online at www.ourconstitution.org.nz

6088.1

☐ Tick box to receive regular updates by email

TAKAKO

Secretariat

Constitutional Advisory Panel

C/o Ministry of Justice

DX SX10088

Wellington

Name(s):

54-JANKE

Email or postal Address:

newzealand.govt.nz

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

stamp

Tell us your aspirations for our country and let us know what's important to you about how this country is run:
IDEAS For POSSIBLE CONSTITUTIONAL ARRANGEMENTS.

- * A LEGISLATIVE FRAMEWORK BASED ON THE TRITI, FOR NEGOTIATED POWER-SHARING AGREEMENTS WITH HAPU AND IWI.
- * CO-GOVERNANCE ARRANGEMENTS AT LOCAL LEVEL
- * A BILL OF RIGHTS ACT THAT IS SURE THE LAW.
- * A TRITI O WATANGI COMMISSIONER, A PLACE IN OUR CONSTITUTIONAL ARRANGEMENTS WHERE THE SHARED VALUES

You can find out more about the Constitution Conversation and make a fuller submission online at www.ourconstitution.org.nz

AND ASPIRATIONS OF NEW ZEALANDERS ARE EXPRESSED.

Secretariat
Constitutional Advisory Panel
C/o Ministry of Justice
DX SX 10088
Wellington

Name(s):

SHANE JANE

Email or postal Address:

TAHAKA

☐ Tick box to receive regular updates by email

6088.1

4887a

Submission to the New Zealand Constitutional Advisory Panel 2013

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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.

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Andre Jansen
Whangarei
New Zealand

2124

From: Chris Jansen <...>
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>
Date: 3/07/2013 8:56 a.m.
Subject: CAP Submission

Race based seats have no place in New Zealand politics.

cheers Chris

DISCLAIMER

This email contains information that is confidential and which may be legally privileged. If you have received this email in error, please notify the sender immediately and delete the email. This email is intended solely for the use of the intended recipient and you may not use or disclose this email in any way.

1184

From:
To: <constitutionalreview@justice.govt.nz>
Date: 8/06/2013 5:29 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Colin Jansen Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City:
Postal Region: Auckland Postal Post Code: Postal Country: New Zealand
Submission: I oppose any laws or policy which establish or promote racial distinction or division.
There shall be one law for all.

- I reject any reference to the Treaty of Waitangi or its principles in any constitutional document.
- I ask that such references be removed from all existing legislation.
- I ask that race-based Parliamentary seats be abolished.
- I ask that race-based representation on local bodies be abolished.
- I ask that the Waitangi Tribunal, which has outlived its usefulness, be abolished.

Sent on the 8 June 2013 at 17:28

4757

From: "Rhyl Jansen"
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 3:01 p.m.
Subject: CAP submission
Attachments: Submission Questions About New Zealand.docx

Submitted by

Lady Rhyl Jansen

Auckland
New Zealand
Ph

Postal address or email address:

I am a NZ Citizen with a Maori greatgrandmother and English and Scottish greatgrandparents . I am on the Maori Roll
I have a University degree – LLB- and have served at Board of the National Council of Women, the United Nations Association of New Zealand (President) and as President of the World Federation of united Nations Associations .

I would welcome an opportunity to the address the Committee to discuss my views on a proposal for an Upper House to be formed.

What are your aspirations for
Aotearoa New Zealand?
How do you want our country
to be run in the future?

Submission Questions About New Zealand's Constitution

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

Yes .

Why?

The constitution should be a comprehensive statement about our nation's highest principles and based on the Treaty of Waitangi

[See my proposal for a senate in final question which would be a way to improve our current constitution should a written constitution not be adopted.]

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

Why? The Constitution must have a pre-eminent status- the highest legal status and no changes unless agreed to by a very high percentage (75% or more

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

Why? Because the judges are experienced and knowledgeable and understand the importance of the law, human rights and international law (United Nations Declarations) which impinge on the rights of new Zealand citizens .

THE CONSTITUTION

. Submission Questions About New Zealand's Bill of Rights Act

d Does the Bill of Rights Act protect your rights enough? NO

Why? It is legislation which can be amended by Parliament and currently the government can legislate away my rights by passing a bill with a simple majority. Exemplified by the GCSB bill 2013.

d What other things could be done to protect rights? YES

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

Why? The Government must not be able to pass laws on a simple majority – it must require a much greater majority

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

Why? As above

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

Submission Questions About the Treaty of Waitangi

d Thinking of the future, what role do you think the Treaty of Waitangi could have in our constitution? **Supreme law included in the Constitution The Treaty, and it's guarantees and protection should form part of the constitution and the jurisprudence that has been established since the Tribunal was established should remain part of our law.**

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

Submission Questions About Māori Representation

d How should Māori views be represented in Parliament? **By Maori Members of Parliament voted in through Maori seats and through list and general seats.**

And through the existence of an Upper House .

d How could Māori electoral participation be improved? **Education on the need for all citizens to participate and vote . Some people have an erroneous view that Maori have more votes than others**

d How should Māori views and perspectives be represented in local government?

Through Maori representation in Maori wards and general wards.

