

688

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/04/2013 5:39 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: UpokoAriki.Huriana Heemi Lawrence (Haenaa) Organisation Name:  
Email: Phone:  
Postal AddressA: Postal AddressB: Postal  
City: Postal Region: hawke's bay Postal Post Code: Postal Country: New  
Zealand Submission: Crown and New Zealand Government have no right to create such  
discussion, the issues of genocide and colonialism is still an issue of deep racism within a western  
context.

Sent on the 29 April 2013 at 17:37

5163

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 4:40 p.m.

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

Full Names: christopher john lawrence Organisation Name: private Email:  
Phone: Postal City: dunedin Postal Country: New  
Zealand Submission: I submit that no part of the New Zealand constitution be race based and that  
the Treaty of Waitangi be abolished.

Submitted on the 12 June 2013 at 14:14

2062

**From:** Garry Lawrence  
**To:** "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>  
**Date:** 2/07/2013 10:35 p.m.  
**Subject:** Submission on Maori Seats

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1. Race-based representation has no place in a modern society. Our democratic rights must be based on citizenship and not on race otherwise we do not have a democracy.
2. There are no race based seats other than Maori seats. Therefore the Maori seats discriminate against the rest of the population.
3. Any supposed rationale for Maori seats has been made redundant due to MMP, therefore they are racist discrimination against other fairly represented peoples in our current political system.
4. Race-based seats are a form of apartheid and should be abolished.

Please acknowledge receipt of this submission

Garry Lawrence  
1 Auckland

2062a

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 10:06 a.m.  
**Subject:** [RELEASED FROM QUARANTINE] [SUSPECT SPAM]  
[http://www.ourconstitution.org.nz/form\\_submission](http://www.ourconstitution.org.nz/form_submission)

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

Full Names: Garry Lawrence Organisation Name: Email: [garry.lawrence@ourconstitution.org.nz](mailto:garry.lawrence@ourconstitution.org.nz)  
Phone: Postal AddressA: Postal AddressB: Postal  
City: Auckland Postal Region: Auckland Postal Post Code: Postal Country: New  
Zealand Submission:

- Bill of Rights Act – Does it protect your rights enough?

Yes

- Treaty of Waitangi – What role should it have in our constitution?

None at all. The Treaty is not a partnership, it was a surrender of rights to the Crown in return for protection from other tribes at the time and is a poorly drafted and completely outdated document. We are all one people and no-one should have special privilege as we are all migrants and this includes Maori. Hard work and focus results in success and that should be the message to government from the Panel, not a case based on a sense of entitlement and grievance. The Treaty should be abolished as it has served its purpose.

- Maori Representation – How should Maori views be represented in Parliament?

Race-based representation has no place in a modern society. Our democratic rights must be based on citizenship and not race. Anything less is apartheid. Maori views should be represented in Parliament in the same way as Chinese, European, Samoan, Australian etc views are, through their elected representatives on the general roll. Why do Maori alone need special representation? There is no basis for this and those arguing for it are saying that Maori are incapable of making their way in the world without special treatment, which of course is not the case.

Sent on the 4 July 2013 at 09:15



2614

**From:** owen lawrence  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 8:21 p.m.  
**Subject:** CAP Submission

If we are all going to be equal under the laws of this land, then there is no place for race based seats, or any race based legislation

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However I doubt there is anyone in the present political landscape who will set us on a path for a democracy that treats all people as equals.

For my part I want an administration that will do right by all people, and set no group apart and above any other - forlorn as this hope may be.

Owen Lawrence

3762

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 23/07/2013 12:36 p.m.  
**Subject:** [RELEASED FROM QUARANTINE] [SUSPECT SPAM]

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

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Full Name:	Philip Lawrence	Organisation Name:		Email:	
Phone:		Postal AddressA:		Cambridge	
Postal AddressB:		Postal City:	Cambridge	Postal Region:	Waikato
		Postal Post Code:			
Postal Country:	New Zealand	Submission:	I believe that an unwritten constitution serves a country best as it responds to changing circumstance as perceived by general populations at given times.		

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My concern with the inclusion of the Waitangi Treaty in a written constitution is as follows -

1/ The 'principles' are not as yet defined .

2/ The Waitangi Tribunal is representative of Maori academics and sympathisers as opposed to impartial investigators. It seems to seek its own version of truth.

3/ Any determination it makes will be suspect and as part of a written constitution will be fodder for lawyers for generations.

If the general population over time sees a need for formal acknowledgement of the Treaty and its principles so be it.

I suggest that the time is not yet come.

Submitted on the 19 July 2013 at 20:38

718

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 1/05/2013 4:52 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Susan Lawrence Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City:  
Auckland Postal Region: Postal Post Code: Postal Country: New Zealand  
Submission: I would only want a written constitution if we no longer had the Treaty of Waitangi. We can't have both. Maori are still very tribal which is why the billions they have been given on settlement issues remain with Iwi leaders and the like. As an Afghani once said to me, the only people who ever see any money are the Mullahs. Maori, who most have more European genes running through them than Maori, have to move on and get over themselves. The poor victim mentality is pathetic in the 21st century in this country at this time. At some time people have to stop looking back or they will be miserable forever. If Maori and Pakeha can't make it NZ is doomed. The Chinese will probably take over anyway, the Asian brain runs rings around us all.

Sent on the 1 May 2013 at 16:51

718a

**From:** SUSAN LAWRENCE  
**To:** "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>  
**Date:** 25/07/2013 5:52 p.m.  
**Subject:** The above

We do not need a written constitution in New Zealand, especially when pushed by Maori for their own self-centred gain.

Until the great white warrior came down from the Northern Hemisphere the Southern Hemisphere people still lived Light years behind. Life is and always has been about the strongest and most powerful, who march, sail or ride in and take over. It's what evolution is all about also, otherwise we would still be grunting in caves. Maori have to get real, life is not fair never has been, end of story. But, because of several stupid white politicians over the last 50/60 years have given in to bullying demands, little by little, we now have a bunch of people, with an arm or a leg of Maori blood demanding their rights. What rights? What have Maori actually done for New Zealand? What did they do in the past? I have read many books on the history of NZ, there were only about 50,000 Maori in NZ by the time the white man arrived, very tribal, uncivilised, mean and vengeful. Nothing has changed really. (I'm generalising, there are good people in every culture). Maori are damn lucky the English took over, the French for a while we're keen but lost interest. If the French had got NZ the Maori would not have their native tongue, a Treaty or huge pay outs that doesn't seem to have helped the average Maori what so ever. The English and Celtic people made this country great and also the Slavic, German, Polish and Dutch who followed by the end of the 19th century. Maori should stand united with the majority of people who brought NZ kicking and screaming into the real world, and stop looking back!

The way new immigrants, from countries that most of us had never thought about 60 years ago, are flocking down here to live, who work hard, build their own homes and want their children to be well educated, they will in the future have a huge say in NZ. People with Maori blood should be very careful what they wish for, it might come true.

We do not need a written constitution, once that happens everything is set in stone aren't cant be changed, like the gun laws in America! Everything of great importance, there should be a referendum for the people, true democracy.

Regards  
Susan Lawrence

2590

**From:** "Robin Le Bagge"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 4:23 p.m.  
**Subject:** CAP Submission

To whom it may concern

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It is high time that we as New Zealanders stepped back and took a look at what has been allowed to develop here in New Zealand as we have become a divided country with them, the ever cash demanding Maori who have created a very comfortable life style for themselves and then there is the average hard working 'New Zealander.

We therefore wish to record our objection to the existence of Maori seats as separatism.

Should this continue to be allowed then we should also have South Pacific seats and Asian seats.

Murray and Robin Le Bagge



4803

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 4:03 p.m.

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

Full Names: Christopher Le Breton Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City:  
Dunedin Postal Region: Otago Postal Post Code: ! Postal Country: New Zealand  
Submission: I am a new New Zealander (in the last 2 years) having lived, worked and travelled in 95 countries, and worked for the European Union, United Nations, and stood for the UK and European Parliamentary election on 2 occasions.

NZ has a huge opportunity to create an empowering, thriving society that builds on the strengths of both Indigenous cultures here in NZ and the best of the modern world.

Given the indicators for the state of the environment in NZ are bad: 90% of rivers are of poor water quality, there is more and more pollution to lakes, 75% of farms would have to close if NZ were in the EU, and there is more and more bio-problems against NZ's unique natural environment, it is clear that the western model of treating the environment as something different, set apart from us, doesn't work.

- The alternative is to create an economy that acknowledges the interconnections between the environment, justice for people and a thriving society, viz Kaitiakitanga. And this is what I propose for the new Constitutional Conversation:

- A Constitution that acknowledges the profound interconnection between environment, a thriving society and the economy, marrying the best of indigenous wisdom and the creative genius of the modern world.

- giving therefore Rights to the whole of Nature: this is something accorded implicitly by traditional cultures. That western/neo liberal systems don't give it so much importance is one explanation for the environmental pollution across the planet: 90% large fish gone (fish set to go extinct globally by 2048 unless there is a big change).

- there does appear to be a need for an enhanced institutional structure, a Council of the Regions, perhaps online, or perhaps meeting in different parts of the country every 6 months, to consult people's views as to the pressing issues facing the country,  
and the views and suggestions of people to resolve problems, and to convey their views to Parliament.

## 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.

Gwennaél Le Coadic  
Boubiers  
France

1608

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 26/06/2013 11:56 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Mike Leach Organisation Name: nil Email: Phone:  
 Postal AddressA: Postal AddressB: Postal City: Hamilton  
 Postal Region: Waikato Postal Post Code: Postal Country: New Zealand Submission:  
 Our constitution should be a single document to avoid all the difficulties of the past in not having one .  
 It is very clear that the Treaty of Waitangi -despite best intentions, has not been a good founding  
 document for a modern NZ. Any history student  
 knows the treaty was inherently flawed and contradictory . It is a poor model on which to base the  
 progress of a modern democratic state. At the time the 2 parties were A. The most advanced nation  
 on earth.B A people barely out of the neolithic age.

It is very apparent by the actions of large Maori groups such as the Kingitanga Land League in the  
 1850s and the Hau hau in the late 1860s that they had little understanding of the Treaty. These were  
 significant but failed attempts to show that "we weren't  
 one people before the law".

Since then some Maori have found other ways of creating a separate state within a state which is  
 anathema to achieving a stable long lasting democracy for all New Zealanders. The key ideas for a  
 new constitution must be:Equality before the law. All racial privilege  
 must be removed forever and never reinstated under any circumstances. People and their ideas  
 must be treated on their merit, not the colour of their skin or who one of their relatives was 160 years  
 ago.

2 Yes, the Constitution must be the supreme document that guides other laws and the lawmakers. It  
 is the philosophical base for our modern democratic nation.It is the fundamental law.The US  
 Constitution should serve as a starting point-especially the glorious  
 introduction and after removing the second amendment on firearms.

3 Parliament must be supreme.They are the highest court of the land and they are elected by the  
 people for only 3 years. If the people disagree with decisions they make they can change the  
 government but they cant change the courts. The people have seen how  
 courts can make incredibly poor law such as the flawed and poisonous "Principles of the Treaty  
 "which has set back New Zealand 100 years. Judges are not subject to the direct, democratic  
 will of the people. We know they are can be biased and flawed in their  
 judgements without having the ability to get rid of them for the betterment of the nation.

Also :4 The Constitution must get rid of separatism before the law. It must have no race based MPs ie  
 Maori seats must be abolished immediately.They are a blight on our modern nation. Although initially  
 well meant when introduced they have now out lived their  
 usefulness. Maori are now as well informed and educated as any other group in the land -we are a  
 different country now. South Africa has shown what happens when people get treated differently in  
 law-it is a long term recipe for disaster. There must be no reserved  
 seats on any council or similar body for any ethnic or racial group. Elections must be on merit only .  
 Likewise people must be free to practice their culture as long as it does not impinge on the law of the

land or the rights of others.

Sent on the 26 June 2013 at 11:55

2844

**From:** "richard leach" <  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/07/2013 8:32 p.m.  
**Subject:** CAP Submission

Abolish Mauri seats

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2244

**From:** "Rob Leach"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 3/07/2013 3:02 p.m.  
**Subject:** CAP Submission

This is my submission:

I am in favor of abolishing race based (or any other divisive basis) in respect of any aspect of central or local government, law, or voting structures or parliamentary seats.

Every person in NZ has an equal chance of voting in the general electoral role.

This country should be one country with equal privilege for all - apartheid systems are unacceptable, and not what our forefathers went to war for

Race based discrimination must be driven out of this country

It is time that elected parliamentarians set aside their own little power plays and remember that they are accountable to the public as they are voted in to represent public opinion. This current government is too arrogant by far, though the problem is there to a lesser extent in other parties.

It is time to get back to basics. This country cannot afford the nonsense that has been going on for the past 10 to 15 years. Either the elected representatives of the public get off their backside and do it, or the public will do it for them in a rather spirited fashion. Does the government want civil disorder and rioting or are they going to face up to the fact that they currently do not represent the silent majority in this country.

Pressure and discontent is building!

Rob Leach

, Lower Hutt



## 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

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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.

I therefore submit the following recommendations:

- The incorporation of economic, social and cultural rights into the Bill of Rights Act 1990;
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- 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.

Maire Leadbeater  
Auckland  
New Zealand



Our constitution is the set of rules that determines how  
 >>>> GOT A QUESTION? VISIT WWW.NZPOST.CO



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

*All NZ'ers are equal under the Law. I  
 have a hope/vision for greater social  
 equality through a fairer distribution  
 of our country's wealth. No sale of  
 state assets.*

*Electorally, MMP needs to ease the  
 threshold from 5% to 4% of the party vote  
 and to abolish the one-seat threshold.*

*I'm not convinced we need a written  
 Constitution, in addition to Bill of Rights &  
 the Treaty of Waitangi.*

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

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

Name(s):  
 ALAN LEADLEY

Email or postal Address:

☐ Tick box to receive regular updates by email

2689

Tauranga.

2nd July 2013.

Constitutional Advisory Panel,  
% Ministry of Justice,  
DX SX 10088  
Wellington.

Dear Sirs,

My submission to the constitutional review is that New Zealand does not need a written constitution. New Zealand's unwritten constitution has served us well. I strongly oppose any legislation or reference to the Treaty of Waitangi being included should one be drafted in the future.

I am totally against any form of a race based constitution. New Zealand has already gone too far along the road to apartheid with a Maori All Black team, a Maori electoral roll with separate Maori seats in Parliament and a Maori political party.

We are and should be all New Zealanders.

Yours faithfully,

(MRS J.M. LEADLEY)



511

**From:**

**To:** <constitutionalreview@justice.govt.nz>

**Date:** 17/04/2013 5:30 p.m.

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

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

Full Names: Christine Leaf Organisation Name: Email: : Phone:  
Postal AddressA: Postal AddressB: Postal City:  
Postal Region: Northland Postal Post Code: Postal Country: New Zealand Submission:  
I do speak with a concern for our moral laws that are put before parliament.

I have signed a number of petitions - mainly to do with marriage , alcohol & drug issues

There seems to be 1000s of signatures from the NZ public to stand against this moral decay but when coming before parliament there seems to be an ability for list MPs to make their votes count. They seem to be strong enough in their voting rights when they really are not represented by the NZ voter.

I would like to see a fair representation of the NZ public in our moral votes.

Can you put a question in our census papers that can show the percentage of "for and against" on such matters which would give a good indication of the NZ public's view on moral matters?

Sent on the 17 April 2013 at 17:29

4878

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 5:02 p.m.

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

Full Names: Judith Helen Ledward Organisation Name:  
Email: Phone: Postal AddressA:  
Road Postal AddressB: Postal City: Postal Region: Northland  
Postal Post Code: Postal Country: New Zealand Submission: My children and  
grandchildren are Ngai Tahu. They are New Zealanders.

Abolish the Treaty of Waitangi. Abolish Maori seats in Parliament. Treat all NZ citizens as New Zealanders (not Maori and non Maori) under common laws for ALL.

New Zealand's proposed constitution must promote equality for all, without mention of race, culture or creed.

Otherwise this country will go down the track of many other countries....bitterly divided by race.

I fear for my grandchildren who are being indoctrinated into believing that Maori are a special race and deserve special treatment. Racism is at work in NZ.

