

Canterbury Regional Council (Ngāi Tahu Representation) Bill

Local Bill

Explanatory note

General policy statement

Under the Environment Canterbury (Transitional Governance Arrangements) Act 2016, Canterbury Regional Council (trading as Environment Canterbury) has included 2 members appointed by Ministers on the recommendation of Te Rūnanga o Ngāi Tahu (**TRoNT**).

That Act is repealed in 2019, and does not affect the 2019 local election which will be conducted under the usual rules applying to the Council.

As a result of the representation review that the Council has conducted, it will have 14 elected members after the 2019 election. This is subject to a determination by the Local Government Commission.

The Council recognises the valuable contribution made by the Ngāi Tahu members to the Council's governance and operations, and wishes to maintain direct Ngāi Tahu representation at Council level.

Support for and opposition to that proposition was expressed in responses to the representation review. The issue was not directly part of that review, which had to be conducted under the requirements of the Local Electoral Act 2001 and so, related only to elected members.

Options considered

The Council has considered the following other options:

- Dividing the region into Maori constituencies for electoral purposes, as contemplated by sections 19Z to 19ZH of the Local Electoral Act 2001. There are no logical boundaries for Maori constituencies in the region, and election on a constituency basis may not result in appropriate recognition of mana whenua. It would enfranchise all Māori on the Māori electoral roll, and disenfranchise

Ngāi Tahu members on the general electoral roll. The Council has previously resolved not to have Māori constituencies; and it is too late for Māori in the region to elect to be on or off the Māori electoral roll. That option does not arise again until 2024.

- Do nothing. That is of course possible, and will be the outcome if this Bill is not passed. However, it would deprive mana whenua of a voice at the Council table, and deprive the Council of that direct input at the highest level.

The Council has considered options adopted elsewhere, including the Bay of Plenty Regional Council Maori constituencies and Hawke's Bay Regional Planning Committee legislation as well as initiatives at Rotorua Lakes District Council and failed initiatives at New Plymouth District Council.

The Council has only one iwi with mana whenua throughout its region.

For that reason, the Council prefers direct appointment by Te Rūnanga o Ngāi Tahu as a reflection of Ngāi Tahu as manawhenua.

In considering the appointment process the Council considered, and rejected, the following options:

- appointment by Ministers on the recommendation of TRoNT. That was rejected because, apart from the exceptional circumstances of the current transitional Act, it is not appropriate that Ministers make appointments to local authority governance bodies:
- election of members by members of Ngāi Tahu. That presents various difficulties in identifying eligible electors and compiling rolls, and consistency with Ngāi Tahu tikanga.

General effect of the Bill

The Bill will empower TRoNT to appoint up to 2 members to the Council after the 2019 local elections.

Those members will be additional to the elected members, so the maximum number of councillors will be 16. The Local Government Commission is currently considering the number of elected members in its role under section 19R of the Local Electoral Act 2001. That process is not affected by this Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The Bill comes into effect on the day after the date of Royal Assent, so the law will be clear prior to the local elections in October 2019. In practice, no action will be taken under the legislation until after those elections.

Clause 3 sets out the purpose of the Bill, which is to enable TRoNT to appoint up to 2 members of the Council.

Clause 4 defines various terms used in the Bill. It also provides that terms used in the Local Government Act 2002 and the Local Electoral Act 2001 have the same meanings here.

Clause 5 provides that enactments applying to local authorities generally continue to apply to the Council, except to the extent that they are inconsistent with or modified by the Bill.

Clause 6 provides for the Council to include up to 2 members appointed under the Bill. The maximum number of members is therefore 16.

References to elected members include appointed members (except where that is inappropriate) and appointed members have the same functions, responsibilities, rights, indemnities, and duties as elected members.

An impact of this is, for example, that the quorum for a Council meeting will always be 8, if the total potential membership is 16, even if there is not 2 TRoNT appointed members. That is the effect of clause 23 of Schedule 7 of the Local Government Act 2002.

Clause 7 empowers TRoNT to appoint up to 2 members of the Council after the 2019 local election, and thereafter as vacancies arise.

Appointed members must be eligible to have been elected as elected members at the date of appointment.

Clause 8 requires the CEO of TRoNT to give signed written notice of each appointment to the chief executive of the Council. The notice must also be signed by the appointed member, and takes effect on and from the date the notice is given.

Clause 9 provides that, generally, appointed members vacate office at the same time as elected members.

Appointed members can vacate office, or be suspended, before the expiry of their term in the same manner as elected members.

Specific provision is made to ensure that TRoNT cannot remove or suspend members whom it appoints.

Clause 10 makes it clear that the Council can call meetings irrespective of whether or not TRoNT has made any appointments.