Submission Questions About Electoral Matters

d How many members of Parliament should we have? **100**

Why? **Too many currently** and w

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

4 years.

d How should the election date be decided? **By the Prime Minister**

Why? **The government must have the ability to call an election if required**

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

Why? **To be as equal as possible in numbers of citizens that Member will represent**

d What should happen if a member of Parliament parts ways with the party from which he or she was elected? **They should resign**

Why?

Because they no longer represent those who elected them and they have no mandate to be there collecting a large salary and expenses

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

- 1. There is no question on the retaining of the Crown as the Head of State .**

The signing of the Treaty of Waitangi was between the Crown and Maori . It is very important that this relationship and the principle of both parties “ acting in good faith “ is carried out.

We have been served well by the Governors General , selected by the New Zealand Government .

A President would be costly to elect and would have political party backing.

I support the current arrangement and NOT to become a Republic.

- 2. Our Current Constitution has little or no restraint on the Parliament , the Cabinet or Members of Parliament to pass legislation with a tiny majority . All laws should be passed with a Higher majority than 61 to 59 as is being used currently**
- 3. The introduction of an Upper House is more important than any other reforms so that NZ citizens can be assured that their rights are protected .**

A Proposal for an Upper House

I was at secondary school in 1950 when the Government abolished the Legislative Council by appointing members who agreed that it had no significant impact on the legislative process. I have no recollection of any debate or information being offered to ordinary citizen.

A convention was established that there should always be Māori representation on the Council.

Without an upper house NZ is a unicameral system in which Parliament is supreme and I consider that this should be changed.

Over the years there have been some proposals for an upper house but proposals in 1990 did not include it in the final changes preferring to implement Mixed Member Proportional proposal for Parliament. This has worked quite well but events such as list MP's leaving their caucus and acting as independents, a GSCB bill which will pass a law by the smallest proportion

I submit that the time has arrived when an upper house (a Senate) of 30 elected members should be seriously considered.

This is the place where the true partnership of the Treaty of Waitangi would be instituted by having members elected by Maori and by Parliament and perhaps local government

There would be an election every 3 years at a fixed date.

Political parties should not be involved .

The aims would be to

1. Scrutinise laws passed by the Parliament to ensure that the rights of citizens were paramount.
2. To ensure that the principles of the Treaty of Waitangi especially the "right to act in good faith" were adhered to

3. Submit to the Courts any topics which required clarification
4. Members could be elected by different groups – Maori – Parliament – all citizens

What are your aspirations for Aotearoa New Zealand?

To live in a country whose government is committed to addressing the effects of climate change, that takes into consideration the effects that moving our industry production and unskilled labour markets overseas has on less educated New Zealanders and the future of our unemployed youth and to stop selling our assets and inheritance for the future. To have a government that actually does the bidding of its people and not the favours of multimillion dollar corporations or pressure from international relationships. To have the significance of protected sites and National Parks upheld by law and prevent any government or party to be able to molest their significance through mining or any other destructive act. To live in a democracy that actually participates in democratic decision making by not denying the people of Aotearoa our basic human or democratic decision making rights to have a say in what Bills get passed for "the good of" our country. To have the whole concept of "under urgency" thrown out of the parliamentary process and governments held accountable for when they continue to abuse this process for their own needs and to meet the needs of their international buddies.

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

Decentralisation of national government power with more power granted to regional governments to better reflect the needs and desires of the diverse and varying regions and people around New Zealand and the sufficient resources to be able to do this adequately.

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

The Courts because it is becoming increasingly evident that Parliament are acting within their own rules and not meeting the obligations of the constitution. They need to be held accountable to an external body and the constant use of smokescreens, violation of human and democratic rights, and outright breaking the law needs to be addressed.

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

Do you think that the Treaty should be made a formal part of the

constitution? Why?

Yes because it is a founding document of New Zealand as a Nation since colonisation. It reflects the needs and rights of tangata whenua and all other New Zealanders. When adhered to it provides a framework for a New Zealand that fairly benefits and supports everyone. Having the Treaty as part of the constitution would make governments accountable for not addressing the constantly growing trends of poverty, poor health, lack of education, violence and abuse and growing unemployment- basic human rights. This is something our government and politicians need to be held accountable for. To provide basic needs to and be protecting the people that they are supposed to be governing and acting on behalf of.

894

From:
To: <constitutionalreview@justice.govt.nz>
Date: 22/05/2013 2:45 p.m.
Subject: [RELEASED FROM QUARANTINE] [SUSPECT SPAM]
<http://www.ourconstitution.org.nz/> form submission

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

Full Names: Troy Janson Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City: Christchurch Postal Region: Postal
Post Code: Postal Country: New Zealand Submission: I Troy Janson make this submission to
show my support for a singular constitution of supreme law which holds true to the human rights act
and solidifies our place as sovereign beings in our lives and prohibits future generations from being
stripped of
theirs.

In regard to the idea of a singular constitution, we should be focusing on removing the control that the
United States and Big Business has on New Zealand via the UCC (Uniform Commercial Code) and
find a way to reroute true Sovereignty back to the individual
and let liability and transparency be the mechanism used.