Submitted on the 31 July 2013 at 17:01

1584

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 25/06/2013 9:16 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** Constitutional Review Paper2013.pages

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

Full Names: Clifford Owen Lee Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Mamaku  
Postal Region: Bay of Plenty Postal Post Code: Postal Country: New Zealand  
Submission: Submission Upload: Constitutional Review Paper 2013.pages

Sent on the 25 June 2013 at 21:14



**Constitutional Review Submission**

Dear Sirs,

First I must express my appreciation for the opportunity to contribute to this extraordinary important issue. Secondly I wish to express my appreciation for having the Maori issue as the 'elephant in the room' as in fact it is more like a very large bomb in the room.

1. I know of no nation or large group of people that remained peaceful while allocation privilege based on anything other than talent, knowledge, expertise or other factors not dependent on the colour of the skin or the ethnic background. Indeed many nations have tried to divide their society in this way and all failed. These failures are extraordinarily expensive in lost lives, capital goods, relationships and all those things that go with a civil war.

Many people do not realise that the United States Civil War cost more lives than all of the wars that the country has fought before or since. Indeed that war was still being fought in the 1960's in a low pressure way as the Southern segregationist continually challenged the non discrimination laws and equal rights statues causing a real hassle in the U.S. South.

Therefore the first item on the constitutional review should be that there will be no positive or negative discrimination based on anything other than talent, ability, age and trustworthiness.

2. The second major item is the size, term and expertise of parliament. We need a business like parliament with the expertise to judge the legislation put forward from any source. MMP has proved to be a disaster as the population of New Zealand is naturally divided almost in half between National (conservatives) and Labour (liberals). Any minor parties brought forward by MMP are able to hijack the entire parliament and the Nation simply by offering their one or two votes to a party that is within one or two votes of becoming the government. This is truly a danger to New Zealand as quiet often the legislation that comes forward is divisive by its nature and no country should be ransomed by one or two people that may have been elected by a narrow majority to the house of representatives.

3. The third issue with parliament is the fact that they are elected for a three year period and a number of issues come up in that period that really need some public input in order to make sure the public is not disenfranchised. Examples would be the sale of our assets both by Roger Douglas and now by John Key. This is an example of governments that caused considerable damage due to their fixed ideas on how to run an economy or a nation.

I would therefore suggest that parliament be formed in the following manner as the arrangements would allow the people of New Zealand to express a powerful opinion at anytime and keep parliament in touch with the nation and its opinion on any specific issue.

4. I am suggesting we have 30 constituent areas in New Zealand and that we elect two people for three years from each of these constituents. once every three years. Obviously the first elections would be for two parliamentarians however the numbers will build up over the initial three years and at the end of the three years we will have a fully functioning parliament. The election cycle is then on going and effects two people every month. In this way parliament and the government will be forced to take account of public opinion on any particular issue. The loss of two seats by the government could bring forward a new prime minister and a new government which will be very much tuned to what the citizens of New Zealand will accept rather than the dogmatic attitudes of politicians who may or may not have an idea of what they are doing in the long term. This system



will lead to some instability however in time governments will learn that by simply modifying their agendas in parliament they can avoid a loss in these monthly elections or the opposition may decide not to change the administration over a minor issue and simply put the parliament on notice that the issue before the nation may not be decided in parliament but in the election booth. From the first monthly election parliament will be put on notice that the public is watching and it wouldn't surprise me to see the leaders of parliament change one or two times before the first parliament is fully elected.

As a matter of course the parliamentarians or the people who wish to stand for parliament would be required to submit to a written examination to ensure that they are of normal intelligence, that they know something about politics and the history of inadequate parliament decisions. Obviously this examination would have to be done very carefully as there will be enormous pressure to copy and make available the questionnaire. A number of different questionnaires, different issues etc. would have to be quite broad and some papers would be more difficult than others however that is not important as passing the questionnaire whether or not the questions are the same is an indication of drive and ability on the part of the candidate.

5. The constitution should state quite plainly that all of the land, water, the foreshore and seabeds and air space belong to the nation and the rights to use or occupy may be purchased or remain for public use as is now the case.

6. The idea that privilege be enshrined for our natural resources

7. in a constitution is simply unacceptable and would not be accepted in any nation in the world.

Regards  
Cliff Lee

MAMAKU

4059

**From:** C. W Lee  
**To:** "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.govt.nz>  
**Date:** 29/07/2013 3:32 p.m.  
**Subject:** CAP submission

I would like to make a submission on the Constitutional Review as I have become very concerned about the present government's behaviour. They are doing things that I believe, are not in the long term interests of the New Zealand public.

We are supposed to live in a free and democratic country and yet our government is allowing New Zealanders to be spied on for the benefit of foreign countries.

Many New Zealanders died fighting for what they thought of as freedom. Would they have ever believed that they would have a government in power that saw their freedom as secondary to the desires of a so called friend?

We have seen our government change the law when one of its agencies was deliberately breaking a law that protects the privacy of individuals. They should have been holding the agency to account. Again, this lawbreaking was done on behalf of another country. It was only through the wealth of Kim.Com that we found out about this lawbreaking. How many New Zealand citizens would have the wealth to take on the government?.

Today we hear that the Armed Forces regard an investigative journalist as a "subversive" and used the Intelligence services of their own and other countries to spy on him.

We are told that there will be measures protect the "ordinary" citizen but who is controlling these agencies now. We have a Prime Minister who is supposed to be the top man but he has obviously been asleep at the wheel. It seems that "she'll be right" is his motto. He suggests an old "mate" for the top position under himself. This does not feel like we have a government that is hell bent on protecting the rights of its citizens.

I came to New Zealand forty six years ago, married a New Zealander and have loved living here. I have five children and six grand-children. All but one of them live in New Zealand. With the contempt this government appears to be showing its own citizens I fear that my children and grand-children will have far less privacy from our own government than I enjoyed.

All this is being done for the benefit of another country. I believe it is a disgraceful way for a Government of New Zealand to behave.

I would like you to ensure that New Zealanders of the future will have the same rights to privacy that you and I have enjoyed .

Yours faithfully

C. W Lee

**From:** Chris Lee  
**To:** <ConstitutionalReview@justice.govt.nz>  
**Date:** 31/07/2013 8:49 a.m.  
**Subject:** Submission to the Constitutional Advisory Panel

Hello

My name is Christopher Alfred Lee.

I am a proud New Zealander.

I am 65 years old and live at [redacted] Tauranga.

I am a [redacted]

I have worked in Australia, Indonesia, the USA, Canada, Italy, and the UK. However, I have never been away from New Zealand for more than four and a half years (and generally much shorter periods than that).

New Zealand is my home.

I regard myself as a rationalist and I am an atheist.

I believe in a secular democracy. That means that I believe in a political system of government which does not differentiate between its citizens on the basis of religion or ethnicity. It means I believe people have a right to be respected as equal human beings within our society. And it means people have an obligation to respect the structure and functioning of our agreed form of government.

As much as I was able, I worked hard for the introduction of MMP as a brake on majority self interest and as a political arrangement where minority interests would have a real voice.

To the best of my knowledge I have no Maori ancestry.

My ancestors include:

My paternal great great grandfather Andrew Lee, an Irish Catholic who arrived in New Zealand in 1850 at age 21 having survived the Irish famine.

My paternal great great grandfather Edward Clemens who was born in England and arrived in Nelson on 1st February 1842 on the Fifeshire aged 19 (and thought to be related to the family of Samuel Clemens).

My maternal great great grandmother Mary Dyer born in 1843 in Auckland.

My father was fostered at six weeks old and raised as an Olson by my Grandma who was a first generation New Zealander with Swedish parentage. She is thought to have fostered as many as 21 children.

I believe Dad did not learn he was a Lee until he enlisted for WWII. He fought for his country flying fighters in the Pacific. He fought as an Olson because he figured if he was going to die he might as well die an Olson.

He never knew his birth mother who was murdered in 1938.

My mother was born at Bethany Home for unmarried mothers and adopted as a baby by Alfred Rice and his wife Frances (nee Howley) (who gave her identity as Olga Nina Gambetta of Texas on the marriage certificate).

My Mum never knew who her birth father was and never met her birth mother.

Alfred Rice was the son of Australian Jews who immigrated to New Zealand and settled in Gisborne where his father (also Alfred Rice) operated the Rice Dramatic Company in the early years of the 20th century. Grandad's first serious job was building houses in Patea. In later years he started the printing firm A. O. Rice in Hamilton and built a bach in Kawhia.

The influences on my life, the "nature and nurture", some of which, even now, I can only guess at (if indeed I recognise them at all) are many and varied.

I am a proud New Zealander.

One Maori separatist, Dr Margaret Mutu, suggests I am merely a guest in this country. Which implies I have some country I could return to. Perhaps the panel members can suggest which country that is?

Another Maori separatist, Justice Joe Williams, talks about the people of Cook's culture and the



people of Kupe's culture. I am emphatically not of Cook's culture. And I cannot be of Kupe's culture.

I am a proud New Zealander.

New Zealand has evolved a unique mix of cultures since the signing of te Tiriti o Waitangi. Many people from many different cultures have made major contributions to who and what we are today and we have a largely secular democracy with the opportunity for the direct representation and influence of a wide range of views.

Like numerous New Zealanders with my sort of heritage I have Maori relatives in many branches of my family tree. The closest include a great niece, a great nephew, and two first cousins a generation younger than me from an uncle's second marriage.

Separatist Maori are telling me that these relatives have greater rights than I do. They have a genetic qualification which entitles them to a proportionately greater say in the governance of New Zealand. Panel members may not be surprised to learn that I totally reject that idea.

Right now, in various countries in the World, people are literally dying for a secular democracy. They are dying because the political systems they live in are riddled with religious and cultural issues which have no place in a secular democracy.

Here in New Zealand we are now examining ways in which we can embed religious and cultural issues into our secular democracy.

That is what the Constitutional Advisory Panel is about.

Centuries ago European science staggered along under the burden of religious dogma - a value system which hobbled development and physically punished "heretics".

In his report entitled Science and New Zealand's Future: Reflections from the Transit of Venus Forum Professor Sir Peter Gluckman has said:

"The one dimension of science that needs to be protected at all costs is the need for the collection and interpretation of data to be value free."

Here in New Zealand we are looking to factor into our scientific research Maoritanga and considerations of tikanga.

That is what the Constitutional Advisory Panel is about.

Te Tiriti o Waitangi ceded sovereignty to Queen Victoria (the Crown). All Maori (slaves and chiefs alike) became British subjects. All people in New Zealand retained ownership of their land and possessions. That is what the treaty says.

The so-called "principles" of the Treaty of Waitangi are a myth and are even rejected by some in Maoridom as a Pakeha fabrication.

But promotion of these "principles" which guarantee nothing better than separatism and an endless stream of grievances is what the Constitutional Advisory Panel is about.

I utterly reject any change to our legal or constitutional system which seeks to factor into our secular democracy considerations of a religious, cultural, or ethnic nature. Moreover, apart from the pragmatic economic and electoral convenience of retaining a British royal as head of state represented by a New Zealander living in New Zealand, I strongly support any movement which aims to remove from our secular democracy considerations of ethnic entitlement, the religious trappings of parliament, and notions of nobility, chieftainship, and the like.

Our society is working hard to address historical Maori grievances. Meanwhile we have had people of Irish Catholic descent telling us how we must "heal our history" while another of Irish Catholic descent suggests people like me are fellow travellers of Nazi sympathisers.

Given the little of my history outlined above, some of the panel may have an inkling of just how offensive I find both those suggestions.

I am a proud New Zealander.

My aspirations for New Zealand are for our country to continue to evolve as a secular democracy, building on its past but not being a hostage to it. Becoming genuinely egalitarian and respectful of the range of cultures and ethnicities our society is composed of.

I'd like our society to be forward looking and cohesive.

Unrealistic as it might be, I'd like our country to be governed by representatives who put ethics above religious, cultural, or economic dogma.

These are not things the Constitutional Advisory Panel is about.

If the Panel is intending to conduct hearings, I hereby advise that I wish to be heard and I will happily travel to Wellington to give you my opinions directly.

Yours faithfully  
Chris Lee





598

**From:** Cliff & Lee  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 22/04/2013 11:37 a.m.  
**Subject:** CAP Submission

Dear Sirs,

First I must express my appreciation for the opportunity to contribute to this extraordinary important issue. Secondly I wish to express my appreciation for labelling the Maori issue as the 'elephant in the room' as in fact it is more like a very large bomb in the room.

1. I know of no nation or large group of people that remained peaceful while allocation privilege based on anything other than talent, knowledge, expertise or other factors not dependent on the colour of the skin or the ethnic background. Indeed many nations have tried to divide their society in this way and all failed. These failures are extraordinarily expensive in lost lives, capital goods, relationships and all those things that go with a civil war.

Many people do not realise that the United States Civil War cost more lives than all of the wars that the country has fought before or since. Indeed that war was still being fought in the 1960's in a low pressure way as the Southern segregationist continually challenged the non discrimination laws and equal rights statues causing a real hassle in the U.S. South.

Therefore the first item on the constitutional review should be that there will be no positive or negative discrimination based on anything other than talent, ability, age and trustworthiness.

Again, before the constitution is written we should have to prove beyond any doubt that discrimination based on racial background is inherently unfair and the country should be rid of the attitude that Maori are somehow entitled to special treatment as no person is entitled to special treatment based on history or skin colour.

2. The second major item is the size, term and expertise of parliament all of which needs to be modified. We need a business like parliament with the expertise to judge the legislation put forward from all sources. MMP has proved to be a disaster as the population of New Zealand is naturally divided almost in half between National (conservatives) and Labour (liberals). Any minor parties brought forward by MMP are able to hijack the entire parliament and the Nation simply by offering their one or two votes to a party that is within one or two votes of becoming the government or that may cost them to lose their government position if those two or three votes go in the opposite direction. This is truly a danger to New Zealand as quiet often the legislation that comes forward that interests the minority group vote is divisive by its nature and no country should be ransomed by one or two people that may have been elected by a narrow majority to the house of representatives.

The second issue with parliament is the fact that they are elected in for a three year period and an innumerable number of issues come up in that period that really need some public input in order to make sure the public is not disenfranchised. Examples would be the sale of our assets both by Roger Douglas and now by John Key. This is an example of a government that could cause enormous damage due to their fixed ideas on how to run an economy or a nation.

I would therefore suggest that parliament be formed in the following manner as the arrangements would allow the people of New Zealand to express a powerful opinion at anytime in the future and keep parliament in touch with the nation and its opinion on any specific issue.

I am suggesting we have 30 constituent areas in New Zealand and that we elect two people from each of these constituents once every three years. Obviously the first elections would be for two parliamentarians however the numbers will build up over the initial three years and at the end of the three years we will have a fully functioning parliament. Election cycle then begins to bring into parliament two people every month. In this way parliament will be forced to take account of public opinion on any particular issue. The loss of two seats by the government could bring forward a new prime minister and a new government which will be very much tuned to what the citizens of New Zealand will accept rather than the dogmatic attitudes of politicians which may or may not have an idea of what they are doing in the long term. This system will lead to some instability however in time



governments will learn that by simply modifying their agendas in parliament that they can avoid a loss in these monthly elections or the opposition may decide not to change the administration over an issue and simply put the parliament on very sharp notice that the issue before the nation may not be decided in parliament but in the election booth. From the first monthly election parliament will be put on very sharp notice that the public is watching and it wouldn't surprise me to see the leaders of parliament change one or two times before the first parliament is finally elected.

I don't believe that we would elect people that are so stupid that they would try and destroy the nation before a full parliament is elected. As a matter of course the parliamentarians or the people who wish to stand for parliament would be required to submit to a written examination to ensure they are of normal intelligence, that they know something about politics and the history of inadequate parliamentary decisions. Obviously this examination would have to be done very carefully as there will be enormous pressure to copy and make available the questionnaire. A number of different questionnaires, different issues etc. would have to be quite broad and some would be more difficult than others however that is not important as passing the questionnaire whether or not the questions are the same is an indication of drive and ability on the part of the candidate.

The constitution should state quite plainly that all of the land, water and the foreshore and seabeds and air space belong to the nation and the rights to use or occupy may be purchased or remain for public use as is now the case. The idea that privilege be enshrined in a constitution is simply unacceptable and would not be accepted in any nation in the world.

In closing I would remind the Constitutional Review Committee that every nation that had tried to favour one group over another for political or other reasons has caused enormous strife and enormous loss of life.

