

December 2018

Committee Secretariat
Maori Affairs Select Committee
ma@parliament.govt.nz

Submission: Electoral (Entrenchment of Maori Seats) Amendment Bill

Dear Sir,

Thank you for providing the opportunity to make a submission on the *Electoral (Entrenchment of Maori Seats) Amendment Bill*.

This submission on behalf of opposes the Bill on the following grounds:

1. The reason for the existence of the Maori seats has long disappeared

The Maori seats were introduced as a temporary measure in 1867 to give those Maori men who didn't meet the property qualification, the right to vote. The seats were meant to remain in force for five years but were extended for a further five years and then indefinitely.

When all men gained the vote in 1879, the Maori seats should have been abolished.

Since the original purpose of the Maori seats has long disappeared, they should be abolished, not entrenched.

2. The Maori seats breach Section 19(1) of the New Zealand Bill of Rights.

In 1986 the Royal Commission on the Electoral System recommended *abolishing* the Maori seats to prevent an over-representation of Maori in Parliament, if our voting system was changed from First Past the Post to Mixed Member Proportional.

Since a quarter of all MPs in our Parliament – including the leaders or deputy leaders of *all* political parties – are now of Maori descent, the retention of the Maori seats

following the introduction of MMP has resulted in a disproportionate over-representation of Maori in Parliament.

In 2010, a ruling by the Attorney General on the principle of *proportionality* noted, “In a representative democracy, it is important to maintain approximately the same level of representation for everyone.”

Since the Maori seats have increased the representation of Maori in Parliament to a level greater than their proportion in the population as a whole, they have become discriminatory and are in breach of section 19(1) of the New Zealand Bill of Rights Act 1990 – freedom from discrimination based on race. Accordingly, the Maori seats should be abolished, not entrenched.

3. The Maori seats are not suited to entrenchment.

Under section 268 of the Electoral Act, *reserved* provisions can only be changed through a special 75 percent majority of Parliament - or a binding referendum of voters. There are six reserved provisions, which are all *constitutional* in nature: the term of Parliament, the Representation Commission, the general electorates, the 5 percent electorate margin, the minimum voting age of 18, and the method of voting.

When the Maori seats were first introduced to give Maori men the vote, they were *constitutional* in nature. But once all men could vote, the rationale for their existence disappeared, and the reason they were retained was *political*.

Political provisions are not suited to entrenchment.

4. The Bill is in breach of Parliament's rules

Parliament's Standing Order 266 states, “A proposal for entrenchment must itself be carried in a committee of the whole House by the majority that it would require for the amendment or repeal of the provision to be entrenched.”

This means that a Bill to entrench the Maori seats should also be passed by a special majority of 75 percent of Parliament. The fact that the Bill does not specify this, means

it is in breach of Standing Order 266 and should be rejected.

5. The Maori seats are no longer lawful

The *Maori electoral population* used in calculating the number of Maori seats is determined by the number of people who indicate they have Maori descent on their Census forms. However, in 1997, the Government Statistician decided to *include* a proportion of those who had not answered the Maori descent question correctly in his calculation. As a result, the number of Maori seats rose from 6 to 7. If the estimate had not been added, there would have only been 6 Maori seats since 1997.

Section 3 of the Electoral Act requires the *Maori electoral population* to be based on “the total number of ordinarily resident persons of New Zealand Maori descent *as determined by the last periodical census*”. However, since 1997 the calculation has been based on the census *plus* an estimate from the Government Statistician. That means the Maori seats are being calculated unlawfully. It would clearly be improper to entrench unlawful seats.

Conclusion

For the reasons outlined, the *Electoral (Entrenchment of Maori Seats) Amendment Bill* should not proceed. Furthermore, the Maori seats should be abolished.

Yours sincerely ...