Binding public referendum should be the ONLY method in which the final construction of the
constitution should be made. Ideally a committee of people should be setup taking one representative
from each district of Aotearoa New Zealand chosen by the people of
each district to represent them, that committee should be completely transparent in its operations and
have online feedback for all the issues so that the people of Aotearoa New Zealand can have as
much of a say as possible.

Removing the power of Business in Government is the key to New Zealand's Ecological and thus
Economical future in turn. If the land is poisoned then there will be nothing left for future generations,
the farms are poisoned from pesticides enough that it would
take over 40 years to grow anything on them if they were to stop being sprayed with the multitude of
toxins they are currently being bombarded with.

Preservation of Ecology is Very important too, we as Kiwis want a clean green image but fonterra sold
us all out for those who brought into an idealistic American dream, sadly for the rest of us, we must
bear the burden. This must not happen again.

Regards Troy Janson

I know not of a submission format so please forgive the grammar and layout. thank you.

Sent on the 21 May 2013 at 22:23

1107

From:
To: <constitutionalreview@justice.govt.nz>
Date: 5/06/2013 6:59 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission
Attachments: constitution submissions.docx

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

Full Names: Fiona Jarden Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal
City: Hamilton Postal Region: Waikato Postal Post Code: Postal Country: New
Zealand Submission: Submission Upload: constitution submissions.docx

Sent on the 5 June 2013 at 18:08

1. Should NZ have a written constitution - Yes, without a written constitution, there is nothing for the government to be accountable to. The original basis of law was to help create an environment which encourage trust and co-operation on society. When people like Jerry Brownlee, shut down the Chch people wanting to collect goods from houses to distribute to local charities, all done voluntary, this is against the very principles on which government originated, the very principles on which we wish to be governed. Without a written constitution outlining those principles, there I no way, we as a people can protest those actions.

2. Should the constitution have higher legal status - yes. The constitution is the principles under which we the people wish to be governed - it is the law governing the government. It must include the principles of natural law -our natural right to life, liberty and pursuit of happiness, in which no government, can legally interfere. Happiness is the right of all, to seek opportunities to develop the skills, to provide for ourselves, gain a sense of belonging and community and recognising our place I the world. The government cannot provide this for us, but it can help create an environment which encourages us to develop the skills to provide this for ourselves. Until we have a written constitution outlining the very principles under which we wish to be governed, we cannot question the extent different bureaucracies are assisting, or undermining us in this pursuit.

3. Who should have the power to decide whether the legislation is consistent with the constitution. An independent body is required to make such decisions - historically this was sovereignty, as the peoples representative. A sovereign organisation is required, that can review not only legislation, but bureaucratic systems to see the extent they are following the principles laid out in a constitution. This organisation, must be easily accessible to everyone. The courts, by their very nature, must also ensure that the principles of a constitution supersede the letter of the law. Within parliament, political parties, have a role to ensure it has properly considered the principles of the constitution prior to passing legislation, and having the legislation ascended to by the governor general. But most importantly, the people need a mechanism by which they can easily and cost effectively demand accountability to the constitution. Between the internet and the media, it is now feasible to pose simple questions - like is Jerry Brownlee acting against the NZ constitution by shutting down the Chch volunteer workers. A resounding yes from the people, should immediately initiate a review by the independent sovereign power - the people representative. That sovereign organisation must have the power invested in it, to take immediate action to stop unconstitutional behaviour - like Jerry Brownlees - we can't wait years for a court case.

2310

From: [redacted]
To: <constitutionalreview@justice.govt.nz>
Date: 3/07/2013 5:14 p.m.
Subject: CAP Submission

I am in favour of abolishing Maori seats .
Regards,
Brian Jarnell

4832

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 4:40 p.m.

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

Full Names: Cushla Jarvis Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City:
Postal Region: Postal Post Code: Postal Country: New Zealand Submission: I would like to see a more educated society, with all children attending school (or other educational facility) up to the age of fifteen, and a more tolerant society. I would like to see more respect for people's opinions and property and a huge reduction in violence - a safer community.

I like the Constitution the way it is now - where "Public power is shared between Parliament, Government and the Courts." I would not like to see power granted solely to the Courts.

Given that the Treaty of Waitangi is already widely taken into account "in law-making and public decisions" and because the Treaty principles are still evolving, I do not see the need to incorporate it into the existing constitution.

Submitted on the 31 July 2013 at 16:39

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.

Tamadea Jasul
Wellington
New Zealand

2127

From: "Jeff" <constitutionalreview@justice.govt.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 3/07/2013 9:02 a.m.
Subject: CAP Submission

At seventy six years of age and having voted all my life I believe all Maori seats should be abolished having separate representation is only racist in my view, all Maori candidates should stand on their own merits in parliament the same as all others.

Jeff

2417

From:
To: <constitutionalreview@justice.govt.nz>
Date: 4/07/2013 7:33 a.m.
Subject: CAP Submission Maori Seats

Dear sirs , I would like to see the Maori seats abolished at the first opportunity. In a multicultural society there is no need for race based political identities or any kind and the continuation of these seats is just another hindrance to overall equality

Yours faithfully

DM Jeffery

617

From:
To: <constitutionalreview@justice.govt.nz>
Date: 23/04/2013 2:24 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: MAURICE LEONARD JEFFREY Organisation Name: Email:
Phone Postal AddressA:
Postal AddressB: Postal City: AUCKLAND Postal Region: Postal Post Code:
Postal Country: New Zealand Submission: I am pleased to make the following genuine
submission, for consideration, please. It is made with a view to making a better future for all.