Regards  
Cliff Lee

1168

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/06/2013 11:26 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Elizabeth Mary Lee Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Takaka  
Postal Region: Postal Post Code: Postal Country: New Zealand Submission:

My aspirations for New Zealand are for a country where all people are treated with Justice and Fairness.

The constitution should encompass the Treaty of Waitangi, this does not reduce the treaty but ensures that all New Zealanders are treated with equity

The UN Declaration of Human Rights must be enshrined as part of the Constitution, together with protection of the planet.

To enable all people to understand the constitution, and so ensure that it is respected and observed , it needs to be written in simple language

A written constitution will ensure that laws and actions can be judged against our beliefs and morals

Sent on the 8 June 2013 at 11:25

1896'

NZ 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.

Jean Lee  
Katikati.

Genny Hobbs

Desmond Hobbs

1896a

I, the undersigned, wish to state that NZ does not need a written Constitution, or any legislation drafted in the future, containing any reference to The Treaty of Waitangi.

One hundred and seventy three years after the signing of this document, and thirty eight billion dollars payout later, is far more than enough for NZ taxpayers, to cover any previous imbalances.

Unfairly, some claims, already addressed, have been reconsidered up to three times, which is beyond my understanding.

The proceeds have not been handed down to help tribal members overcome their plights, but sometimes been invested unwisely. The tribal trusts should share their payouts with "their people"

The Waitangi Tribunal should be wound up and abandoned, to allow for progress to be made in a multicultural society, since our population is now, of many ethnicities, with immigrants from many diverse countries, all contributing to our economy, and not asking for help.

Therefore, we need a binding referendum, regarding this matter, at the 2014 general election.

Jean Lee,  
Katikati.

Desmond Hobbs

Jenny Hobbs



1896b

The Declaration of Equality, spells out what needs to happen, to ensure there is one law for all, and one class of citizenship in this country.

Therefore:-

We reject references to the Treaty of Waitangi or its principles in any constitutional document.

We ask that such references be removed from all existing legislation.

We ask that race-based Parliamentary seats be abolished.

We ask that race-based representation on local bodies be abolished.

We ask that the Waitangi Tribunal be abolished.

We oppose separatism.

We wish to ensure there is one law for all, in NZ.

Rob and Jean Lee.

Jennifer & Desmond Hobbs

1896c

In a democracy, there must be one law for all, with no regard to race, gender or religion.

We therefore oppose any reference to The Treaty of Waitangi, should any legislation be drafted, now or in the future.

We do not need a written Constitution.

Jean and Rob Lee.

Jennifer & Desmond Hobbs

1682

**From:** "John Lee"  
**To:** "lison harris" <constitutionalreview@justice.govt.nz>  
**Date:** 28/06/2013 9:45 a.m.  
**Subject:** Submission  
**Attachments:** CAP values 2.odt

Your message is ready to be sent with the following file or link attachments:  
CAP values 2

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.





TAKAKA

28 June 2013

Secretariat, CONSTITUTIONAL ADVISORY PANEL  
Ministry of Justice  
DX SX 10088  
WELLINGTON.

I submit on behalf of a group in Golden Bay which has, for nearly the past two years, been meeting to consider issues surrounding the current Constitutional Review.

We see an urgent and primary need to enshrine, in a written Constitution, values which will direct and govern practices. We list them without hierarchy.

They are;

**Fairness**, such that all people have constitutionally protected rights:

**Justice**, where all people are protected by the timely availability of access to courts:

**Inter-generational respect for the planet and all natural things**, with appropriate environmental safeguards being enshrined in law:

**Cooperation**, achievable through consensus decision making:

**Integrity**, stemming from transparent accountability:

**Compassion**, demonstrated by concern for all people:

**Dignity**, shown in demonstrable respect for all people:

**Liberty**, where the individual liberty of all people, particularly the most needy, is protected by the Constitution, and

**Security** where the State protects actively all people's rights.

Please acknowledge receipt of this letter.

Yours sincerely

John Lee



1682 a

TAKAKA

8 June 2013

**Submissions**

Secretariat, CONSTITUTIONAL ADVISORY PANEL

c/o Ministry of Justice

SX10088

WELLINGTON.

1. Please find herewith my submission.
2. Please advise receipt.

John Lee.





This submission addresses only one of the questions posed by the Constitutional Advisory Panel ;

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

This submission starts with the premise that,

New Zealand cannot claim to be a 'Government of the people, for the people and by the people', only a  
'government of the people';  
consequently New Zealand needs a written constitution.

### Conceptual assumptions

- Every advance in democratic rights, anywhere in the world and over centuries, has been hindered by those in, and with, power.
- Democracy is 'government of the people, by the people and for the people', where there are shared and mutual responsibilities between the 'people' and the State has a duty to protect the people from harm;
- The State's operating philosophy is firmly based on well defined human rights;
- A constitution is a written binding contract for its people.

### Principal Concerns [derived in part from the Economist Intelligence Unit's Index of democracy.]

Patent defects in the current functioning of government in New Zealand include – not exclusively - that:

- freely elected representatives cannot determine government policy;
- there are inadequate checks and balances on the exercise of government authority;
- foreign governments help determine government functions and policies;
- special, religious and other powerful domestic groups exercise significant political power, parallel to democratic institutions;
- Government's authority extends over all New Zealand, even over local government;
- The functioning of government is not open and transparent with inadequate access to information;
- Popular perception of the extent to which the public have free choice and control over their lives is very low;
- Public confidence in government and/or political parties is low.



### How has this state of affairs arisen?

- **Voter Dis-empowerment**, which leads to
- **Voter Alienation**, which inevitably produces
- **Voter Apathy**.

### **Voters are disempowered**

- when they become aware that their voices are not truly heard;
- when there is no easy access to appropriate information;
- when they are denied ready access to decision making which takes place away from them;
- where they have no personal knowledge of, or contact with, key decision makers;
- where they become aware that the 'mushroom' theory of management is applied to them; which perception leads to views that controlling agencies and/or individuals are in no way accountable, and do not communicate well;
- when, either collectively or individually, they have lost any faith they may have had in the 'democratic' process, essentially attributable to the insidious growth of neo-liberalism, which has actively sought to create a 'dumb' and docile populace'.

**Voters are alienated** from their elected representatives because such representatives treat them, too often, as 'vote fodder'.

A political scientist recently spoke of a changing style for MPs, suggesting that political parties are now "shells of their former selves, with unhealthy levels of membership and participation"; that political parties are "... stepping stones for personal advancement and enrichment, with MPs "manifesting arrogance and narcissism and a lust of power and influence" [Bryce Edwards' NZ Herald; 6 May 2013]

**Voter Apathy**, the direct product of Disempowerment and Alienation is best illustrated by the decline in turn out at both central and local government elections. Turnout for the General Election in 2011 was the lowest ever, demonstrating a pattern of gradual decline since 1880, while turn out for local elections is considerably lower.

### Such Disempowerment and Alienation are the direct product of:

- the patent lack of accountability of Parliament, and of the Government, to its people; e.g., the 'Question Time' circus, often poor communication between MPs [particularly 'list' MPs] and constituents, managed 'press conferences', control of official information [oftimes defined as 'commercially' or 'personally' sensitive,]





This is well exemplified in the overweening behaviour of the Executive, e.g.

1. Suspension of democratic elections for Environment Canterbury; and Budget proposal to override local government.
2. Wanganui Collegiate School joining the state system despite Ministerial And Departmental advice.
3. Hobbit film making;
4. Convention Centre with 'pokies'; a 'new style of Answering Questions' ;[ *Prime Ministerial "brain fade"*; *Ministers only answering the question as interpreted by the answerer, not the questioner,; or overwhelming with unneeded issues/information... or talking far too fast...*  ]
5. Some Ministers and MPs not responding to constituents' queries.
6. 'Presidential' style of recent Prime Ministers ; [ *why did PM and not GG send message to Anzac day ? Ms Clark's motorcades* ]
7. [Ab]Use of Urgency, and/or very restricted period for making public submissions on, often, complex legislation;
8. Little recognition of arguments about effective consultation [ as defined in the Local Government Act].
9. Dis-ingenuousness 'claiming' a public mandate when only ? 40% voted for the National Party.
  - Inability of a select Committee to require accountability [e.g., Don Elder and Solid Energy Select Committee. Ignoring Select Committees to try to pass contentious legislation [Crown Minerals Act SOP April 2013 re 'defence' of oil rigs]
  - Power of extra-Parliamentary forces [e.g., Nicky Hager, "The Hollow Men" on Change of Prime Minister; Sky City 'lobbyism', predominant neo-liberal culture], Charter Schools ]
  - The inability because of a short parliamentary term to develop any long-term strategy for managing the state [ debates about improvements in the Superannuation scheme is but one example]
  - Failure of transparent and honest media reporting, and of information sharing;
  - Failure to base legislation on evidence and logic;
  - Difference between what is 'promised' in a manifesto [ if these do emerge] and 'political reality'

These criticisms, to a lesser degree, apply also to local government.



## PROPOSAL

To start to develop the growth of a real and 'true' democracy, the people, many of whom – unwillingly and increasingly – demonstrate a deep sense of powerlessness, deserve and need a thorough, well informed and lengthy debate or conversation between the people of New Zealand.

It is far from clear that this current review has been sufficiently deep and/or informed.

1. Because there is no clear definition in statute of the rights and responsibilities of 'the people' and of the State, there is a **clear case for a written constitution** which unequivocally states these mutual rights and responsibilities as well as the role of the State.

This view is founded on the need for clarity, certainty and a precise location of such a fundamental document, as well as the basis for reasoned challenge.

2. Palmer having asserted a need for “ fundamental principles according to which a nation, state body politic is constituted or governed”, **these principles, already promulgated internationally in the Universal Declaration of Human Rights**, which New Zealand has ratified; and , in so far as Maori rights specifically are concerned, covered in the United Nations Convention on the Rights of Indigenous People; **must be included in a New Zealand Constitution, so that New Zealand becomes a constitutional Democracy.**

3. While the 'spirit' of **democratic constitutionality** in New Zealand may be universally accepted, it is patent that it **has never been achieved in operational practice.**

4. This is no local phenomenon as , for generations, and all round the world, 'political' groupings, rationalising actions as being for the 'benefit of the people' , have persistently usurped the 'rights' of the people.

For these reasons, I propose a massive and total re-jigging, and  
reform of the process of Government in New Zealand .

Tinkering will never be enough.

**The three top roles in the parliamentary hierarchy are in critical need for change.**

The main thrust of these proposals is to bring the office of Prime Minister under real democratic parliamentary control.

### a. The Head of State.

The New Zealand Governor General, as Head of State, needs to play much more than a purely 'ceremonial' role; rather that of ' Defender of ' the Constitution. The Monarch is – after all - Defender of the Faith !





**The Governor General should be chosen by the Parliament**, - not, as at present, by the Prime Minister and Cabinet - for approval by the Monarch.

1. This officer should be responsible to the people for the maintenance of the Constitution and for assurance that Parliament effectively manages the state, in both short and long terms. Planning the regular operations of the Parliament will be reviewed and where appropriate, modified by the Head of State, after full consultation with the people.
2. As there is a clear need in New Zealand to develop long term arrangements for future policy development in many areas, I propose a **Council of Elders**, chaired by the Governor General; each Elder being elected from within her/his special interests; such as :
  - a. **Society** – Health [Public and Personal], Aged, Disabled, Education, Justice, Law and Order, Social Services,
  - b. **Multi racial**- particularly in light of ever changing multi-racial demographics, but with strong representation from Maori and Pacifica.
  - c. **International Relations**- inc Trade, Defence and Climate; and
  - d. **Economic Development** - Primary And Secondary Industries, Public Service, Tourism, Transport, Environment, Rural Sector, Information Technology.

Elders will be democratically chosen, for the maximum of two terms, each of six years. by sectors being represented .

**Such a Council is urgently needed to achieve a long term future for all New Zealand,  
especially our grand children.**

**b. The Speaker**

1. In New Zealand, Prime Ministers have over years increasingly usurped 'authority' to manage the House of Representatives, a situation which must be reversed, through **election of the Speaker as a normal process of any General Election.**

I propose therefore that **the Speaker account to the Head Of State for the effective management by the Parliament, of the 'Affairs of the Nation'.**

2. This officer will be supported by extending the existing role of Officer of Parliament. Existing Officers -the Auditor General, The Chief Ombudsman, the Commissioner for the Environment will be joined by the Chair of the State Services Commission, Chief Executives of the Educational Review Office, the Human Rights Commission, the Financial Management Authority and the Chief Censor [with additional special overview of the media in its several manifestations].



**c. The First Minister**

**Parliament will elect the First Minister** [ a new title to demonstrate a proposed constitutional change ] from among those elected, under existing practices, into the Parliament, and thereafter the Cabinet , contrary to current dubious practices.

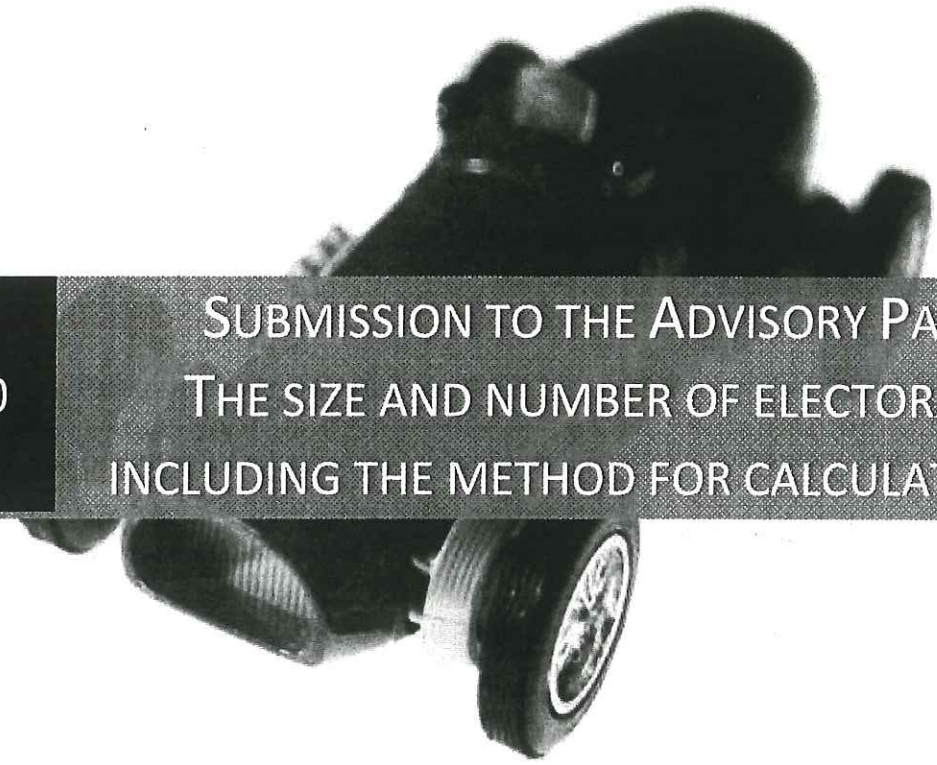
**The First Minister, as the Chair of the Cabinet, as *primus inter pares*, shall be accountable to the Speaker, through Parliament, for the day-by-day management of the operations of the New Zealand Government. Ministers will be held responsible ' [ i.e. a reintroduction of the Westminster concept of 'ministerial responsibility' ] for the operations of their portfolio agencies, in the future to be known as Public Service Departments.**



16826

5/24/2013

LAWS420



SUBMISSION TO THE ADVISORY PANEL:  
THE SIZE AND NUMBER OF ELECTORATES,  
INCLUDING THE METHOD FOR CALCULATING SIZE



## **Abstract**

This following is a submission for the Constitutional Advisory Panel regarding electoral matters. The text will focus mainly on the issue of 'size and number of electorates, including the method for calculating size.'

The submission will begin by analyzing the pros and cons of the current composition and laws surrounding appointment of members into the representation commission and an analysis of the court's hands-off attitude over the powers given to the commission, as indicated in case such as *Timmins v Governor-General*.

An examination of s35(3)(a)-(c) will indicate that while maintaining the South Island quota will ensure their representation, this benefit ought to be weighed against the risk of needlessly inflating the number of electoral MPs.

