DEDICATED INDIGENOUS REPRESENTATION IN NEW ZEALAND’S PARLIAMENT

Proposals to include recognition of Australia’s Indigenous peoples in its Constitution, combined with their ongoing severe underrepresentation in Australia’s federal Parliament, have renewed calls for instituting some sort of guaranteed representation at the national level. Noel Pearson, a senior Indigenous advisor to the Prime Minister, Tony Abbott, reportedly has proposed dedicated Senate seats for Aboriginal and Torres Strait Island peoples. And the Palmer United Party Senator, Jacqui Lambie, has called for setting aside 3-4% of Parliament’s seats (at least five in the House and two in the Senate) for members elected by Indigenous voters. Of course, calling for something is not the same as getting it. Similar proposals for reserved Indigenous representation in the Australian context have unsuccessfully been put forward in the past. Whether the current flurry of interest produces any more tangible outcomes than this earlier work will be revealed in due course.

Such calls, however, are not particularly radical when viewed in a wider context. More than 30 countries have some type of policy for increasing the representation of minorities in their national legislatures. Perhaps most relevantly to the Australian context, New Zealand’s parliamentary system has contained dedicated Maori seats for nearly 150 years. At present, seven seats in New Zealand’s 121-member Parliament are reserved for representatives directly elected by those Maori who have chosen to enrol to vote on the Maori rather than the general electoral roll. These seven seats exist alongside and geographically overlay a further 64 general electorate seats, with the rest being list seats allocated directly to political parties under New Zealand’s Mixed-Member Proportional (MMP) voting system. It is thus possible that two individuals living in the same household may be enrolled to cast votes for different slates of candidates: one to fill that area’s general electorate seat and one to fill its Maori electorate seat.

Although these seats are by no means universally supported – the New Zealand First, ACT and Conservative parties all campaigned on the promise of their immediate abolition at the 2014 general election – their future does appear relatively secure for at least the foreseeable future. Both the main political parties, National and Labour, are committed to allowing the seats to remain in place until Maori themselves decide otherwise. The wider public also appear generally supportive of the seats; an opinion poll taken before the 2014 election found 54% of respondents supported retaining them, up from 41% in 2003. And a review of New Zealand’s constitutional arrangements conducted in 2013 concluded that: “there is no immediate need to change the current arrangements for Maori representation in Parliament.” This comment does not seek to advocate for a similar system of representation in Australia. Rather, it simply outlines how it works in New Zealand.

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6 As, indeed, is the case with the author (who is enrolled on the general electoral roll) and his wife (who is enrolled on the Maori roll).
BRIEF HISTORY OF THE MAORI SEATS IN PARLIAMENT

The Maori seats in New Zealand’s Parliament initially began as a corrective to the exclusion of Maori from the general franchise. While Maori were never formally prevented from voting on openly racial grounds – Art 3 of the Treaty of Waitangi guaranteed Maori all the rights of British citizens – the individual property qualification requirements for enfranchisement had the practical effect of keeping virtually all Maori (who held land in common) from casting ballots. It was anticipated that, in the words of Earl Grey, the “advance in civilisation and the acquisition of [personal] property” by Maori would “enable them, by degrees, to take their share in elections along with the inhabitants of the European race”.9 This somewhat optimistic colonial presumption was misplaced, however, and with the progression of time the fact that Maori played virtually no part in New Zealand’s representative government increasingly became viewed as a problem in need of a solution.10 Conflict between Maori and Settler society over issues such as the continued alienation of Maori-owned land and the extension of Crown sovereignty over tribal areas flared into open warfare. At the same time, the fact that Maori paid taxes and were subject to laws passed by Parliament without having direct parliamentary representation caused at least some local parliamentarians and colonial administrators disquiet. And while Maori continued to experiment with independent forms of governance, a number of chiefs also sought parliamentary representation for Maori as “their last vestige of a lost autonomy”.11 These factors led to the passage of the Maori Representation Act 1867 (NZ), which established four seats in Parliament elected by all male Maori who were of “pure descent” (meaning greater than 50% “Maori blood”) or “half-caste” (meaning equal Maori and non-Maori ancestry). However, Parliament’s generosity should not be overemphasised: Maori gained only four seats to represent a population estimated at some 40,000-50,000 persons, while European settlers had 72 seats for a population of 220,000.12

Although conceived as a purely transitional measure (the Maori Representation Act 1867 set to expire in 1872), the Maori seats proved too useful to abandon. Their life was extended by an additional five years in 1872, before Parliament made them permanent in 1876. In part, it did so as the great majority of Maori still could not meet the ongoing requirement to possess property in order to vote. For Maori, therefore, keeping four seats was better than no representation at all. Furthermore, non-Maori MPs in some areas of the North Island feared that their electorates would be “swamped” if Maori ever were freely permitted to vote alongside non-Maori. Consequently, a compromise between Maori aspiration and Settler fear led to separate Maori and non-Maori representation in Parliament becoming an increasingly embedded feature of New Zealand’s electoral system. By 1893, this separation was made complete with the abolition of any residual right to vote in both Maori and European electorates.