1. The first consideration should be to accept the important fact that everyone, YES EVERYONE, resident in this country is an immigrant, or the descendant of an immigrant. Even Maori history concedes that their forbears came in the Great Migration, from elsewhere.

This being the case, there is NO indigenous race of people here, or if there ever was, they ceased to exist over 1000 years ago.

2. This being the case, a new constitution should override and displace the Treaty of Waitangi, and be an equal constitution for all of our many races.

While it is true that much of the Maori land was taken by fair means and foul, if we are going to continue to investigate and compensate for that, perhaps we should also investigate equally how this race obtained the land in the first instance. No doubt this was also by fair means and foul, or by just taking it.

3. The new constitution should eliminate the separate Maori parliamentary seats. When the results of the recent census are out, it will show that Maori are no longer the largest minority. If we continue with separate electorates, to be consistent we would have to consider seats for Asians, Polynesians, English, South Africans, Aussalians and more.

Clearly this becomes impractable, so the answer is to have single electorates for all races to vote in.

This would also have the added value of eliminating the current divisive tactics, resulting from one minority race having separate representation.

WE ARE A CONGLOMERATE OF RACES, BUT ONE PEOPLE,
ALL NEW ZEALANDERS.

Sent on the 23 April 2013 at 14:23

617a

From: "ConstitutionalReview (ConstitutionalReview@justice.govt.nz)" <Constitut...
To:
Date: 30/07/2013 4:03 p.m.
Subject: CAP Submission

Good afternoon

Submission received by Hon English for your consideration.

Thanks

Parliament Buildings | Wellington | Tel:

From: Maurie Jeffrey
Sent: Friday, July 26, 2013 12:20 PM
To: B English (MIN)
Subject: CONSTITUTIONAL REVIEW/ CONSTITUTIONAL ADVISORY PANEL

There are some matters I think I should bring to your attention, regarding the above-----
Firstly, I should point out that my wife is one-eighth Maori, and consequently our 3 sons and 5 grandsons are all potential Maori roll voters.
Only one is not yet of voting age so currently the total with my wife is 8. NONE have opted for the Maori roll mainly for one reason, i. e. they see the existing setup with Maori seats and Maori parties as seriously divisive to the ambitions and ongoing future of race.

I understand the Advisory Panel has not yet made any submissions available to the public and I believe this should be done to have maximum clarity and transparency.

I have two more requests for your committee to consider, please. They are brief, but I believe they are extremely important-----

1. EVERYBODY, YES EVERYBODY in this country is an immigrant or the descendant of an immigrant. Even Maori history acknowledges the Great Migration of their forbears. That being the case there are NO true indigenous people here now, and this should be recognised.

2. While there is no doubt that land and property were taken from Maori, for which they are still getting reparations, but can we be sure they actually acquired it by fair means, and paid accordingly, in the first place? Or did they just take it? In which case there should be no reparations.

Maurie L Jeffrey

AUCKLAND
NEW ZEALAND

3520

From: "Barbara Jeffs"
To: <constitutionalreview@justice.govt.nz>
Date: 11/07/2013 2:23 p.m.
Subject: CAP Submission

Four years --term of Parliament

OBSERVE a referendum.

NO written constitution.

The members of Parliament are chosen by "Joe Bloggs" which means ALL sorts of people. If agitators out-vote the placid folk, that is democracy, and I must accept that decision.

Barbara Jeffs (Mrs)

From: "Barbara Jeffs"
To: <constitutionalreview@justice.govt.nz>
Date: 4/07/2013 12:34 p.m.
Subject: CAP Submission

Maori Seats MUST be abolished.
There is NO SUCH THING AS A PURE_BLOODED MAORI.
Barbara Allan Jeffs, (Mrs)
Pokeno.

3901

From:
To: <constitutionalreview@justice.govt.nz>
Date: 29/07/2013 11:56 p.m.
Subject: CAP submission

Hello,

The following is just my opinion and is not meant to be offensive to anyone that reads it. Should you take offence to anything I have said then I am truly sorry. I have always been a firm believer in agreeing to disagree when you cannot sometimes reach an agreement with some people. So to those offended; Lets do that.

My dreams for New Zealand, and what kind of country I want to leave to my Grandchildren would be:

That my Grandchildren will know the difference between right and wrong and know that should they do wrong there is a consequence. That they Respect Authority.

I am sorry to say this as I know some people will not agree, but I believe it to be true so here goes.