In addition, it is argued that the electoral quota calculated by s35(3) and the rigidity of the 5% tolerance in allowing for an adjustment of the quota in s36 is far too restrictive for the commission to fully give due considerations to their s35(f) duties. Illustrations of such negative impacts will be shown in case studies of several electorates including Te Tai Tonga and Kaikoura.

Lastly, improvements to each of the limitations discussed above regarding the Electoral Act 1993 are proposed, including a greater degree of flexibility in electoral tolerance level and restoration of the 1:1 ratio between electoral and list Members of Parliament. All electoral issues are closely interlinked and any inevitable references to the size of Parliament will be limited to only contextual information on the relationship between list and electoral MPs. Otherwise, the

submission will deliberately shy away from reviewing the merits of increasing or decreasing the size of Parliament as it is not a part of the prescribed issue at hand.

All of the topics of discussion within the submission contain a reference to the Royal Commission report in 1986 regarding their recommendation towards the MMP<sup>1</sup> system. Comparisons between NZ's electoral state of affairs and other commonwealth nations or Germany are also made in most cases.

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<sup>1</sup> Mixed-Member Proportional

## Representation Committee

Politicians are easily tempted. It is very tempting for politicians to draw electorate boundaries in a way which would help maximize the chances of capturing that constituency. The Electoral Act 1993 s28 created the representation committee in order to control the effect of such temptations.

The committee consists mostly of independents, including statisticians and civil servants<sup>2</sup>. However, the committee contains partisanship, because one member is appointed to specifically represent the government and another to represent the opposition<sup>3</sup>. The Royal Commission recommended in 1986 that 'each of the parties in the House of Representatives should have its own representative'<sup>4</sup> on the committee. One would disagree for the following reason.

Unlike FPP<sup>5</sup>, much of the distribution of MPs in Parliament will be decided by the party votes, not electoral votes. But, such is not the case for minority parties in a large number of instances. United Future, Progressive, Mana, Maori, and ACT parties would all be absent from Parliament had it not been for their victories in a constituency in the 2011 general election. Furthermore, the Maori party attained at least one overhang seat in every election it has been in. In other words, there is a large incentive for the ACT party, for example, to fill up the electoral boundary for Epsom with as many rich, corporate-minded voters as possible.

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<sup>2</sup> Electoral Act 1993, s28(2)

<sup>3</sup> *Ibid.*

<sup>4</sup> Report of the Royal Commission on the Electoral System "*Towards a Better Democracy*" (December 1986) at 137

<sup>5</sup> First Past the Post

Contrastingly, the two major parties<sup>6</sup> have never been affected by these phenomena. Representatives from any minority parties will be enticed to gerrymander certain electorates in which their electoral MPs may have a decent support in order to win. Given that their political careers do not depend on these electoral boundaries, it is more likely that Labour and National will focus their time on increasing their national vote totals. However, that is not to say that the labour party would not benefit from drawing up the Epsom boundaries to John Banks' disadvantage, effectively eliminating national's closet ally from the next House of Representatives.

Moreover, Davison CJ's refusal to 'look at the merits of a particular decision'<sup>7</sup> of electoral boundaries in *Timmins v Governor-General* indicates that there is minimal accountability is put on the members of the commission. It was held that the court can only ensure that the commission obeys the statute in making its decision<sup>8</sup>. Nonetheless, this does not help, because the requirements set out in s35(3)(f) Electoral Act is merely subjective guides<sup>9</sup>. It seems that Labour and National enjoy a political privilege which can be misused with little oversight. If the commission wishes to exude a truly clean and non-partisan image to the public, no political actors should be a part of it.

In fact, Australia, Canada, India and United Kingdom all employ completely neutral committees to draw up electoral boundaries<sup>10</sup>. Germany's Electoral Districts Commission also remains neutral<sup>11</sup>, even though their plans must be handed accepted by Parliament in order for their recommendations to be enacted<sup>12</sup>.

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<sup>6</sup> Labour Party and National Party

<sup>7</sup> *Timmins v Governor-General* [1984] 2 NZLR 298

<sup>8</sup> *Ibid.*

<sup>9</sup> Electoral Act 1993, s35(3)(f)

<sup>10</sup> MMP Review Committee on "Inquiry into the Review of MMP" November 2001 at 54

<sup>11</sup> German Federal Electoral Law. Art 3(1)

<sup>12</sup> German Federal Electoral Law. Art 3(3)

## **Electoral Act 1993: South Island Quota**

S35(3)(a) of the Electoral Act says that the South Island 'shall be divided into 16 General electoral districts.' Based on the 2006 census, this led to a south island quota of about 57,500 people per seat, which was used to generate 47 electorates in the North Island and an additional 7 Maori electorates for a grand total of 70 electoral seats for the 2011 general election. Due to s35(3)(a), South Island's general electorate seats are fixed at 16. However, the number of electoral MPs has continued to rise because the North Island's rate of population growth faster than that of the South Island.

The emigration effect of the 2011 Christchurch earthquake would accelerate this process further, which points to a real possibility that the 2014 general election could consist of more than 70 electoral MPs. Unless the number of balance between the list and electoral MPs are restored to 1:1, more parties will begin to win electoral seats, making the 5% representation threshold progressively obsolete. There is also a greater chance that a party will win overhang seats. Minority parties will focus more on winning electorates rather than appealing to the national audience.

In reality, the political and monetary cost of targeting a single electorate is much more effective than trying to exceed the representation threshold. In the 2011 general election, the greatest number of votes counted in a single electorate was 39,525<sup>13</sup>. In comparison, 5% share of the national votes was tallied at 112867 votes<sup>14</sup>.

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<sup>13</sup> Electoral Commission "Official Count Results – Wellington Central" New Zealand Election Results <[http://www.electionresults.govt.nz/electionresults\\_2011/electorate-59.html](http://www.electionresults.govt.nz/electionresults_2011/electorate-59.html)>

<sup>14</sup> Electoral Commission "Official Count Results – Overall Status" New Zealand Election Results <[http://www.electionresults.govt.nz/electionresults\\_2011/partystatus.html](http://www.electionresults.govt.nz/electionresults_2011/partystatus.html)>



These are troubling signs as one of the main reasons for the government's departure from FPP in 1993 was to shift the focus away from constituencies to the national vote counts.

There are two methods of solution to restore the balance between list and electorate MPs. Either decrease the number of electoral MPs to 60, or increase the total number of MPs to 140, including 70 list MPs. The latter seems like a more realistic solution as s35(3)(a) would have to be amended or abolished if the number of electorates were to shrink to 60, which requires 75% support from the house.

Moreover, 140 was the ideal number of MPs the Royal commission recommended within their report in 1986<sup>15</sup>. The current total of 120MPs was the "minimum necessary to help parliament meet the demands that will be made of it during the next generation" for the implementation of MMP. The only reason why the commission preferred 120 instead of 140 was due to 'public resistance' against increased costs.

If the costs of adding an extra 20MPs can be justified, the next election cycle would be a great opportunity to fulfill the Royal Commission's recommendations.

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<sup>15</sup> Report of the Royal Commission on the Electoral System 1986, op. cit., at 127

## **Electoral Act 1993: Allowance for adjustment of quota**

Proportionality is a fundamentally important ideal in any election. In light of this, the representation committee ought to do their best to ensure that each vote is of roughly equal value to each other. S36 Electoral Act 1993 sets an error margin of 5%. However, this principle should be weighed up against the ideal of representation. Electoral MPs still play a crucial role in the MMP system. Hence, these MPs should be able to clearly understand the needs of their constituency so that they can be represented in Parliament.

One of the most extreme examples of representation being sacrificed in the name of proportionality is in Te Tai Tonga, an electorate which stretches to cover the Maori roll of the entire South Island, Stewart Island, Chatham Islands and a majority of Wellington.

There is both a practical and symbolic value in allowing for a Maori electoral MP to be in charge of advocating the needs of the entire Maori population of the south Island without it being muddled by the views of another group living in the North Island, purely for the sake of abiding by s36.

Besides, according to the 2006 Census, the total population of Maori descent living in South Island is 73,230<sup>16</sup>. This is less than 5,000 residents short of the total of Maori population in the Waikari electorate<sup>17</sup> which is the smallest total of Maori descent population out of all Maori Electorates<sup>18</sup>.

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<sup>16</sup> Statistics New Zealand, *QuickStats about Maori* (27 March 2007) at 3

<sup>17</sup> Waikari's total population of Maori descent is 78,150

<sup>18</sup> Parliamentary Library, *Electorate Profile: Waikari* (September 2012) at 8

Assuming that the relationship between the Maori electoral population and Maori population is reasonably constant throughout New Zealand, it seems that the new Te Tai Tonga boundaries will be about 15-20% short of the average electoral population of a Maori electorate.

<b>Electorate</b>	<b>Usually Resident Māori Descent Population 2006 Census</b>
Te Tai Tonga	113,748 <sup>19</sup>
Te Tai Hauāuru	93,948 <sup>20</sup>
Te Tai Tokerau	93,165 <sup>21</sup>
Tāmaki Makaurau	89,751 <sup>22</sup>
Hauraki-Waikato	85,998 <sup>23</sup>
Ikaroa-Rāwhiti	84,849 <sup>24</sup>
Waiariki	82,518 <sup>25</sup>
South Island*	73,230 <sup>26</sup>

So, one must determine what figure would be an appropriate percentage of tolerance allowed for discrepancies in electoral population per electorate. The Royal commission in 1986 suggested 10% tolerance. Surprisingly, the 5% tolerance level which the representation commission is limited to nowadays is a carryover from the FPP era.

Determining the appropriate tolerance level depends on two conflicting point of political objectives.

1. Disciplining against boundary-fixing processes/gerrymandering
2. Recognizing communities of interest within the same electorate

<sup>19</sup> Parliamentary Library, *Electorate Profile: Te Tai Tonga* (September 2012) at 8

<sup>20</sup> Parliamentary Library, *Electorate Profile: Te Tai Hauāuru* (September 2012) at 8

<sup>21</sup> Parliamentary Library, *Electorate Profile: Te Tai Tokerau* (September 2012) at 8

<sup>22</sup> Parliamentary Library, *Electorate Profile: Tāmaki Makaurau* (September 2012) at 8

<sup>23</sup> Parliamentary Library, *Electorate Profile: Hauraki-Waikato* (September 2012) at 8

<sup>24</sup> Parliamentary Library, *Electorate Profile: Ikaroa-Rāwhiti* (September 2012) at 8

<sup>25</sup> Parliamentary Library, *Electorate Profile: Waiariki* (September 2012) at 8

<sup>26</sup> Statistics New Zealand, *QuickStats about Maori* (27 March 2007) at 3

Finding the correct balance in legislation between those two is Parliament's duty. However, switching over from FPP to MMP meant that there were a) Fewer and geographically larger electorates, and therefore it would become naturally difficult to group communities of interest without relaxing tolerance level; and b) payout for political parties (especially, Labour & National, who are the only two party who enjoy a position at the representation committee) in gerrymandering has diminished significantly due to the fact that party vote are the main determinant in the number of MPs elected into Parliament.

Clearly, the equilibrium has shifted towards increasing tolerance in constructing the electoral boundaries. Yet, Parliament has done nothing to reflect this change in condition and the negative effect of these rigid laws were revealed by Graham Beever in "the New Game with the Old Rules: Boundary Determination under MMP." Beever tells a story of two small Canterbury towns: Amberley and Sefton. Although, both Amberley and Sefton has 'close social, economic and cultural links' with Christchurch and Canterbury plains, both towns were included in the Kaikoura electorate based in Blenheim, about 300km away<sup>27</sup>. Obviously, both Amberley and Sefton fell victims to the strict application of s36 Electoral Act 1993, however, one may realize how ridiculous and unyielding a 5% tolerance level is when both towns have a combined population of 1,884 residents<sup>28,29</sup>, which would mean about 1,500 electors. This now is an added political hassle for Colin King<sup>30</sup>, who is now required to cater to a wider spectrum of interests.

Comparing New Zealand's tolerance limit to other countries produces no surprise as 5% is one of the smallest figures of variation allowed for any system of government.

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<sup>27</sup> Graham Beever "The New Game with the Old Rules: Boundary Determination under MMP" 34, VUWLR 135 (2002) at 151

<sup>28</sup> Statistics New Zealand, "QuickStats about Amberley" Statistics NZ <  
<http://www.stats.govt.nz/Census/2006CensusHomePage/QuickStats/AboutAPlace/SnapShot.aspx?id=3585802&type=au&ParentID=1000013&expand=2000058&scrollLeft=0&scrollTop=438&ss=y>

<sup>29</sup> Statistics New Zealand, "QuickStats about Sefton" Statistics NZ <  
<http://www.stats.govt.nz/Census/2006CensusHomePage/QuickStats/AboutAPlace/SnapShot.aspx?id=3585805&type=au&ParentID=1000013&expand=2000059&scrollLeft=0&scrollTop=638&ss=y>

<sup>30</sup> Current MP for the electorate of Kaikoura



Country	Maximum level of adjustment allowed <sup>31</sup>
United Kingdom	No specific tolerance level is quantified However, often >10% <sup>32</sup>
Australia	10%
Canada	20%
Germany	15% when initially drawing up boundaries, De Facto tolerance of 25% <sup>33</sup>

Curiously, the German Electoral Districts Commission's limit used to be 25% and 33% respectively before an unacceptable level of overhang seats and malapportionment led to amendments. Thus, it would seem that at 33%, the risks of running unequal representation in the said electorates would outweigh the Commission's convenience in drawing up electoral boundaries. Of course, it is preferable to minimize the discrepancy of voters between each electorate as much as possible. Knowing that the commission has applied a 5% tolerance without report of any major breakdown in the past few years, there is no immediate need for a dramatic increase of the maximum level of adjustment allowed under s36 Electoral Act 1993.

In a strange way, under the harsh environment the committee has been subjected to, the representation commission has coped satisfactorily. If appropriate electorate boundaries can be achieved in the majority of the electorates with only 5% tolerance, such a method should be pursued. Only a handful of electorates will benefit from increased tolerance for variation of electoral population.

Therefore, this text submits to keep the current 5% tolerance level unchanged for most electorates, except allow for up to one Maori Electorate plus two General Electorates to be drawn with up to 15% tolerance. An additional landmass requirement of 2 million hectares should be put on any general electorates planned to be drawn with these lenient error margins.

<sup>31</sup> MMP Review Committee on "Inquiry into the Review of MMP" November 2001 at 12

<sup>32</sup> David Butler and Iain McLean "The Redrawing of Parliamentary Boundaries in Britain" in David Butler and Iain McLean (eds) *Fixing the Boundaries: Defining and Redefining Single-member Electoral Districts* (Dartmouth, Aldershot, 1996) at 1, 9

<sup>33</sup> German Federal Electoral Law, amendment XIII



15% tolerance is the target for the EDC of Germany when they draw their electoral boundaries<sup>34</sup>. It is also the average % figure of tolerance level between United Kingdom, Australia and Canada. 2 million hectare landmass qualification is a backstop to guard against the risk of any political influence within the representative committee using this exception as a political tool to gain an advantage in a battleground electorate where no reasonable benefits of drawing an electorate in a certain way can be presented.

The quota for tolerance exemption (one Maori electorate and two general electorates) was an arbitrary judgment call. It seems to be a conservative allowance, considering the number of potential problem-electorates situation in the South Island alone<sup>35</sup>. Upon further review Parliament may move to modify this figure. After all, these are optional clauses which the commission may choose not to utilize if they deem that every electorate can be sufficiently drawn in accordance with Electoral Act s35(3)(f).

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<sup>34</sup> German Federal Electoral Law, amendment XIII

<sup>35</sup> Clutha-Southland, Waitaki, Kaikoura, West-coast Tasman

## **Conclusion:**

New Zealand's MMP system is fundamentally sound. Each of the solutions identified within submission are intended to empower the commission to control those extreme cases of statistical anomaly, and update their electoral systems to more fairly reflect the political state of the nation.

Hopefully the following will be achieved:

- Constituent MPs: Simplification of their political duties by reducing the size of large electorates into a manageable size consisting of communities that have overarching political, economic and cultural interests
- Representation Committee: Better fulfillment of s35(3)(f), especially when giving considerations to s35(3)(f)(ii): Community of interest; and (iv): Topographical features
- Citizens: Clearer understanding of which electorate they belong to and their constituent MP.
- Reduction in frequency and scale of electoral boundary changes.