The clause also makes it clear that the Council must perform its functions and duties, and can exercise its powers, irrespective of whether or not TRoNT has appointed any members.

TRoNT has an opportunity to make its appointments before the first meeting of any newly selected Council, but if it does not, or there are subsequent vacancies in appointments, the Council's roles are not affected.

Clause 11 requires the Council to disregard the likely appointment of members by TRoNT when making representation review decisions under the Local Electoral Act.

Clause 12 requires the Remuneration Authority to assume there will be 2 members appointed by TRoNT when determining remuneration, allowances, and expenses for members of the Council.

Rino Tirikatene

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Canterbury Regional Council (Ngāi Tahu Representation) Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

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3 Purpose

The purpose of this Act is to enable TRoNT to appoint up to 2 members of the Council in accordance with this Act, and make related consequential provisions.

4 Interpretation

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(1) In this Act, unless the context otherwise requires,—

2019 election means the triennial general election of members of local authorities required by section 10 of the Local Electoral Act 2001 to be held on the second Saturday in October 2019

appointed member means a member of the Council who is appointed to office under **section 7** 10

Council means the regional council named in the Local Government Act 2002 (Part 1 of Schedule 2) as the Canterbury Regional Council

elected member means a member of the Council who is elected to office under the Local Electoral Act 2001 15

member, in relation to the Council, means—

(a) an elected member; or

(b) an appointed member

TRoNT means Te Rūnanga o Ngāi Tahu established by section 6 of the Te Rūnanga o Ngāi Tahu Act 1996. 20

(2) A term or expression that is defined in the Local Government Act 2002 or the Local Electoral Act 2001 and used, but not defined in this Act has the same meaning as in the Local Government Act 2002 or the Local Electoral Act 2001, as the case requires.

5 Relationship between this Act and other legislation applicable to local authorities 25

The Local Government Act 2002, the Local Electoral Act 2001, and any other enactment applicable to a local authority apply to the Council, except to the extent that those enactments are inconsistent with, or modified by, this Act.

6 Extended membership 30

(1) From the 2019 election, in addition to the elected members, the Council may include 2 members appointed under this Act.

(2) Despite section 19D and 19E(2) of the Local Electoral Act 2001 the maximum number of members of the Council is 16.

(3) A reference in any enactment, other than in sections 19D and 19E of the Local Electoral Act 2001, to a member or an elected member of a local authority or a regional council must, in relation to the Council be read as including a reference to an appointed member (including, for example, treating a reference to an 35

- electd member’s election as a reference to an appointed member’s appointment).
- (4) Without limiting **subsection (3)**, all members of the Council have the same functions, powers, responsibilities, rights, indemnities, and duties irrespective of whether they are elected or appointed. 5
- 7 Appointment of members by TRoNT**
- (1) After the day on which the official result of the 2019 election is declared under section 86 of the Local Electoral Act 2001 in relation to the Council, and after each subsequent triennial general election, TRoNT may appoint up to 2 members of the Council. 10
- (2) Despite section 117 of the Local Electoral Act 2001, whenever a vacancy arises in the case of an appointed member, TRoNT may appoint a member to fill that vacancy.
- (3) Every member appointed under this section must be qualified to be elected as an elected member at the date of appointment. 15
- 8 Notice and commencement of appointment**
- Every appointment under section 7 must be notified to the chief executive of the Council in writing signed by the appointed member and chief executive of TRoNT, and the appointment takes effect on and from the date that notice is received. 20
- 9 Vacation of office by appointed members**
- (1) Unless vacating office sooner, appointed members cease to hold office at the same time as elected members vacate office under section 116(1)(a) of the Local Electoral Act 2001; but are eligible for reappointment if qualified.
- (2) Appointed members vacate office or are suspended in the same manner as applies to elected members under the Local Government Act 2002 (clauses 1 to 4A of Part 1 of Schedule 7). 25
- (3) Section 12 of the Interpretation Act 1999 does not apply in respect of appointed members.
- 10 Lack of appointed members** 30
- (1) Meetings of the Council (including the first meeting called under the Local Government Act 2002 (clause 21 of Schedule 7)) may be called irrespective of whether or not TRoNT has made any appointment under **section 7**.
- (2) The Council must perform its functions and duties, and may exercise its powers, irrespective of whether or not TRoNT has made any appointment under **section 7**. 35

11 Representation reviews

In making any determination under section 19I of the Local Electoral Act 2001, the Council must disregard the right of TRoNT to appoint members under **section 7**.

12 Remuneration Authority to assume appointed members exist

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In making any determination in respect of the Council under the Local Government Act 2002 (clause 6 of Schedule 7) the Remuneration Authority must assume that the Council will have 2 members appointed under **section 7**.