If you bring a child into this world, you are then responsible for that child. I believe you are responsible for that child until they are legally seen to be an adult in society and are then responsible for themselves. I hear you say but what about if they are out of control and the parents can't do anything to stop them. Well that's where I want some of our tax dollars (tax that I have contributed towards all my working life) to be used to provide help for those parents. Put these out of control children onto the Army, Navy or Air force. Not for 6 weeks or 6 months. Put them in there for at least 2 years. If their parents can't control them, then lets take them somewhere where they learn respect and appreciation of what they actually have, what their parents actually do for them. Somewhere that lets them productively vent their frustrations and anger and learn the value of family and morals. Some of these children think they are 10 foot tall and bulletproof and have no respect for anyone or anything except for their own selfish needs - its all about them. I believe they need to be humbled and taught life isn't all about them and it does not get handed to them on a plate. Take them to see those less fortunate or meet people who have overcome terrible childhoods and suffered unspeakable tragedies in life but have overcome the odds and completely turned their lives around for the better. Take them to prisons and show them what life is really like in there, lets be real, show them real Life! These children are the future of our country, quite frankly I'm scared. We are too soft as a country. I am not about to condone violence but when I was young and did something wrong I would get a smacked behind from dad or a few whacks from the wooden spoon from mum. It didn't hurt me or scar me for life but it certainly made me think twice before doing it again. With the "No smacking law" what is to stop children behaving badly when there is no real consequences if they do. I have heard some say you can't hit me, ill call the police, I can do what I want, when I want, you can't stop me - Guess what they are right - I can't do anything, I can't smack them, I can't physically restrain them, can I call the Police? What should I do? I hope my grandchildren are not asking the same questions in the future. I hope we wise up and stop the culture and behaviours creeping into New Zealand society. Lets nip it in its tracks and break these destructive cycles.

I know first hand, that just because you come from a bad childhood, it doesn't give you a free pass to continue the cycle, once you become an adult that because it happened to you that therefore you are justified

to then behave in the same way, to your children. That this is wrong, lets stop saying, oh that poor person that had such a horrible life, so we should make allowances - Wrong, why do we need to make allowances, they did it themselves, they were not forced, they chose to do it. Once you are an adult and responsible for your own decisions, you can not blame your actions on anyone else but yourself. You are the one doing it, then you are to blame. No excuses. You hear in courts all the time these days "I was abused as a child" Well you should know even more so, than anyone else, because it happened to you, that you should not be inflicting that same hurt on anyone else. We must break the cycle. Make each individual adult responsible for their own actions. When they are still a child, then the parent must be responsible for their children's actions.

We cant just keep letting it go, feeling sorry for everyone, I'm not saying don't have empathy, we must have empathy, but there should be no excuse. If we continue to keep doing this we are then condoning.

I want those Grandchildren to respect their Elders, and understand the importance of their wisdom. Let our Elders tell their life stories to the young and impressionable minds in our schools. That those Grandchildren were safe in their own homes. Lets utilise all of those highly trained Social Workers and Child Youth & Family departments, get them into schools to observe the behaviours of these innocent children who don't lie, because they don't know yet that they should lie. They will tell you anything honestly if asked the right questions. ""From the Mouth of Babes"" I'm not saying to manipulate or spy on parents, I saying ask those children about their environment, if it was cold last night; where they warm last night, did they have enough blankets. What did they have for dinner, lunch or breakfast at home? What do they do on the weekend' - did they do it with Mummy and Daddy?

Investigating these children's home life when those questions ring alarm bells might help a child from prolonged abuse if we as a society identify those at risk when they are young and the damage is minimal. Tell if this does not make sense?

Well that's my opinion, that's what I would love to see, because New Zealand and New Zealander's are generally a clever lot of people who punch well above their weight on an international scale in so many areas. Lets be smart at home and sort out our social issues, be a world leader in dealing with them effectively and efficiently.

Thanks for listening.

Kind Regards
Jen

3902

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 27/07/2013 5:37 p.m.
Attachments: Submission on Constitution of NZ – David Jenkins.doc

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

Full Names:	David Jenkins	Organisation Name:	Email:	Phone:
	Postal AddressA		Postal AddressB:	Postal City:
Auckland	Postal Region:	Postal Post Code:	Postal Country:	New Zealand
Submission: My submission is attached Submission Upload: Submission on Constitution of NZ – David Jenkins.doc				

Submitted on the 27 July 2013 at 17:36

Submission on Constitution of NZ – David Jenkins

The fact that NZ is one of 3 countries that does not have a written constitution should be of great concern and it is vital that the lack of written constitution be addressed – particularly if we are to entertain the idea that NZ might become a republic.

More importantly, I believe that the Bill of Rights Act must be strengthened and give the judiciary the right to uphold fundamental freedoms to keep the Crown accountable. While parliament will always wish to be supreme law making body, we have seen in the last 12 months several pieces of legislation (Offshore minerals exploration, Caregivers of children with disabilities) where the Crown has limited fundamental rights of NZ citizens through Parliament. The recent GCSB Bill again further seeks to erode basic freedoms by overriding basic tenets of privacy.

Unfortunately members of Parliament have shown themselves to have conflicts of interest and not be impartial. Despite the introduction of MMP, the Crown and ruling party wield far too much power through Parliament and have shown themselves not to be good custodians of fundamental rights. They seek to erode freedoms for bureaucrat expediency (viz the two above examples) and furthermore seek to protect agencies of the Crown when they do break laws (e.g. GCSB broke NZ law and was not held accountable).