## 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.

Julia Lee  
Auckland  
New Zealand



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**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 23/07/2013 5:10 p.m.  
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Full Names:	Jonathan Millhouse Lee	Organisation Name:		Email:	
	Phone:		Postal AddressA:		Postal
AddressB:		Postal City:		Postal Region:	Auckland
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Submitted on the 23 July 2013 at 17:09



# Submission to the Constitutional Advisory Panel

Jonathan Lee

Auckland

Email:

## Share your Aspirations

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

Putting the development of welfare (that is wellbeing, happiness and safety) for all as the goal, rather than economic development, in particular government should be guided by the following values—

- fi *Equality*—abiding by the Golden Rule: treating others as one would like to be treated (and its inverse: not treating others as one would not like to be treated). Also doing what needs to be done (and its inverse: not leaving undone that which needs to be done). Equality means equal before the law both in terms of access and power. It also means ensuring moderation in the disparity of material advantage and power.
- fi *Integrity*—pursuit of the ideal in all matters, including truthfulness—evidentially based and developed through sound reasoning, avoiding dogma, emotional appeal or other logical fallacies, as well as lies, omissions and diversions. Taking responsibility, acknowledging successes, and confronting ones’ own as well as others’ failures.
- fi *Peace*—non-violent conflict resolution and the pursuit of consensus over tyranny of the majority. Actively protect mutually supporting communities respecting their cultural diversity. Renunciation of war except for self defence or with the authority of a properly constituted community of nations acting in accordance with established international law.
- fi *Stewardship*—the pursuit of spiritual (non-material, intellectual, cultural, social, moral, wellbeing and so on) fulfilment over that of material interests in excess of moderate necessities. Also ensuring the sustainability of economic, environmental and other resources for our own and future generations.

The values are not exhaustive, not ranked in order of priority and are interrelated forming a unfired whole.

A country can only justify its status as an independent sovereign state if it has a unique culture that requires exclusive laws, administration and jurisdiction to actively protect it.

New Zealand has a unique culture; however difficult that may be to define. This is at least in part derived from our historic relationship between the aboriginal people—Māori—and subsequent settlers. It also is derived in part from the aspirations of the settlers to build a new society based on equality before the law, freedom of opportunity and expression, and mutual support. These were not the same aspirations of Britain, Australia or the United States, and are more akin to those of the Scandinavian countries.

These New Zealand aspirations have been eroded since the 1980s by—

- fi The increase in the disparity in the distribution of wealth and income between the poor and rich, including both individuals and corporations.
- fi The concentration of economic, political and social power in what has effectively become an oligarchy.
- fi The exercise of power for the protection of the interests of those with wealth.
- fi The exercise of power for the perpetuation of those in power, irrespective of whether the parties or individuals are of the political left or right.
- fi The erosion of the distinctive egalitarian culture of New Zealand, in particular from the elitist cultures of Australia and the United States.

In particular, there has been substantial abuse of power, including—

- fi Use of parliamentary funds for electioneering—misappropriation of public funds to further the interests of the incumbent holders of public office.
- fi Diminished ministerial responsibility—ministers not resigning from cabinet when their department fails to meet adequate standards.
- fi Diminished ministerial accountability—ministers acting in a judicial capacity without providing reasons.
- fi Use of a parliamentary majority to force through legislation against the will of the people—
- fi Use of parliamentary urgency or supply legislation to curtail the proper scrutiny of proposed legislation.
- fi Rendering unlawful the right to petition the courts or for the courts to consider such petitions.
- fi Entering into treaties or negotiations with the intension of creating treaties that bind the state without the consent of parliament.
- fi Circumventing the conventions of non-political interference in the appointment and running of public service departments.
- fi Deterioration of integrity by public officials through deceit (both lies and claiming forgetfulness), omission (either by failure to disclose or economy of truth) or subterfuge (including diverting attention) and corruption (whether for pecuniary gain, or advancement or satisfaction, and either personal or for their social class, ethnic group, faith and so on).

Further reasons for change—

- fl ***Sovereignty by consent.*** We are a monarchy because the queen no longer rules by divine right but by the consent of the people (as expressed by parliament). The consent of the people—whether for the current monarchy or any other constitutional arrangement—will continue until such time as there is reason for sufficient discontent to warrant change in the sentiment or substantive reason for parliament to effect change where popular sentiment is sufficiently indifferent to pose a threat to parliamentarians' re-election. Monarchy is inconsistent with equality and its support of elitism (whether in the form of aristocracy or oligarchy), and New Zealand should become a republic in which the people are sovereign.
- fl ***Prime ministers sovereign.*** Our parliament is controlled by the executive through the prime ministers by their effective appointment (and dis-appointment) of cabinet ministers. This enables the cabinet to control the major and supporting minor parties, even if there are marginal policy and legislative concessions to form a cabinet. Provided prime ministers are able to keep the support of their caucus, they control both the legislature and the executive branches of government. As parliament is sovereign, especially being able to control the judiciary through legislation, prime ministers are effectively sovereign.
- fl ***Disproportionate influence of wealth.*** The politician most likely to obtain and retain support as prime minister is the one who is mostly to have sufficient support in the electorate to ensure the re-election of sufficient the members of caucus and the their parties for them to achieve ministerial positions. No matter how good the qualities of a politician are as a potential prime minister, they will not obtain electoral support unless they have sufficient and favourable media exposure. Irrespective of the ownership of our media, it is dependent at least at the margins on commercial advertising. Likewise, politicians are dependent on sponsorship for advertising from either corporates or wealthy individuals. Corporations and the wealthy therefore have a disproportionate influence on political power. In other words, potential prime ministers are free to act in the public interest only in as much as these interests are at least no contrary with those of sufficient wealth and interest to exercise their financial influence.
- fl ***Undue influence of public service.*** When determining policy including new legislation, the Cabinet is largely dependent on the advice and information provided by the public service in its various manifestations. Politicians, especially when in opposition, have very little resources to develop policy including research. Even when in Cabinet, ministers have limited ability to effect their manifestos through service contracts with their departments and their even lesser powers of removing non-compliant public servants. As limited as they are, the standards of corporate governance, especially in the use of boards of directors, provide greater accountability of the executive.



- fi *Audit and review functions limited.* The offices of the Ombudsman and Controller & Auditor-General tend only to pursue cases against the government when the transgression is manifest, as opposed to being likely. They may also be will under proposed legislation be directed and sanctioned by parliament, have limited scope to initiate their own investigations and may not investigate non-government organisations contracted to provide public services and paid for by public funds. Both these audit functions and the review function of the judiciary are subject to the sovereign power of parliament to legislate.
- fi *Fallacy of popular sentiment.* Experiments in Canada, Iceland and elsewhere with the people's assemblies or juries, in which members of a constitutional review have been randomly selected have shown that once informed such lawmakers do not necessarily reflect the sentiments of the relatively uninformed populace. In other words, popular sentiment may be a suboptimal means of discernment on substantive issues. Care therefore needs to be taken with regard to the use of referenda. At the same time, care also needs to be taken in preventing undue influence being exercised on any constitutional review body through the manner in which information is presented to it.

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

**Principles of government.** The principles of government should be set out in a constitution, namely the establishment of the rule of law for the betterment of the people's wellbeing—not solely their economic advantage as measured by gross domestic product or any other measure. No deployment of armed forces overseas without prior sanction by the United Nations for peacekeeping duties.

**Sovereign people.** The people to be sovereign and governed by greater consensus rather than simple majority giving disproportionate influence to marginal interest groups. All people are to be equal. The people to elect both houses of parliament; approve all amendments to the constitution; recall any public official; and initiate binding and non-binding referenda.

**President.** Instigation of a president as the embodiment of the people to be head of government, and to replace the queen as head of state on her death or abdication. No reserve powers other than to directly refer matters to the people. Oversees the presidential appointments commission that establishes transparent appointment processes (but conducted in private) for the appointment of senior public officials by the president, making recommendations for approval by the second chamber of parliament. Such appointments to be impeachable by the House of Representatives, and adjudicated and sanctions by the second chamber. The president and vice president (the speaker of the second chamber) to be elected from the second chamber by single transferable vote by that house (their seats being taken by the next on the appropriate ethnic list).

**Bicameral parliament.** The legislature to have two chambers: an upper primarily revising chambers elected by STV to proportionally represent the major ethnic groups, including Mfiori; and the House of Representatives, elected by proportional

representation from party lists only, where the prime minister would hold the confidence of the house on matters of supply. Political parties and individuals standing for election (including local government and public bodies) to be publicly funded, with any additional funding to be transparent and severely limited (if any). Appropriations not to be used for electioneering or likely to be construed as electioneering.

**Recognition of cabinet.** Institution of the executive in the form of the cabinet as a constitutional body. There should be six ministers: prime minister and ministers for foreign, internal, social, economic and financial affairs. These ministers could be supported by deputy or assistant ministers outside of cabinet but part of cabinet committees responsible for various subordinate departments. Ministers would be from the House of Representatives. Assistant ministers would not need to be parliamentarians.

- **Limits on prime minister.** The prime minister would not be able to make decisions without the prior approval of the cabinet, which would be subject to collective responsibility. Customary ministerial responsibility would be entirely at the discretion of the prime minister.
- **Public service governance.** Each ministry would have a governance board of at least six but not more than nine directors, chaired by the minister. Ministers may direct boards but such direction should be tabled in the House of Representatives. Similar boards would be established for all subordinate executive departments. Directors may be members of more than one board.
- **Stewardship.** Every proposal by government should contain an assessment of stewardship in terms of sustainability and risk management covering at least economic (including fiscal), environment and social (including ethnic) responsibility. Appropriations of supply to be approved by the House of Representatives and commented on by the second chamber but any delay by that house to be curtailed.

**Transparent judiciary.** The courts would be independent of all other branches of government with guaranteed remuneration. They would have the authority to rule on constitutional matters and the Supreme Court to be able to strike down unconstitutional proposals and legislation. Judges would be appointed by a transparent process: recommended by a presidential appointments commission and approved by the second chamber of parliament. Judges should be subject to a confidential performance assessment system as part of their professional development to include among other things: multi-source feedback, portfolio, mentor interview and development plan.

**Independence of audit branch.** All auditing functions of government should be consolidated where applicable under the Controller & Auditor-General for the use of all public funds and authority irrespective of whether the services are supplied by public or private providers. This branch should have the responsibility and resources to initiate investigations, and to bring matters before the courts for determination in the public interest.

**The fourth estate.** Provision should be made for the active protection of independent balanced reporting and commenting on government matters, including the guarantee of public broadcasting through popular media channels.

### ***Rationale***

Who would join a club or other incorporated society, in which the executive committee—elected every few years—could change the rules, levy fees and make perpetual commitments at will without recourse to the membership? The answer is very few but this is essentially how we are governed.

The need for constitutional reform is not furthermost in most people's minds because the absolute sovereignty of parliament means our unwritten constitution is changed piecemeal by party elites across the political spectrum with few major crises, and fewer checks and balances. The time is right for a review of our constitutional arrangements because (in no particular order)—

- fi *Increasing disparity.* The increasing disparity if not alienation within New Zealand society by among other things wealth, ethnic groups and political participation.
- fi *Māori renaissance.* The economic, political and cultural renaissance of Māori iwi but the growing number of urban Māori without iwi affiliation.
- fi *Perpetual priority given to consumerism.* The primary measure of government action continues to be gross domestic product that promotes consumerism at the expense of wellbeing. Not only does this cause increased emotional stress as the poor are left further behind but also means the environment continues to be stripped of its organic and inorganic resources without regard to the needs of future generations.
- fi *Foreseeable end of Queen Elizabeth's reign.* The inevitable demise of the queen's reign—now an octogenarian—which means we have an opportunity to decide the future of New Zealand as a monarchy.
- fi *Increasing power of the executive.* The increasing presidential style of general elections and the highlighting of the powers of our prime minister, which are greater than that of the President of the United States, who is subject to greater checks and balances by an independent legislature. This includes, among other things, the potential for abuse in appointments to public offices, especially those that audit and review government action.
- fi *Decline in ministerial responsibility.* The decline in ministerial responsibility at a time when the equivalent governance in the private sector is increasingly being held to account. This leads to among other things the potential power of the public service in exercising inordinate control of the information, advice and agenda of the cabinet.
- fi *Diminished ministerial accountability.* Ministers acting in a judicial capacity without providing reasons.
- fi *Overuse of parliamentary urgency.* The increased use of urgency in parliament to accelerate the passage of legislation, circumventing parliamentary scrutiny and public consultation.
- fi *Limiting the right to petition the courts.* Rendering unlawful the right to petition the courts in particular circumstances or for the courts to consider such petitions.
- fi *Loss of sovereignty through treaties.* Entering into treaties or negotiations with the intention of creating treaties that bind the state without the consent of parliament.



- fi *Disproportionate power of minority parties.* The affect of MMP in providing marginal interest groups through their sponsorship of parties to exercise disproportionate political power, especially in the passage of legislation that does not have any popular mandate.
- fi *Non-mandated major legalisation.* The passage of major legislation that does not have a popular mandate, even though the sponsoring party was given a general mandate to form the cabinet.

## New Zealand's Constitution

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

Yes, because it would—

- fl Actively protect our national identity by recognising the role of the Treaty of Waitangi (in terms of the principles—see later) and core values: equality, justice, simplicity and peace.
- fl Provide a more transparent and digestible understanding of our rights and obligations as New Zealand citizens.
- fl Institute the New Zealand people as sovereign and not the monarchy or even the legislature (either as parliament or technically, ‘The Queen in Parliament’).
- fl Enable changes to the constitution while creating better checks and balances on executive power, and any power behind that in terms of a self-serving elite.

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

Yes, because it would—

- fl Have to recognise the people are only governed by their consent and any change to their constitution would require the consent of the people. This would not prevent the legislature (parliament) proposing changes.

And no, because it would have to—

- fl Recognise there a higher law that of moral behaviour. At best any constitution, whether codified or not, cannot hope to encapsulate the parameters of all conduct in all circumstances. Each event needs to be evaluated in its particular circumstances, albeit taking into account the general framework, whether that is the constitutional law, legislation or common law. Case law has established that one of the grounds for appeal may be because an act of government is, ‘simply wrong’. This must remain. It cannot be defined but must be proven in the context of the prevailing circumstances a the time.
- fl Acknowledge those international laws we subscribe to, in particular those concerning human, indigenous, child, disabled, and economic, social and cultural rights listed below.

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

Neither; the people should be able to make the ultimate determination—

- fl In the first instant, parliament should determine (or be advised by the Attorney General) as to whether existing or proposed legislation (or regulation) is consistent with the constitution.
- fl In the second instant, the courts should determine whether existing or proposed legislation or regulation is consistent. The Supreme Court needs to have the power



and duty to preemptively strike down any law or proposed law that is unconstitutional.

- ii In the third instant, the people should make the final determination. This should take the form of a referendum, which may be brought by either the parliament seeking leave to overrule the courts and change the constitution, or by the people themselves in the form of a popular referendum.

## Bill of Rights Act

### Does the Bill of Rights Act protect your rights enough?

No; those rights protected in law need to be extended to include economic rights, those of the child and the rights of indigenous people. These should be based on, among other things the United Nations'—

Declaration of Human Rights

Declaration of Rights of Disabled Persons

Declaration of Rights of Indigenous Peoples

Declaration of Rights of the Child

International Covenant on Economic, Social and Cultural Rights

Every individual needs to have the right to act according to their conscience in the circumstances as they believe them to be, it is reasonable to act. This acknowledges there are higher laws than the constitution but when in conflict with the constitution or derivative laws, it will be up to the individual to demonstrate the superiority of their conscience in the circumstances. This protects whistleblowers, conscientious objectors and the like.

There needs to be equal power of litigants in civil and criminal law as well as equal access.

No right to force anyone to take up arms or support armed conflict.

The New Zealand bill of Rights Act 1990 currently enables parliament to both limit these rights, and to limit the right of the people to petition the courts or the courts and tribunals to adjudicate on such matters.

These rights need to be made supreme law by inclusion into a written constitution, so that any limitation would need the same approval of changing the constitution.

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

The courts need to be able to strike down any law, regulation or policy they deem to be contrary to the constitution.