For the next 82 years, ending only in 1975, an individual’s participation in the electoral process was determined by genealogy: persons with greater than 50% “Maori blood” had to vote in a Maori electorate; persons with less than 50% “Maori blood” had to vote in a European electorate; while only “half-castes” could choose between the two. Consequently, the vote of any Maori person enrolled in a European electorate (or, any person enrolled in a Maori electorate) without possessing the appropriate blood quantum was invalid.13 While separate representation for Maori and non-Maori was legally mandated, it was not equal in nature. Maori repeatedly argued for more Maori seats to better reflect their true share of the population, but until the introduction of MMP in 1993 these remained fixed at

11 Sorensen, n 10, p 8-61.
12 Atkinson, n 9, p 50. A proportionate distribution of seats would have required some 14-16 Maori members of Parliament.
13 See Re Raglan Election Petition (No 4) [1948] NZLR 65 at 87-88.
four in number. And as late as 1967, this fact had the additional consequence of restricting to four the number of “pure descent” Māori MPs that could be elected to any given Parliament.\textsuperscript{15}

**THE MĀORI SEATS TODAY**

The current definition and regulation of the Māori seats remedies such historical inequalities. Most importantly, in 1975 Māori voters were given the choice whether to enrol on either the Māori or the general electoral roll.\textsuperscript{16} The legislative definition of “Māori” also was changed at that time by removing any reference to a particular blood quantum. Consequently, any “person of the Māori race” – which includes “any descendant of such a person”\textsuperscript{17} – may enrol on either the Māori or general electoral roll in the Māori or general electorate in which he or she resides.\textsuperscript{18} All persons able to demonstrate any degree of Māori descent – able to whakapapa to some Māori predecessor – are thus entitled to decide which form of parliamentary representation they regard as most appropriate for them. However, a voter must exercise this choice when first enrolling to vote and can revisit it only during a four-month long Māori Electoral Option (MEO) period held following the national census every five years.\textsuperscript{19} Outside of this limited temporal window, voters cannot switch between the Māori and general electoral roll.\textsuperscript{20}

The second major change to the Māori seats took place alongside the introduction of the MMP voting system in 1993. The number of such seats went from four to a varying figure ultimately determined by the number of Māori electors who put their names on the Māori roll. Because anyone already on either the general or the Māori electoral roll only may change rolls during the designated MEO period, this process obviously has important ramifications for the total number of Māori seats in Parliament. Every elector is offered the opportunity to indicate that they are of Māori descent when enrolling or amending their enrolment details, irrespective of which roll they choose to be on. Those who do so are then mailed information about the MEO at the commencement of each MEO period. Advertising campaigns before and during the MEO period are well funded; with extensive kanohi ki te kanohi (face-to-face) education and enrolment encouragement work paid for by the Electoral Commission and carried out by Māori organisations. Such campaigns only are permitted to advise of the right to choose on which roll to enrol, with those participating specifically enjoined from promoting any particular enrolment decision. Nevertheless, they have had an impact on the enrolment patterns of Māori electors, with the numbers of Māori choosing to enrol on the Māori roll at each MEO increasing in both absolute and relative terms.\textsuperscript{21} Consequently, the number of dedicated Māori seats in Parliament has also risen: from five at the first MMP election in 1996, to six in 1999 and reaching its present number of seven in 2002.

Aside from enrolment matters, however, the Māori and general electorates are now subject to identical forms of legal regulation. Ignoring for the moment the obvious condition of Māori descent, anyone seeking to place their name on the Māori roll must meet the same enrolment requirements and are subject to the same disqualifications from enrolling as apply to general electors. The number of Māori seats in Parliament is calculated using the same procedure and the same formula as for general

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\textsuperscript{14} In 1975, a Labour government did seek to base the overall number of Māori seats upon the numbers enrolled on the Māori roll, but the subsequently elected National government repealed this change before any adjustment in seat numbers could take place.

\textsuperscript{15} Until that year, “pure descent Māori” could only stand for election in the Māori seats, and only “pure descent Māori” or “half-castes” could stand for election in these seats.

\textsuperscript{16} Electoral Amendment Act 1975 (NZ).

\textsuperscript{17} Electoral Act 1993 (NZ), s 3(1) (definition of “Māori”).

\textsuperscript{18} Electoral Act 1993 (NZ), s 76(1).

\textsuperscript{19} Electoral Act 1993 (NZ), s 76(2).

\textsuperscript{20} Electoral Act 1993 (NZ), s 79.