I urge the discussion of Constitution to recommend that fundamental freedoms, as partially enshrined in the existing Bill of Rights Act, are given greater discussion with a view to making this a fundamental law (as per the US Constitution) and this fundamental law protecting fundamental freedoms is given a mechanism by which these freedoms can be vigorously upheld.

The Judiciary has a long history of upholding the rights of the Individual and holding the Crown to account. Moreover the Judiciary are at arms length and are scrupulously avoid conflict of interest. I would like to see a strong recommendation that Bill of Rights are monitored and upheld by the Judiciary to the point where the Judiciary can direct Parliament in extreme cases to review flawed legislation that contravenes freedoms protected by the Bill of Rights.

1495

From:
To: <constitutionalreview@justice.govt.nz>
Date: 20/06/2013 7:29 p.m.
Subject: Emailing: Our Constitution.docxCAPSubmission
Attachments: Our Constitution.docx

Attached is my submission on some of the subjects in the review. As an ordinary lay person it is difficult to get my head around everything in the short time given. The only help I have had is from my daughter who is undertaking a Diploma in Law while working full time. I reiterate here that not enough time has been allowed for this review for all New Zealanders to know about it. They are all too busy working and looking after their families.
Elsa Jenkins

The message is ready to be sent with the following file or link attachments:
Our Constitution.docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Our Constitution

New Zealand does already have a constitution. Although not written or in a single document that can be labelled "The Constitution" it exists in a number of significant enactments and other instruments in the Common Law and in core principles and conventions.

Our current constitutional arrangements are flexible and easily changed to accommodate the evolving nature of New Zealand society.

Having a supreme law constitution will shift power into the hands of the judiciary who may not be experienced enough to make certain decisions.

Constitutional changes should be referred to the public for review before the changes are made. The government should not have the sole authority on changing matters concerning the constitution.

Any unfavourable changes made by a government may result in loss of office at the next election viz the election process. The courts should have the power to decide whether legislation is inconsistent with the constitution as there is the assumption of judicial independence.

While having a one document constitution may seem appealing it will also present many issues. I do not agree with a one document constitution as that would be difficult to change as the New Zealand society continues to evolve.

While the constitutional arrangements need reviewing and revising this is a long process (i.e longer than this constitutional review has allowed for) and before New Zealanders decide to go to a one document constitution a significant amount of thought will be required to decide what it should look like and what it should contain. The average New Zealander is not aware of the constitution and this "constitution conversation" has not reached enough New Zealanders to be able to use the results to make legitimate changes to the current arrangements. Further engagement of New Zealanders needs to occur and currently the engagement is insufficient.

The Constitution Act 1986 should be entrenched as this formally sets in place the roles and powers of the three government institutions (the executive, legislator and judiciary) making it difficult to change as a 75% majority will be required to make any change. This is just one example in which the current constitutional arrangements can be enhanced but there are more if one looks. Enhancement of the current arrangements may be a suitable option to having a codified constitution.

The written text is not so important it is the underlying values that people believe in that are.

Maori Representation

New Zealand is the only jurisdiction in the world with a separate electoral roll for its indigenous people.

There should be no separate electoral roll or Parliamentary Seats for Indigenous people. Surely under MMP this should not be required.

With so much intermarriage in the world today how can anyone claim to be Maori?

We are all New Zealanders with equal rights.

No country should have a written constitution that is race based.

Treaty of Waitangi

I do not agree with the current Treaty being included as a formal part of the constitution. The Treaty of Waitangi is about partnership and until the terms of this partnership are resolved (this should be a separate process) and clearly defined any formal inclusion in constitutional documents should be deferred.

We (New Zealand) need to find a way to move forward with the Treaty. At present the government and taxpayers have paid out billions in compensation and the goal post for Treaty claims keeps moving, meaning a never ending grievance process causing a drain on the countries resources.

To incorporate the current Treaty into an entrenched constitution would be to place special constitutional status on Māori which then makes the constitution biased towards one race. A constitution is supposed to protect the rights of all not just those of one race.

Electoral Matters

While MMP has made government more accountable and has prevented any one political party from holding a majority, and therefore holding all the power, it does have some flaws. One matter that requires an overhaul is what is known as "Waka jumping" if you obtain a seat in Parliament for a party, be it a constituent seat or on the party list, and you resign from that party you should not be able to become a member of another party or stand as an independent. You should leave parliament altogether, losing all parliamentary privileges and associated payments

Another matter is the number of members you have signed up for your party to be able to stand for Parliament. It appears that 500 is too low to provide sufficient people to stand for parliament and, that having only one MP in parliament such as ACT and United Future provides no credence to MMP even if it props up a larger party. This should be a provision in the Electoral Act making it clear and concise so there is no misunderstanding.

The number of MPs also needs to be reduced and having the current 120 MPs places a drain on the country's resources as some of these MPs are being paid by tax payers but not making a valuable contribution to the country.

The current three year parliamentary term is too short and should be extended to four years. This will allow for a party(s) in power to have sufficient time to make an impact on the country and fulfil their election promises.

The election date should be a consistent date that is provided for in the Electoral Act 1993. All the provisions in the Electoral Act should be entrenched; currently only section 268 is. This will ensure that small changes cannot be put in place unnoticed and will then be fully debated and consulted on.