Similarly, the Auditor-General's ability to initiate investigation needs to be protected and enhanced with the capability of prosecuting civil matters to obtain a determination by the courts, and being able to investigate non-government organisations that have been appropriated public funds. To use a military analogy, a defensive obstacle (such as a minefield) is only effective when it is both observed and covered by effective fire; otherwise the enemy will bypass it or render it ineffective. Therefore all constitutional rights must be proactively protected by entities that can investigate or sanction; otherwise the rights are ineffective.

Likewise, the media—the so-called 'fourth estate'—needs some form of protection to expose any malpractice (malfeasance, misfeasance and nonfeasance) of government, not only in the right to publish but also for the protection of so-called 'whistleblowers'.

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

Irrespective of the fact we are a monarchy, parliament is currently regarded as effectively being sovereign. However, it is the people who should be sovereign; that is, the people should be able to make the final determination.

Notwithstanding this, the courts should be able to strike down any law, regulation or policy determination that is contrary to the constitution (and those rights enshrined in it). Furthermore, the Supreme Court should be able to act preemptively and make determinations on proposals in a similar manner to the German Constitutional Court.

If the parliament wished to persist with the legislation or whatever, it should effectively secure the support needed for a constitutional change. In other words, a simple two-thirds supermajority of those voting in both houses separately.

Finally, any change to the constitution should be ratified by the people in a referendum with a simple three-fifths majority of those who vote.

It should be noted a similar process in the Republic of Ireland has enabled at least 31 changes to its constitution. A further 10 amendment bills failed; one because it did not pass both houses of the Oireachtas (parliament) and nine were rejected by the people in referenda. This demonstrates not only a constitution can evolve through due process of amendment that acknowledges the sovereignty of the people but that the people can exercise their power to restrict the power of their parliament. The United States has passed at least 27 amendments to its constitution.

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

- fi **Legal representation in civil cases.** The right to adequate legal representation in civil cases (including but not limited to family law), as without it economic power would cause an imbalance in the scales of justice.
- fi **Balance of power before tribunals.** Similarly, the right to a balance of power (resources) between the parties in both civil and criminal cases needs protection.
- fi **Right not to be conscripted into armed forces.** Consistent with being a peace-loving nation, the ability to conscript people into the armed forces—even for the defence against invasion—should be enshrined in a constitution. This should also include the right for a volunteer service person or other enforcement officer not to carry out an order for reason of conscience.
- fi **No right to bear arms.** The right to bear arms which currently exists in common law should be overruled in a negatively worded right; that is, no right to bear arms unless enabled by law and manifestly in the public interest. No one should have the right to take life unless the case for it is overwhelming.
- fi **Duty to provide succour.** All citizens should have an obligation to provide the essentials of life to others in New Zealand, when the citizens have a surplus of essentials and the victims do not, irrespective of fault.

f1 *Right to privacy.* Everyone should have the right to privacy unless they have waived it or it is manifestly in the public interest (and not simply because of interest to the public).

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

Yes, see above. Certain rights should be inalienable and enshrined in supreme law. A constitution is an agreement among the people for the rule of law. It is not an agreement between the government and the people. The people therefore must remain sovereign and the rights and obligations established by the agreement should be supreme law.

## Treaty of Waitangi

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

The treaty needs to be acknowledged—possibly in the preamble to the constitution—as one of the principle founding agreements of the nation, along perhaps with the Declaration of Independence by the United Tribes.

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

For the reasons set down by the Waitangi Tribunal (<http://www.waitangi-tribunal.govt.nz/doclibrary/public/Appendix%2899%29.pdf>) only the principles should be protected by inclusion in the constitution, including—

- fi The acquisition of sovereignty in exchange for the protection of rangatiratanga.
- fi The treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith.
- fi The freedom of the Crown (state) to govern by rule of law.
- fi The state's duty of active protection of Māori interests and wellbeing both collectively and individually.
- fi State's duty to remedy past breaches.
- fi Māori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.
- fi Duty to consult consistent with the duty to act reasonably and in good faith, while maintaining the freedom to govern.

While Māori should be recognised as being the first people of Aotearoa—making them first among equals—such a status does not make or imply they have any greater right to the active protection of their interests and wellbeing, political power or remedy than any other ethnic group.

Notwithstanding this, it is recognised that in the interim there will be a disproportionate appropriation of state resources to both actively protect and remedy Māori interests and wellbeing due to not only past breaches but also, irrespective of these, the current plight of Māori. The marginal difference between Māori and other disadvantaged ethnic groups representing the remedy of breaches to the treaty. To do otherwise would be to permanently render Māori to the status of victim or to make other ethnic groups less than equal to Māori.



## Mfiori Representation

### How should Mfiori views be represented in Parliament?

- fi The Mfiori seats in the House of Representatives should be removed in exchange for representation in a second chamber proportional to the proportion of the general electorate that wished to be identified as Mfiori.
- fi Mfiori need to be recognised as the first people in the constitution but should not otherwise have prerogatives in excess of other groups, other than contained in the principles derived from the Treaty of Waitangi.

### How could Mfiori electoral participation be improved?

- fi There needs to be promotion of general participation through some form of civic education within schools across all ethnic groups in a way that is most appropriate to those ethnic groups and other minorities whose participation is below acceptable levels. Additionally, this should be extended to migrants aspiring to citizenship as part of 'How does New Zealand work?' knowledge and should include specifics on the electoral system and how to vote.
- fi Urban Mfiori—those displaced Mfiori that have lost their iwi connections—should be specifically encouraged to participate, in particular provision must be made for them in pan-tribal institutions in the course of settling treaty grievances, so that these Mfiori have a stake in Mfiori economic, social, cultural—and so political—outcomes.
- fi Notwithstanding the above, participation in a general election should be mandatory, as a civic duty similar to jury service, along comparable lines to that of Australia. However, each ballot paper should have an option to register a non-vote or the equivalent.

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

Similar small chambers or committees to that of the proposed second ethnic chamber of parliament should be added to local government. Such chambers or committees should not replace the need to consult in a culturally appropriate manner to the ethnic group concerned.

## Electoral Matters

### How many members of Parliament should we have?

There should be not less than 100 and not more than 500 members of the House of Representatives, and not less than 25 but not more than 100 members of the suggested second ethnic chamber—for arguments sake, 'the senate'. Given the current population of some 4½ million people, the size of parliament should be some 150 members (100 members of the House of Representatives and 50 senators).

- fi There needs to be more members who are independent from the executive to both scrutinise the legislation proposed by the executive and hold the executive to account. At present there are some 34 members of the House of Representatives with executive portfolio (ministerial) responsibility, plus one speaker, out of 121 members, leaving only 86 members to staff select committees to scrutinise. Also, as the executive is entirely selected from the House of Representatives, there is a disincentive for members of the parties supporting the cabinet to hold the executive fully to account, especially when expulsion from a party should mean expulsion from parliament too.
- fi In the short term a reduction in the size of the House of Representatives by the removal of territorial constituencies and so the overhang would help offset the additional cost of a senate.
- fi A reduced House of Representatives puts pressure on the pool from which the cabinet is selected. This issue is addressed elsewhere in this submission.

### How long should the term of Parliament be?

Four years.

- fi Three years is too short. The old adage is: the first year is for the ministers to master their portfolios and the cabinet to develop its legislative programme; the second year is for getting the principal legislation through; and the third is focused on winning the next election. This leaves only the middle year for legislation, which in recent years has seen the misuse of urgency.
- fi On the other hand, 5 years is too long and gives too much power to the incumbent cabinet without being held to account by the people. Four years is a practical compromise.
- fi The second chamber should be elected at the end of the second year following a leap year for the same term of four years, in other words the mid point between terms for the House of Representatives. This election should also be used for local government and other elected bodies. This allows the people to influence both the House of Representatives and the executive mid term.

### How should the election date be decided?

The dates of key elections should be established in a codified constitution or, in its absence, statute.

- fl It should be on the last Saturday of November each leap year for the House of Representatives and the second year following each leap year for the second chamber and other elected officials. Electing the legislature is the sovereign prerogative of the people, not that of the prime minister, who may select the date for political advantage. The dates should be a priority for the nation, and so transparent and predictable.
- fl Notwithstanding the above, if the prime minister resigns because among other reasons they cannot secure supply (including a confidence vote on the matter of supply)—and no other member of the House of Representatives is able to secure that house's confidence of supply—there should be a general election on a Saturday, not less than 1 month and not more than 2 months from the resignation. The term of that house would only be to the next scheduled election. It should be the responsibility of the president to be advised by the house through its speaker as to whether a new prime minister has the confidence of the house on matters of supply, not the prime minister.
- fl If, however, no member of the House of Representatives is able to obtain that house's confidence of supply within one year of a statutory general election, no election should be held and the president should appoint a prime minister from the House of Representatives who is able to obtain the greatest support to continue executive government consistent with the conventions of 'interregnum' governance on the existing appropriation of supply.

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

The size and number of electorates need not be determined in the constitution or the electoral statutes. Territorial electorates should be abolished: all members of the House of Representatives should be elected from their parties' lists of candidates and the senate from list of national candidates.

- fl Peoples' affiliations are less territorial today than with their ethnic, social and economic affiliations. By having national constituencies there is less likelihood of minority votes being wasted or for backdoor arrangements to artificially increase the support for a political faction, as in the arrangements made by the National Party with the candidates for Epsom and Ohariu in the 2011 election.
- fl With regard to the House of Representatives, under MMP, constituents have become accustomed to approaching whichever MP they think is most appropriate to their particular needs. Also parties have ensured they offer territorial representation, whether or not the incumbent MP is a member of that party. Constituent MPs can therefore no longer claim to exclusively represent their territory. Any party that neglects a territory (or any other political or non-territorial constituency) is likely pay the price in subsequent elections. It would remove the dichotomy of both local government and MP representing territorial interests. It would also remove the need for the overhang in the number of seats.
- fl This would make independent MPs all but impossible but their influence on the House of Representatives under MMP is negligible anyway because the current



overhang. Since the instigation of MMP, no independent candidates have been elected to the House of Representatives. There would be more scope for both independent representatives or for representatives to act more independently from any party affiliations in the senate.

- fi With regard to the senate, the quota would be based on ethnic affiliation and the constituencies would be national. Election would be by single transferable vote. While party affiliation should be permitted for senators, STV would better enable independent candidates or senators to act independently from their parties. If a senator were to part ways with their party, they should not be excluded from the senate because their party affiliation was not the determining factor in their election.

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

**House of Representatives.** If members of the House of Representatives holds their seat under MMP by virtue of being on the party list and part ways with their party, they should have their membership of the House of Representatives automatically withdrawn.

- fi Electors under the present MMP system vote for party. While the party publishes its ranking of candidates and its policies, how this is assessed by the electors among a myriad of other potential factors is individual and unknown. The only fact known is that at a particular time a party was allocated a given number of seats.
- fi If members part from their parties then the party must retain its allocation such members no longer have a mandate to remain in parliament.
- fi This remains true even irrespective of where the member lies on the list because how the electors discerned their vote is unknowable. It also remains true if such members remain faithful to the manifesto of the party at the time of the election while the party has changed its policy. Again this is true because the elector knew at the time of the election the party had the ability to change its policies at any time in the future, and the only known fact is the elector chose that party at the election.
- fi On the question of personal morality, unless a member becomes disqualified to be a member of parliament under law, a party should be allowed to retain or expel a person for their behaviour—or for any other reason—according to the party's rules, which may also be subject to change. These rules and their application would be subject to law.
- fi Notwithstanding the above, there needs to be provision for a binding referendum to recall any public official or officials, including holding an immediate election or either or both chambers of parliament, if it was manifest the majority of the electorate (say a three-fifths or two-thirds majority) had lost confidence. This is required if the people are to be sovereign.

**Proposed ethnic second chamber.** However, in the instance of members of an second chamber, who are elected by STV as individuals on the basis of national constituencies determined by ethnic group, then withdraw from that chamber should not be automatic.

- fi Even if such members had a party affiliation and even if that party promulgated a list of its supported candidates in order of preference, it cannot be reasonably determined to a high enough degree that such support was a determining factor in their election to state their mandate no longer holds and their membership automatically withdrawn.
- fi Notwithstanding this, it should be made clear in the voting instructions that any change in a candidate's party affiliation will not automatically lead to the loss their seat.



179

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 10/04/2013 9:44 a.m.  
**Subject:** [RELEASED FROM QUARANTINE] [SUSPECT SPAM]  
[http://www.ourconstitution.org.nz/ form submission](http://www.ourconstitution.org.nz/form submission)

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

Full Names: jonathan lee Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Postal  
Region: canterbury Postal Post Code: Postal Country: New Zealand Submission: The  
tow is leading NZ to a divided society. We should all be one nation united, opposite to what the tow  
encourages. Stupid pakeha give in to all maori requests regardless. Maori are not the first to settle  
NZ.

No it should not be part of any constitution. We do not need a new constitution !

Treaty claims should be stopped now.

Sent on the 9 April 2013 at 22:15

1738

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 30/06/2013 10:00 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** ConstitutionalConversation.pdf

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

Full Names: Phillip Lee Organisation Name: New Zealand Citizen Email:  
Phone: Postal AddressA: Postal AddressB:  
Postal City: Hamilton Postal Region: Waikato Postal Post Code: Postal Country: New  
Zealand Submission: Submission Upload: Constitutional Conversation.pdf

Sent on the 30 June 2013 at 09:59

These are the questions we would like your feedback on:

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

No. It does not protect the individual's rights enough as corporate and property rights are starting to take precedence over an individual's rights. There needs to be a clear relationship between these where the individuals rights come before corporate and property. Current and future individuals rights need protection against corporate and property claims.

2. What other things could be done to protect rights?

Protection to NZ citizens needs to be given against local and overseas/ international corporations or governments influence that erodes citizen's current and future rights.

Ensure that rights are not eroded via the exercise of financial or personal resources.

Ensure the protection of society's future rights.

Ensure the judicial system provides the right of justice to victims of crime.

More needs to be done in the prevention of individuals or groups from violating others rights.

More needs to be done to educate people on rights and justice principles so that it is clear to all when they are trespassing and violating others rights and what rights people have.

The system needs to give greatest support to the weakest party in a conflict of rights but not favour that party.

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

Yes. The protection of the individual citizen is the most important responsibility of the state. The state needs to be subject to laws that protect the individual's rights so that inappropriate use of power is constrained.

The impact of any law must firstly consider the individual's rights, then the communities or societies, then individual property rights, then NZ as a whole, and lastly corporation and international organisational interests and rights.

It should also include the rights of animals. This is in recognition of humanities power and need to exercise that with kindness to maintain our humanity.

The right to euthanasia or autonomy over your own existence needs also to be considered in certain circumstances. This is to understand that choice of life's continuance is an individual's now that society has moved to a point where the continuance of life is constrained by finance or technology. Life's continuance should not be constrained only by financial resources.

It should also include property and ownership rights. These rights impact on human and societies rights. Ownership is not forever and that what you do with your property impacts on others now and in the future. That impact means that you are constrained in what you do with what you 'own'.

It should also include intellectual and creative rights. Ideas are cheap and easily come by in a society that has such vastly accessible knowledge. The protection of an idea for commercial benefit is an anachronism dating back to another time. The protection of the implementation or realisation of the idea however should be protected from theft. That right should be granted to the producer. It is debatable as to whether or not it should be tradable.

It should also include the right to privacy. The Internet is a public place and only that which is intended to be public should be available for public access. Private activities should not be made public without permission. In the case of illegal activities or when people are acting in a public capacity then they should be public. An activity that a person has made public cannot be claimed to be private in the future.

It should also include the right to a healthy environment (one where your health and well-being is supported). Pollution and poor food supply degrade the quality of people's lives. Those that damage the environment should have to fund its restoration or pay the cost to society for that harm. It is not a societies cost unless it is universally beneficial which excludes most business activity.

1897<sup>1</sup>

The Declaration of Equality, spells out what needs to happen, to ensure there is one law for all, and one class of citizenship in this country.

Therefore:-

We reject references to the Treaty of Waitangi or its principles in any constitutional document.

We ask that such references be removed from all existing legislation.

We ask that race-based Parliamentary seats be abolished.

We ask that race-based representation on local bodies be abolished.

We ask that the Waitangi Tribunal be abolished.

We oppose separatism.

We wish to ensure there is one law for all, in NZ.

Rob and Jean Lee.

Katikati.

Jennifer & Desmond Hobbs  
Katikati



1897a

In a democracy, there must be one law for all, with no regard to race, gender or religion.