\textsuperscript{21} In 1993, the number of persons on the Māori roll was 101,585 as compared with 146,689 persons enrolled on the general roll and declaring Māori descent (meaning electors on the Māori roll accounted for 40.9% of the total number of Māori enrolled to vote). Immediately following the 2013 MEO period, the number of persons on the Māori roll was 228,718 as compared with 184,630 persons enrolled on the general roll and declaring Māori descent (meaning electors on the Māori roll accounted for 55% of the total number of Māori enrolled to vote).
electorates, with the numbers of each rising (and potentially falling) in line with the relative electoral population of each group. Any enrolled elector who is a New Zealand citizen is qualified to stand for election in any Maori or general electoral district. Individuals elected from both Maori and general electorates sit in the same Parliament, along with list MPs elected through the combined, nationwide party votes cast by both Maori and general electors. Every MP, whether elected via a Maori electorate, a general electorate or a party list, gets one vote each on any issue that comes before Parliament. Therefore, it is somewhat misleading to view the Maori seats in terms of “special” or “separate” representation, as this implies they are subject to different or more favourable rules than are the “ordinary” general seats. The more accurate description is “dedicated” (or perhaps “reserved”) representation, as the Maori seats provide a guaranteed presence in Parliament for representatives directly elected by those Maori who consciously choose to enrol and vote in the electoral process as Maori.

**Contemporary rationale for the Maori seats**

The rationale for having dedicated Maori seats in New Zealand’s Parliament has changed over time, especially since the country’s move to MMP in 1993. When originally established, as discussed above, the Maori seats provided some parliamentary representation to a significant minority group otherwise completely excluded from the election process. Following the advent of universal manhood suffrage, they then guaranteed ongoing representation in the context of an electoral process that otherwise might have failed to elect any Maori representatives at all.22 (An alternative, but not entirely contradictory, account is that they pacified Maori political aspirations in a way that did not intrude too forcefully upon the non-Maori majority’s domination of Parliament.) However, the MMP context requires a different sort of justification for retaining the Maori seats. Because the strongly proportional nature of this voting system encourages the country’s various political parties to pursue votes from all segments of society, Maori can expect to achieve significant parliamentary representation by virtue of weight of numbers alone.23 Indeed, following the 2014 general election, some 26 MPs self-identifying as having Maori heritage were elected through the Maori, general and party list seats.24 So if the ordinary workings of the electoral process can be predicted to return a significant number of Maori to Parliament, the “representational safety net” argument for having dedicated seats loses much of its force.

Consequently, contemporary arguments in favour of retaining the Maori seats rely more on a claim that their existence acknowledges the right of Maori, as tangata whenua (people of the land), to participate in the national political process through representatives who have been chosen by Maori voting amongst themselves.25 The basis for this particular rights claim lies in broader demands for recognition of an Indigenous people’s collective right to continue to exercise forms of self-determination both within, and independent of, existing state structures.26 Furthermore, it is asserted that such self-determination rights were (and still are) recognised and guaranteed by the Crown through the signing of the Treaty of Waitangi. The plain text of the Treaty does not specifically include any broad right to participate in national government; much less does it guarantee dedicated Maori representation in a Parliament not established until some 13 years after its signing. Article 2 of the

23 Indeed, this aspect of MMP was one of the primary reasons why the Royal Commission on the Electoral System recommended that New Zealand adopt it: Royal Commission on the Electoral System, n 10, pp 51-52, 101-103.
24 This equates to some 21% of the 121 seats in the House of Representatives, compared to 14.9% of the population who identified as Maori at the 2013 census.
Treaty, however, does guarantee Maori ongoing *tino rangitiratanga* over a variety of matters that are of importance to Maori. One aspect of ongoing *tino rangitiratanga*, it is argued, is the right of Maori to participate collectively as Maori in the decision-making processes of the New Zealand state.28

The primary justification for the Maori seats in the post-MMP environment thus has shifted from a mechanism for bringing at least some MPs of Maori origin into Parliament, to the current claim that dedicated Maori representation provides a symbolically important recognition of the position of the Maori people as a "Treaty partner" in the enterprise of national government. The Royal Commission on the Electoral System recognised this symbolism inherent in dedicated Maori representation in Parliament back in 1986 when it noted that the Maori seats "have come to be regarded by many Maori as the principal expression of their constitutional position in New Zealand".29 And the fact that an overall majority of Maori have chosen to participate in national elections by enrolling and voting on the Maori roll, while the ratio of young Maori enrolling for the first time is about 2:1 in favour of the Maori roll, indicates that this belief still is strongly held today. It does not particularly matter, therefore, that candidates who are Maori can get elected to Parliament by way of the general electorates or party lists. Those MPs elected from the Maori seats instead remain important because they are elected by Maori, for Maori, as Maori. Therefore, their place in New Zealand's Parliament is to represent the particular hopes, aspirations and interests of the Maori electors who chose them, not to function as representatives who happen to be Maori. Whether similar mechanisms are appropriate for Australia is not for this author to say, but in New Zealand they seem to work.30

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30 There is some evidence that the Maori seats are successful in improving representational outcomes for those who choose to be on the Maori roll: "Maori who choose to be represented by Maori electorate MPs are more likely to believe that they have a say than those represented by electorate MPs who are not Maori … This suggests that the Maori electorates succeed in fostering a greater sense of efficacy among those Maori who choose to take advantage of the Maori option." See Banducci S, Donovan T and Karp J, "Minority Representation, Empowerment, and Participation" (2004) 66 *Journal of Politics* 534 at 551.