145

From:
To: <constitutionalreview@justice.govt.nz>
Date: 9/04/2013 10:53 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Nigel David Jenkins Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City:
Postal Region: Waikato Postal Post Code: Postal Country: New Zealand Submission:
I have been told that the word "pakeha" means 'white ghost'. And the word maori means
"people of the land". I find this deogatory and prejudice If this is so, I would like the word
pakeha changed or people educated about the true meaning of these words
by TV ADVERTISEMENT. Than you

Sent on the 9 April 2013 at 10:52

145a

From:
To: <constitutionalreview@justice.govt.nz>
Date: 9/04/2013 10:54 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Nigel David Jenkins Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City:
Postal Region: Waikato Postal Post Code: Postal Country: New Zealand Submission:
I have been told that the word "pakeha" means 'white ghost'. And the word maori means
"people of the land". I find this deogatory and prejudice If this is so, I would like the word
pakeha changed or people educated about the true meaning of these words
by TV ADVERTISEMENT. Than you

Sent on the 9 April 2013 at 10:53

1971

Quick Submission

Your name:

William Jenkins

Name of the organisation you represent (if applicable):

Postal address or email address:

Napier

Attached:

Privacy and Confidentiality

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**

Submission to the Constitution Advisory Panel

By Will Jenkins, Napier (no group represented)

1.0 The New Zealand constitution

- 1.1 I personally believe New Zealand should develop a single written constitution. This would help create administrative efficiency, encourage national pride and a greater understanding of the law and how it impacts on people's lives.
- 1.2 Currently the constitution is spread across a wide range of documents. I believe this helps create a sense that the law is difficult to understand and only for access by 'experts'.
- 1.3 By creating a single written document I believe this will encourage more New Zealanders to develop an understanding of its contents, refer to it and use it as a basis for determining their rights, responsibilities and privileges as citizens. I also feel that this would make the creation of classroom resources and teaching plans more realistic.
- 1.4 I am not comfortable with the constitution becoming supreme law, mainly because I am unsure what the implications of this would be; if I were I may more likely offer a firm opinion one way or the other.
- 1.5 I believe Parliament should remain the final source of power and legislative determination in this country (i.e. we should retain full Parliamentary sovereignty). This enables the people to have a reasonably direct influence over decision making and the nature of law / policy (through elections and the select committee process etc.) in a way I believe they would not should the constitution be made supreme law and by extension 'abandoned' to the Courts.
- 1.6 I fear if the constitution were made supreme law then the courts would be used to push the viewpoints of powerful lobby groups and those with money and influence, to the potential detriment of everyday people. I am aware that the Parliamentary system is often criticised for these very things, however I believe that the democratic party system, open free media and corruption free elections (all of which must be preserved at all costs) help reduce the impact of these kind of pressures.
- 1.7 I fear the judiciary would become politicised if they had the final decision making authority. This should be avoided at all costs.
- 1.8 Of course all this would depend on what was in the constitution. However in our current political environment there are a wide range of opinions from the far left to the far right. I cannot see how all these viewpoints can be readily distilled into a single deterministic document.
- 1.9 At least under the current parliamentary environment, legislative changes typically reflect the mix of parties as voted by the people. A constitution that is not made supreme law would at least allow a pragmatic interpretation, reflecting the political flavours of the Parliament as determined by the people over time.
- 1.10 I personally think it is best to keep this kind of direct influence in our political system rather than abandon it to some form of supreme document, interpreted by the judiciary who are not elected or voted out by the people.

- 1.11 I personally believe some of the political stalemate and extremism observed in the United States is due to their almost fanatical devotion to their constitution, written over 200 years ago, which no longer reflects all aspects of modern society as it is now.
- 1.12 That being said I believe the constitution once agreed on, should be made difficult to change and should require a 75% vote for further changes. This should safeguard the constitution from too much meddling or reinterpretation, without having to go the extra step of making it supreme law.
- 1.13 It should be voted into place ideally with a 75% majority of Parliament. This will ensure broad agreement on its contents and make it less likely to become a political football.
- 1.14 I personally believe the voting process of Parliament is the best place to decide whether legislation is inconsistent with the constitution. The courts should also have the power to make rulings stating as such, but only in the form of recommendations.
- 1.15 I would like the constitution to begin with a preamble that references the Treaty of Waitangi as New Zealand's founding document. It would also mention the special and unique place of all people's, fauna and flora living in this country. It would also note the importance of all people groups, their culture, values and belief systems.