We therefore oppose any reference to The Treaty of Waitangi, should any legislation be drafted, now or in the future.

We do not need a written Constitution.

Jean and Rob Lee.

Jennifer & Desmond Hobbs

4882

**From:** Robert Lee :>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 5:04 p.m.  
**Subject:** CAP SUBMISSION  
**Attachments:** Submission of Robert Lee.pdf

Kia Ora

Please find attached my submissions with respect to the review of New Zealand's constitutional arrangements.

Please acknowledge receipt.

Kind Regards

Robert Lee



TO: The Constitutional Advisory Panel

FROM Robert Lee

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Submissions with respect to proposed changes  
to New Zealand's constitutional arrangements.

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This document is submitted by:

Robert Lee,

Rotorua

**To The Constitutional Advisory Panel**

1. These are my submissions with respect to changing New Zealand's current constitutional arrangements.
2. I shall refer to both the United States and Swiss constitutions as models that New Zealand can look to as credible and highly effective examples of proper and excellent constitutional arrangements.
3. The United States of America first adopted its written constitution in 1787. It is considered "superior" to and trumps other laws. It is entrenched and subject to Judicial Review by their Supreme Court.
4. It is lamentable that more than 220 years later New Zealand still lacks even a proper written constitution. With all due response, an unwritten constitution is no constitution at all and can therefore be no proper accountability to it.
5. The Swiss operate a highly attractive version of "direct democracy" in which an interested population are frequently involved in the democratic processes via referendum.
6. The current model that operates in New Zealand known commonly as "The Crown" is an outdated relic of the British Monarchy that contains a number of undemocratic and undesirable features.
7. I believe it is of the utmost importance to get the fundamentals and the foundations of New Zealand proper, correct and according to the rule of law and according to the principles of democracy.
8. I submit that it is no coincidence that whereas the USA, with its proper constitutional arrangements, flourished into the most powerful and dominant country on the planet in the 20<sup>th</sup> century whereas New Zealand, with its non-existent constitutional "arrangements" has floundered. New Zealand has been unable to keep up with Australia in almost every respect. Consequently, New Zealand's best and brightest have for many years voted with their feet, abandoned the nation they love, with so much going for it, and immigrated to Australia and other more successful countries.

**The Crown and "Parliamentary Sovereignty"**



9. New Zealand and the United Kingdom are the only remaining two countries in the world whose Parliament asserts the doctrine known as 'Parliamentary Sovereignty'.
10. 'Parliamentary Sovereignty' provides Parliament with essentially unbridled power. This is fundamentally undemocratic and entirely unacceptable in a country that claims to be a modern democracy.
11. The other last remnant of "Parliamentary Sovereignty" is the source of this doctrine namely the United Kingdom of Great Britain.
12. However, unlike New Zealand, the UK Parliament's powers are, to some degree, bridled by the existence of an Upper House known as the House of Lords.
13. New Zealand did have an upper house until the early 1950's until it was abolished by an [arguably unconstitutional] Act of Parliament.
14. Furthermore, the UK Parliament is also now restrained by their participation in the European Union. In particular the UK Parliament may not make laws that are contrary to "The Treaty of the European Union".
15. New Zealand's current constitutional arrangements are uniquely permissive of an entirely unrestrained Parliament who are currently at liberty to pass any law based upon a simple majority.
16. This could include laws that are retrospective, illegal, unfair or unreasonable or laws that set aside fundamental rights or laws that override the rights "affirmed" in The New Zealand Bill of Rights Act 1990 (NZBORA).
17. Section 7 of NZBORA requires that the Solicitor General provide a report to Parliament where any proposed law seeks to override the rights contained in NZBORA. This mechanism has proved to be entirely insufficient to prevent our "sovereign" Parliament from passing laws that impinge upon the rights of New Zealanders with multiple laws every year falling into that category.

#### **"Unconstitutional" Laws in New Zealand**

18. One example of an unconstitutional law that affects every New Zealander and passed by our "sovereign" Parliament is contained in s115 of The Land Transport Act 1998 which allows the NZ Police to stop any vehicle at any time without reasonable cause. This section would appear to conflict with our right to be "secure" against *unreasonable*

*search or seizure* and our right not to be *arbitrarily detained* as provided for in sections 21 and 22 of NZBORA.

19. Another example would appear to be The Serious Fraud Office Act 1990. Section 9 requires suspects to answer questions. Section 27 explicitly provides that self-incrimination is no excuse for not answering questions. Section 45 makes it a criminal offence not to answer questions for which criminal conviction and imprisonment may follow. This would appear to conflict with s23(4) of NZBORA which provides:

*Everyone who is—*

- ☐ *(a) arrested; or*
- ☐ *(b) detained under any enactment—*

*for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.*

20. These are but two examples of apparently unconstitutional laws passed by New Zealand Parliaments to illustrate the point that this issue is not academic or theoretical in nature but should properly be of genuine concern to all New Zealanders whose rights are increasingly impinged by our unbridled Parliament.
21. The above examples are by no means a comprehensive list. The Solicitor General ought to be able to provide a list of Section 7 reports that have been prepared since 1990 when NZBORA was passed.
22. Several months ago I requested a copy of the s7 report with respect to s115 of The Land Transport Act 1998 by email from the current Solicitor General as I have been unable to locate such a list on the Internet. I have not received a response.

#### **The United States of America Constitution as a model**

23. The United States Constitution is written, is superior law and is subject to Judicial Review by the Supreme Court. The Supreme Court is empowered to strike down any legislation that conflicts with their written Constitution, which includes their Bill of Rights.
24. By contrast the unfettered powers of the New Zealand Government resulting in many undesirable laws may be at least partly responsible for the many New Zealanders have preferred to live and work in other parts of the world.

25. There is no equivalent provision to s115 in American law. In the United States the Police cannot stop citizens driving along the road without "probable cause". Any attempt to pass such a law would fail because it is in conflict with their 4<sup>th</sup> amendment which provides in strong and definite language:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized*

26. If an American parliament (congress) were to succeed in passing such a law then the Supreme Court has jurisdiction to review such a law and would be obliged to strike it down.

27. The same applies to the draconian provisions referred to above in The Serious Fraud Act 1990. These appear to be in conflict with the United States fifth amendment which provides:

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

28. The powers of judicial review of laws by the Supreme Court is not a novelty or unique to the USA. Canada and Germany are but two other significant examples where their Supreme Court also has such powers.

#### **Entrenchment**

29. The American constitution is entrenched so Parliament is not at liberty to change it by simple majority. The procedure required for making amendments to their constitution is described below.

*In the first step, the proposed Amendment must be supported by two-thirds in Congress, both House and Senate. The second step requires a three-fourths*

*majority of the states ratifying the amendment. Congress determines whether the state legislatures or special state conventions ratify the amendment*<sup>1</sup>

30. It is therefore submitted that the constitutional arrangements of the United States are a worthy role model. In particular, this includes:
- a. A written constitution which includes a Bill of Rights;
  - b. The constitution must be entrenched;
  - c. The constitution must be superior to other laws;
  - d. The Supreme Court must have jurisdiction to review laws and if they are found to be inconsistent with the constitution, these must be struck out.
31. It is submitted that these arrangements would serve as a reasonable and effective constraint upon Parliament which would prevent the passing of laws which may be convenient for the purposes of government but which are repugnant to reasonable citizens and which may be repugnant to fundamental principles of democracy and indeed repugnant to the rule of law.

#### **The Swiss model – An example of “Direct Democracy”**

32. Binding referendums are a central and key feature of the Swiss constitution. In effect, they operate to prevent the government from passing unpopular laws and / or amendments to constitutions.
33. Binding referendums can be initiated by citizens with relative ease and are routinely conducted many times a year. For example, in 1992 fifteen referenda were held which included, significantly, rejecting the joining of Switzerland to the European Union. For this reason Switzerland is still not a member of the EU.
34. The government does not have a right of veto over citizen initiated referendums which is simply a legal procedure regulated by their constitution.
35. Were such arrangements in place in New Zealand it would seem unlikely that unpopular legislation such as the “anti-smacking” legislation would have survived the inevitable citizens initiated referendum that would have followed.
36. Consider the implications of this one law: How many reasonable New Zealanders may consider that the custody of their children is in jeopardy if they were brought before the

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<sup>1</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Constitution](http://en.wikipedia.org/wiki/United_States_Constitution) see “Procedure”

Courts for smacking their children and this became a relevant consideration in deciding to immigrate to Australia or elsewhere.

**Constitutional arrangements with respect to the Judiciary**

37. Having been involved with litigation against the Crown it has become apparent to me that the current constitutional arrangements with respect to the Judiciary are insufficient for justice to be seen to be done.

38. The fundamental problem that arises when a citizen attempts to bring litigation against the Crown is that the Crown gets to be a judge in its own cause.

39. The separation of the three branches of government is supposed to mitigate against this apparent problem under the guise of "Judicial independence".

40. However, consider that:

- ☐ the Solicitor General is a member of Parliament appointed by the Prime Minister and serves in the Cabinet;
- ☐ the members of Cabinet share collective responsibility for their decisions;
- ☐ The Prime Minister and the other ministers of Cabinet have ministerial responsibilities for various Crown Agencies that may be defendants in litigation brought by citizens.
- ☐ it is the Solicitor General who has overall responsibility of The Crown Law Office;
- ☐ it is usually the Crown Law Office that usually represents Crown agencies as Defendants in civil proceedings.

41. Consider also that:

- ☐ it is the Solicitor General who appoints (and promotes) judges,

42. This means that those who have overall and joint responsibility for Crown Agencies (the cabinet) are in a position to appoint and promote judges who make decisions that are agreeable to them as Defendants.

43. Even without this apparent problem of appointments we would still have the problem that Judges who are paid by and are part of the Crown would still sit in judgment over litigation involving the Crown, which is at least an apparent conflict of interest and at worst an actual conflict of interest.



44. The right to a jury trial in civil cases, as provided for in Defamation cases, would mitigate against this conflict of interest where the defendant is a Crown entity.
45. The practical difficulty to this obvious solution is that the jury pool is in heavy demand for criminal cases (arguably due to over policing). A practical solution would be to allow the civil litigant against the Crown the right of appeal to a jury. This would however be entirely unattractive to the Crown but entirely attractive to citizens who wish to hold Crown Agencies accountable for their actions.
46. In New Zealand Judges enjoy "judicial immunity". In theory this immunity means Judges may be at liberty to make decisions without any threat of action against them potentially arising from a dissatisfied party.
47. Unfortunately, this also has the effect of making lower Court judges at liberty to make decisions that lack merit, detail, and contrary to established principles of law and in particular make findings of fact that are manifestly incorrect.
48. The appeals process is available in theory to remedy such flawed decisions but higher courts are increasingly reluctant to revisit erroneous findings of fact made by lower judges preferring instead to consider only important and new "points of law".
49. In practice, lower Courts are making significant errors that the higher Courts are not able or willing to correct.
50. These constitutional flaws with respect to the judiciary result in a Justice system that, too often, is unpredictable and does not deliver justice and there is little that an unsuccessful litigant can do about it.
51. The consequences for such a person can be significant and may account for many of the New Zealanders who elected to live in another country.
52. It is submitted that juries ought to be available to consider the merits of an appeal application and to allow an appeal by jury if they consider it justified.

#### **Constitutional Arrangement with respect to Oaths of Office**

53. Democracy, by definition, is government of the people, by the people, for the people.
54. Certain people are required to take an "oath" or else they are unable to accept a position in the employment of the Crown. This includes:

- ☐ Members of Parliament;
- ☐ Police;
- ☐ Lawyers;
- ☐ Judges.
- ☐ Doctors;

55. These oaths require allegiance to "the Crown" rather than "the people" and, it is submitted, is entirely inapposite to the principles of democracy.

56. Hone Hawawira was an example of a person elected by his people to the parliament and Parliament required him to make an oath swearing his allegiance to "the Crown" rather than his people.

57. The custom of the taking of oaths not only ought to be discontinued but any oaths already in place ought to be rescinded. It is submitted that this is entirely contrary to the principles of democracy.

58. It is submitted that in New Zealand culture oaths ought not be required to occupy positions within the Crown and if they were, such allegiance ought to be to the people of New Zealand and not to the Crown.

#### Summary

59. I am in favour of:

- a. a written constitution;
- b. the entrenchment of that constitution;
- c. the constitution being superior law;
- d. the Supreme Court being able to strike down unlawful, unfair, unreasonable or otherwise unconstitutional laws;
- e. citizens initiated binding referenda
- f. a much lower threshold for allowing referenda;
- g. changes to how judicial appointments take place;
- h. changes to the appeals process that allows applications for appeal to be heard by a jury and if justified a jury trials
- i. the abolishment of oaths of "office" and in particular oaths that pledge allegiance to the "Crown";
- j. the renouncing of existing oaths of office.

60. I would be happy to provide further information if required or make an oral presentation if required.

61. I have not had the opportunity to fully consider the merits of the Waitangi Treaty being incorporated into a New Zealand constitution. However, if I were to have any further involvement in this matter I would like to reserve the right to also give this matter consideration.



Robert Lee

3055

# **Constitutional Review Submission June 2013**

**Author:** Lee Short

Auckland

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## **1. Submission:**

My submissions are in two parts. The first from 1(a) – 1 (m) covers the express points raised by the panel terms of reference. The second section 2 (a)- (k) covers points of specific concern to me as a New Zealander anxious to preserve democracy in this country.

### **a) Size of Parliament**

The nominally 120 members are more than is needed to run a country of 4.5 million people if the structures and processes are modified to cope efficiently. I am opposed to any increase in numbers and recommend that there are no more than 100 representatives – all to be elected (no list MPs).

### **b) The length of term of parliament – Should the term be fixed?**

With no Upper House or a Citizens' Veto of unacceptable legislation, a shorter term and more frequent elections is the only way of holding the government to account. Whilst our shorter term does not prevent political parties "buying" their way into parliament the three year term is the only way that voters can effectively restrain the powers of the Executive and hold the government to account, thus ensuring that the government remains responsible to voters.

### **c) Should the Election Day be flexible or fixed?**

Currently the Prime Minister fixes the date with the subsequent benefits to his/her own party. Whilst a fixed date may open things up to electioneering and lobbying either way I don't believe it is a major problem as long as the electorate can vote democratically.

### **d) Should the number of electorates stay the same?**

No. The electorates should be adjusted to accommodate a maximum of 100 seats and all list members should be eliminated. The public has no say in whom a list MP will be so democracy is compromised as they are unelected and unaccountable to the electorate. They also stay on in parliament when they leave or are expelled from a political party. This means they remain in parliament without a mandate.

**e) Should the method of calculating the size of electorates be changed?**

The process for deciding the number and size of electorates is based on the South Island always having 16 electorates. After each five-yearly census, the Representation Commission divides the number of people living in the South Island by 16, to get the "population quota." the Commission then divides the Maori electoral population and North Island electoral population by the South Island population quota. This calculation results in the number of North Island and Maori electorates. This system needs review. For example I do not believe Auckland metropolitan needs so many MPs. I live in Meadowbank and have Tamaki as my electorate, with Epsom, Auckland Central, and Maungakiekie very close by. These four electorates could be reduced by at least one if not two.

I am opposed to separate electorates based on race. Therefore the Maori electorates should be eliminated. The adoption of MMP means that the number of Maori only seats and therefore the balance of power will reside in a few which sets the country on a continuing path to separatism.

**Conclusion and submission**

I believe the system of allocating seats needs to be decided at a referendum at an election following an in depth education program, and several choices offered. Eliminating Maori only seats will reduce the number in parliament by 7 which is a good start towards 100 maximum seats. A further review of densely populated regions combining electorates will allow further reduction.

**f) Should electoral integrity legislation be reintroduced?**

I believe that the electoral integrity legislation should be reintroduced to both stop party hopping and also MPs staying on in parliament after they have been dropped from their own party. No list seats would mean that all MPs would have to face the electorate. A by-election is the best solution to resolve this with the voters in the electorate deciding representation.

**g) Should the Maori Electoral option (separate Maori roll) be retained or abolished?**

It should be abolished, as no representation should be based on race alone. New Zealand is a multi ethnic country and all citizens should have equal rights but not rights based on race. To continue this separate representation is to maintain and promote an apartheid policy.