2.0 The Treaty of Waitangi

- 2.1 I believe the Treaty of Waitangi is the founding document of New Zealand and must be not only made a part of a single written constitution, but be given a place of significant status within that document.
- 2.2 I personally believe Maori on the whole have been given a raw deal since the signing of the Treaty namely: 1. The radical differences in meaning between the English and Maori texts 2. The appalling abuses including unfair laws up until the late 20th century. 3. While I welcome the Treaty settlement process I am aware that it does not compensate in full for what was lost. However as an apology, a recognition for what happened and as a significant transfer of assets, the settlement process is still very important, timely and effective.
- 2.3 Due to 3.2 my heart tells me that the right thing to do is to make the Treaty of Waitangi supreme law, however my head tells me New Zealand is not yet ready for the potential implications of such a move.
- 2.4 Instead I suggest a more pragmatic, 'next step' approach be taken by giving the Treaty a significant place in a single written constitution and moving ahead on a partnership basis (as recommended by the late Lord Cooke of Thorndon).
- 2.5 The principles of partnership should be increasingly applied to other legislation as it comes up for review.
- 2.6 Once the Treaty settlement process comes to an end a Treaty of Waitangi Court should be established with the power to hear cases and rule on whether the Treaty relationship / principles has been broken between the Crown and an individual, people group or organisation.
- 2.7 This court should have the power to order remedies and make recommendations to Parliament. Parliament would be given up to a specified time frame (6 months?) to reply in writing to the Court explaining what they intend to do in relation to the finding (if

anything; this would be a public document), however at the end of the day the Court would not have the power to order changes. If Parliament chooses not to act it would need to give a clear and reasonable reason; they would then be subject to the will of the people at a subsequent election.

2.8 The Court should issue regular reports on its activities and progress reports on the issues it has been mandated to watch.

3.0 The Bill of Rights

- 3.1 I believe the Bill of Rights should be included in a single written Constitution, principally because the current Act covers important and basic human rights which should be widely understood and preserved. I understand it is common practise for a Constitution to include these rights.
- 3.2 I do not see it necessary for the Bill of Rights to be made supreme law, however it should be entrenched.
- 3.3 Given the immense social and technological changes since the Bill was passed, I feel it is now timely to review the rights covered by the Bill and update them as necessary. This should be part of the process of drafting and seeking public comment on any proposed written Constitution.
- 3.4 I personally would like economic, social, cultural rights added as well as the right to privacy.
- 3.5 The Courts should be given an increased mandate to pass judgement on whether the rights have been broken by the State and in most cases order remedies. However legislative changes should remain the preserve of Parliament alone and by extension, the will of the people.

4.0 Maori Representation

- 4.1 I am personally satisfied with the status quo of including a portion of Maori seats (as determined by the number on the Maori roll), as part of the make-up of Parliament.
- 4.2 This at least guarantees a minimum Maori voice in Parliament; to me this is an important part of the partnership established by the Treaty.
- 4.3 Any changes to this system should be decided by Maori alone. A poll should be taken every 3 elections (with clear alternatives) to see if there is a mandate for change.
- 4.4 Ideally the number of Maori in Parliament should reflect their proportion of the total population (i.e. this will increase over the next few decades); however this should be left for individual political parties rather than mandated by law.
- 4.5 I like the idea of having Maori wards at local body level. A poll calling for such a move should be triggered by 10% of electors living within a local body's area. The establishment of one or more Maori wards should be allowed after 40% of voters voting in a poll agree to such a move. This should make it easier for wards to be established, in regions where there are a reasonable portion of Maori residing.

5.0 Electoral Matters

- 5.1 I am satisfied that the current number of MP's (120) is about right. I do not currently see the need for any more, at least until the population increases to close to the 5 million mark (I am sure this is some formulae for working this out, if not this should be established).
- 5.2 However less MP's would seriously hinder representation, make electorates too large for a single MP to manage and increase their workload to the near impossible.
- 5.3 The term of Parliament should be kept to 3 years (perhaps 3.5 years?) This is mainly on the basis of allowing the people a reasonably regular opportunity to vote and change the makeup of Parliament as they see fit.
- 5.4 The election date should be fixed; otherwise it just allows the Government in power to use it to their own advantage. Certain pre-set criteria such as a passed lost confidence motion, the loss of a majority, national crisis, war etc. should still enable the Government to call an early election.
- 5.5 I am reasonably comfortable with keeping electorates based on roughly the same number of people in each electorate; however I do not have any set opinion on this matter.
- 5.6 I personally believe waka jumping should still be allowed. At times a MP does part company with a party because they genuinely believe a party no longer represents the mandate or the policies that they entered Parliament representing. I am well aware that the usual reasons for waka jumping are typically much more dubious. Of course that person will still have to face the people at the next election.

6.0 Other issues

- 6.1 Can I suggest that the vexed issue of Republicanism also be reported? While I am reasonably happy with NZ remaining a Constitutional monarchy into the foreseeable future, my gut feeling is at some point we will become a Republic. A semi-regular poll (every 2nd or 3rd election?) should be instituted to gauge shifts in public opinion. Once a clear majority has been reached then moves should be taken to move carefully in this direction.
- 6.2 Another long term suggestion surrounds the issue of Maori self-determination over their own lands and affairs. I believe the Treaty not only brought about partnership but also for Maori to have full possession and control over whatever assets they continue to care for or own.
- 6.3 I would like to see some form of Maori Council or Parliament for want of a better term (with elected representatives from the various Iwi around the nation) established at some point in the medium term. This would decide policy relating to Maori development, lands and have a budget (voted on each year as part of the annual budget process) for Maori health, economic and social development projects and have the right to recommend law changes to the current full House of Representatives. In the medium term this would need to be passed by the House of Representatives, but perhaps in some point in the future it would have the ability to pass its own law.