**h) Should the parliamentary Maori seats be retained or abolished?**

They should be abolished because they are based on race. Currently there are many politicians of Maori descent in parliament, which proves that citizens of Maori descent are quite capable of being elected to parliament. To continue this separate representation is to maintain and promote an apartheid policy

**i) Should local government Maori seats be retained or abolished?**

They should be abolished for the same reasons expressed above. This also applies to unelected appointments to committees such as the IMSB on Auckland Council. Representation in local government must be by election therefore offering full accountability to the electorate.

**j) The role of the Treaty of Waitangi within our constitutional arrangements:**

The first thing to note is that embedding the Treaty of Waitangi in a written constitution would remove all Treaty arguments from politicians and hand them over to the courts. This would not be a good thing. Our politicians, heaven knows, are bad enough, but at least we can tell them what we think, and vote them out and replace them with another lot. But we cannot do anything like that with judges. Once the Treaty is in a written constitution, then the interpretation which judges put upon it will be binding on us and beyond argument forever.

Given the clear pro-Maori view which some members of the judiciary already display, they should be the last people to be let loose on the Treaty. It is no use saying in reply to that that many judges do not have that view. For one thing, political issues, whatever they are ~ not just Treaty issues, but all sorts of things



~ should not be left to judges at all, whether we agree with their politics or not.

We ourselves should decide political issues, not highly-paid officials. For another thing, the politics of most judges are actually irrelevant. We have a hierarchy of courts, and appeals from one to another. The final rulings are made by the five judges of the Supreme Court. They can overrule anyone else. Once those five people declare that black is white, then every other judge in the country is obliged to agree.

Under a written constitution, then, many political decisions on all sorts of matters of the highest importance will be handed over to this tiny handful of unelected and undismissable judges. They will be our rulers, and if we do not like it there is absolutely nothing we will be able to do about it.

The original three terms or provisions of the Treaty (the right of government to govern; iwi property rights; and equal rights for all new Zealanders as British subjects) have now been superseded or eclipsed, we are told, by the "spirit" of the treaty, to continue the religious analogy, and by **an ever-growing list of "principles"** which various bodies declare from time to time, with no consultation or discussion. There are, at last count, at least thirteen separate lists of Treaty "principles", no two the same.

**These" principles" are nowhere defined. There has never been any public debate or discussion on these "principles" because the public conversation has never taken place.**

Indeed, the third (silent) voice in the treaty conversation, that of the European majority, is never sought nor its rights acknowledged. Parliament shamefully declined to define any treaty principles during the passing of the SOE Act (1987), leaving it for the courts to decide. Instead, Parliament engages in a never-ending journey of appeasement and retrospective compensation for historical wrongs which in some cases never happened. Non-elected judges are no more qualified than anyone else to determine which, if any, "principles" may apply to any given situation.

**k) Bill of Rights issues (for example, property rights, entrenchment):**

The New Zealand Bill of Rights Act 1990 is a statute of the Parliament of New Zealand setting out the rights and fundamental freedoms of anyone subject to New Zealand law. I would like to see private property rights awarded the added protection of being included in the Bill of Rights. The rights of all citizens should be the same. This includes property rights.

**l) Should the protection of property rights be included in the Bill of Rights?**

Yes. The Electoral Act is the only New Zealand statute containing entrenched provisions, which means that it can only be changed through a 75% vote in Parliament or a majority vote in a public referendum. The argument is that the Bill of Rights does not need to be entrenched since by convention no government would change such a law without wide parliamentary support.

**m) Written constitution:**

New Zealand should retain its present flexible constitutional arrangements that consist of a collection of written statutes, conventions, and common law rights that together set out the basic rules by which we are governed. Our elected Members of Parliament who are accountable to the electorate should hold all law-making power. New Zealand does not need a new written constitution. It should avoid anything that gives the ultimate law-making power to un-elected judges

New Zealand's current constitutional arrangements is to be found in a combination of:

- formal legal documents (particularly the Constitution Act 1986, the Letters Patent Constituting the Office of the Governor-General, the Electoral Act 1993 and the New Zealand Bill of Rights Act 1990)
- decisions of the courts (known as common law)
- Long-standing and recognised practices (some of which are described as constitutional conventions).
- These are not 'supreme laws' and most of them may be changed by a simple Act of Parliament.



New Zealand's constitution is based on the Westminster, or British, tradition. It has evolved over many years and has continued to change since we became independent of Britain. It has served both Britain and New Zealand well and does not need changing

## **2. Other Comments:**

### **a) Constitutional Panel Appointment:**

My first concern is that the democratic principles established in New Zealand by the enactment of the 1852 Constitution Act, which in turn provided the structures and processes for democratic governance in the country have been undermined and subverted by successive governments who ignored the will of the electorate and ignored referenda (e.g. the proposed partial sale of state assets etc.) The appointment of the Review Panel is an example of a blatant disregard for fairness because the five Maori representatives are professed Treatyists, radicals or Maori sovereignty proponents. Their numeric representation on the panel far outweighs their demographic representation as members of New Zealand society. As the Tuwharetoa chief negotiator on Treaty reparations former deputy Prime Minister Sir Michael Cullen has a definite conflict of interest and could scarcely be deemed to be impartial or objective. The taint continues with the public utterances of Deborah Coddington, married to and no doubt influenced by the views of her husband Colin Carruthers, lead barrister for the Maori Council in their case against the Government over water rights. John Luxton a former Maori Affairs minister has gone on record as assigning special rights to the Treaty of Waitangi.

### **Conclusion and Submission:**

The panel is biased and will not render an impartial assessment. How can the government or parliament give credence to a report from a biased body?

### **b) Democracy and the Constitutional Review**

New Zealand is a democracy containing the three elements that constitute a democracy embedded in its structures and processes. These include:

- The Nation — which is the overall framework and idea we have of ourselves.

- The State – which is parliament, and all the institutions and systems of government?
- The Citizens – who are the subjects of the nation-state, and hold it accountable.

These three elements are held together by the principles of universalism, equality, and freedom. Universalism is the commitment to the belief that the human being is the political subject and is therefore is regarded as human before he or she is seen as a member of a race, religion or other type of social group. Universalism is the basis of democracy because it justifies the equal status of the citizen. It should be recognized that ***the political status of citizenship is different from cultural/race identity.***

This means that political status, that is, citizenship, is part of a constitution, but race/cultural/religious identity is not. In democratic countries religion is kept out of politics because religious identity is not part of the political arrangements. So for the many New Zealanders that have a religion, their religious status is not their political status. Race and culture is like religion – it is an identity, but not a political status.

#### **Conclusion and submission:**

Race/cultural identity cannot be included as a political status in a constitution. Race and cultural identity should not be used to provide political privilege. This goes to the heart of why the Treaty is now such a divisive document. Does the panel recognize the articles of the Treaty with meanings of the time of signing (i.e. 1840)? If not, why not? If the panel wishes to ascribe contemporary meanings what justification can it give for those?

#### **c) The Treaty and its Different Interpretations (Treaty Partnership and principles)**

The Treaty as written in 1840 is a simple document consisting of a preamble, three articles and an epilogue. In the first article, sovereignty was ceded by Maori to the Crown. In recognition of that factor in article three Maori were granted all rights and privileges of British subjects and were guaranteed the protection of

the Crown. Article two is now a contentious one as Maori were granted the right to administer their taonga. (Property gained by the spear- 1840 translation) disputed today by Maori claiming contemporary interpretations to include all forms of property. They also challenge sovereignty issues claiming the right to dual sovereignty.

It is the unchallenged contemporary interpretations of the Treaty by the Waitangi Tribunal that have created the division and angst in New Zealand society. The word partnership does not appear in any version of the Treaty and to imply that the British Crown in 1840 who controlled about 25% of world ever entered into a partnership with a native race of approximately 100,000 people is ludicrous. The agreement to the rights of British citizenship was in itself an important and unique recognition for Maori people.

The original three terms or provisions of the Treaty (the right of government to govern; iwi property rights; and equal rights for all new Zealanders as British subjects) have now been superseded or eclipsed, we are told, by the "spirit" of the treaty, to continue the religious analogy, and by an ever-growing list of "principles" which various bodies declare from time to time, with no consultation or discussion. There are, at last count, at least thirteen separate lists of Treaty "principles", no two the same. These "principles" are nowhere defined. There has never been any public debate or discussion on these "principles" because the public conversation has never taken place. Indeed, the third (silent) voice in the treaty conversation, that of the European majority, is never sought nor its rights acknowledged. Parliament shamefully declined to define any treaty principles during the passing of the SOE Act (1987), leaving it for the courts to decide. Instead, Parliament engages in a never-ending journey of appeasement and retrospective compensation for historical wrongs which in some cases never happened. Non-elected judges are no more qualified than anyone else to determine which, if any, "principles" may apply to any given situation.

Likewise the principles of the Treaty introduced by Sir Geoffrey Palmer in 1989 some 149 years after the event are another contemporary intervention used at the time to secure the Maori



vote for the Labour Party, and seized upon by the biculturalists and separatists and now is considered by many to be the orthodoxy.

**Conclusion and submission:**

The deeply held divisions over interpretation are a strong reason alone not to include the Treaty in future legislation. These divisions have been highlighted in all surveys conducted in recent years on the importance and acceptability of the Treaty. The danger for New Zealand is that race-based legislation would create the prospect of New Zealand in a similar vein to many overseas countries developing the ethno-cultural conflicts which have become the most common source of political violence in the world today.

**d) Treaty in constitution would divide, not unite**

**Conclusion and submission:**

I would submit that the existing divisions would be exacerbated further if the Treaty is included in New Zealand's constitution for the following reasons:

- It would divide us into two peoples, one of whose political status comes from their genetic heritage or race, and the other whose political status is that of citizen.
- Including the Treaty in a constitution would bring into the constitution an anti-democratic political system – the tribe/iwi.
- The fundamental differences of the two systems would be destructive of democracy.
- Another fundamental difference between the political status of citizenship and the nature of tribalism is that the former espouses equality for all and the other is based on inequality and privilege.

**e) Historical revisionism and deliberate propaganda**

The control of historical interpretation by emergent and ruling elites is a common political strategy used to secure the ideological dominance necessary to maintain political and privileged access to economic resources

It is very evident in New Zealand that historical revisionism has accompanied culturalist politics.



The new interpretation usually has scant regard for historical facts.

The sanitized version of Maori history ignores the genocide perpetrated on the Moriori, cannibalism, infanticide, and the killing of 40,000 – 60,000 of their own people in the “Musket wars”. The true ills of Maori society in pre European times are ignored for a romanticized version of life that blames colonialism for all the ills in a manner used to support an ideology rather than to delineate historical reality.

The revisionist viewpoint came about from the 1970s and is entrenched in our education system and government institutions and is nothing more or less than biased propaganda.

#### **Conclusion and submission:**

This propaganda and historical revisionism should be recognized for what it is a distortion of our history; this is another strong and valid reason why the Treaty should not be included in a new constitution.

#### **f) Politicized Educational propaganda**

Biculturalism has been the dominant ideology in New Zealand education since the 1960s reflecting the concerns of “Pakeha” educators to accommodate perceived Maori sensibilities and the conviction that Maori communalism and spirituality could contribute to the nation’s culture.

Since the 1960s anthropologists, departmental educationalists and politicians have criticized and blamed education for failing to solve society’s socio-economic problems. Maori culture held multiple attractions for these educators as it was perceived it would simultaneously foster pride in a supposedly unique national identity, absolve colonial guilt, defuse urban Maori tensions, and provide a palliative to problems of urbanization whilst enriching the spiritually impoverished materialistic Pakeha culture.

#### **Conclusion and submission:**

I would submit the whole focus of bicultural education ignores the realities of a multicultural New Zealand and the teaching of a

sanitized Maori history has connotations of the political propaganda carried out in other countries at the expense of democracy.

Our politicized education system is another reason for turning down the inclusion of the Treaty in a new constitution.

I would further submit that funding research that critiques the historical revisionism of the bicultural period — so that NZ's history is studied according to sound research methods, and not in the interests of Treaty politics, as is currently the case with much Waitangi Tribunal research.

**g) Constitution is about citizenship, not culture**

**Conclusion and submission:**

Our present constitution includes the right that each individual has to practise his or her cultural identity. This right is enshrined in legislation, which says that a person cannot be discriminated against on the basis of race, religion and cultural affiliation. It is pertinent to point out that right only exists because of our equal status as citizens — a status that comes from the Universalist principle that we are all equal as human beings. Citizenship is at the basis of our freedom, and an essential part of a democratic constitution. I strongly submit that the inclusion of the Treaty in a constitution and by inference in all legislation will undermine and subvert those rights

**h) Tribalism based on inequality**

**Conclusion and submission:**

Tribalism which has given rise to a neo traditionalist approach by Maori Iwi to political affairs presupposes that the modern Maori despite intermarriage somehow replicates the forbears who signed the treaty. Tribalism is in my view incompatible with democracy because tribalism is based on principles of inequality, and those in positions of authority are not elected and are therefore not accountable. Tribalism is a pre-modern system that has anti-democratic factors recognized throughout the world where there is a move away from tribalism to democracy. In tribal organizations a person's political status comes from the status of his or her

ancestors. Tribalism is divisive with once again the dividing mechanism being race.

**i) Sovereignty**

**Conclusion and submission:**

Parliament is sovereign, not two Treaty 'partners'. There can't be two 'sovereigns'. It is Parliament that makes the laws and exercises authority on behalf of all New Zealand citizens, to whom it is accountable. If it were true that there was a Treaty 'partnership' then iwi would be sovereign alongside Parliament. This is nonsensical. It is the result of hugely influential lobbying by a small group of powerful biculturalists and iwi lobbyists, but opposed by most New Zealanders. The Government Constitutional Advisory Panel is a good example of this creeping inclusion. 50% of its members was chosen because of their race. That is confusing political status with identity – the point I make above.

There can only be one sovereign. Inclusion of the Treaty in a constitution would divide, not unite

**j) Co-governance**

**Conclusion and submission:**

The latest strategy of 'co-governance', as in the proposed co-governance of the Hauraki Gulf with 50% Maori and 50% representation from all the other groups with an interest in the Hauraki Gulf is a very serious step in the wrong direction for governance. It gives one race-based group the unelected Maori Iwi unaccountable power, and takes justified and accountable power away from the bulk of the New Zealand population.

This would be a serious erosion of democracy and is an example of the race based politics that would be paramount if the Treaty and all its false interpretations were included in all our legislation

**k) Parliament, not Supreme Court, must be supreme**

**Conclusion and submission:**

It is vital for the future of our democracy that the government ensures that Parliament is supreme free from an unelected judiciary or powerful lobby groups like the biculturalists and Iwi



elite have in making and interpreting our laws. I submit the supremacy of parliament must be maintained.

This is a further reason that the race based Maori seats should be abolished. It is important that our democratic institutions are strengthened. And that our democratic principles preclude racial favoritism. For those wanting greater equality and social justice it will not come from the biculturalist approach but rather from political arrangements to do with employment, and politics concerned with housing, health, and education. All New Zealanders should benefit from such policies. Such flexibility must be constrained by democratic principles and systems. And therefore cannot include the Treaty.

4405'

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 11:23 a.m.

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Full Name: Tet Woo Lee Organisation Name: Email: n Phone:  
Postal AddressA: Postal AddressB: Mt Eden Postal City:  
Auckland Postal Region: Auckland Postal Post Code: Postal Country: New Zealand  
Submission: The focus of my submission is on the Bill of Rights Act, as I believe our current arrangements do not adequately protect the people of New Zealand from over-reach of the state's power. I support the entrenchment of the New Zealand Bill of Rights Act to ensure that parliament is unable to remove or alter or rights in this Act with a simple parliamentary majority, and instead amendments to the act should ideally require approval by public referendum, or at least a super-majority of parliament. Further, I would like to see this act becoming a 'superior law' so that the Bill of Rights will override any other act passed by the government that is in conflict with the Bill of Rights. Any need to curtail our rights would therefore need to be passed by an amendment to the Bill of Rights Act, which is protected by entrenchment. Together, I believe these provisions will ensure the rights of the people of New Zealand are better protected than our current arrangements, which allows the state to override our human rights by simple parliamentary majority.

As for the other issues being considered by the panel, it is my view that current constitutional arrangements in terms of Treaty of Waitangi, Maori Representation and our electoral system are adequate, and therefore I do not have a strong view on any changes to these aspects of our constitution.

Submitted on the 31 July 2013 at 11:22