

MĀORI WARDS AND MATIKE MAI: A TIRITI O WAITANGI ANALYSIS

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There is ongoing controversy around Māori wards and constituencies in local government. This article sets out the history and context of the Māori wards debate, and the impact of this controversy on the representation of Māori. In light of this, this article considers the constitutional significance of Māori wards in relation to te Tiriti o Waitangi. Constitutional positioning of Māori wards is important given the dynamicity of legislation, which impacts the ability of Māori wards to support representation. The article uses the Matike Mai findings of the rangatiratanga, relational and kāwanatanga spheres as a framework for analysis. It argues that Māori wards are not a mechanism that supports the tino rangatiratanga sphere, contrary to recent Waitangi Tribunal findings. Similarly, it finds that Māori wards do not support the relational sphere. However, this article finds that Māori wards are best situated within the kāwanatanga sphere, arguing that increased representation through Māori wards supports Crown obligations of ōritetanga and substantive equality. It considers some limitations to the effectiveness of Māori representation through Māori wards, but overall maintains that Māori wards are an appropriate starting point to support kāwanatanga. Lastly, the article uses these findings alongside the Matike Mai framework to analyse potential alternatives to Māori wards that better uphold te Tiriti o Waitangi.

I INTRODUCTION

The application of te Tiriti o Waitangi (te Tiriti) in modern New Zealand is complex.¹ Many attempts by the government to create mechanisms that support te Tiriti fail to properly uphold Tiriti obligations. This article situates Māori wards in local government in the context of te Tiriti, and through this assesses how successful Māori wards are at upholding te Tiriti.

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1 For the purposes of this article, te Tiriti refers to the Māori text, whereas the Treaty refers to the English text. The treaty refers to both texts together. This follows the Waitangi Tribunal's format. See Waitangi Tribunal *He Whakaputanga me te Tiriti—The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2014) at 2.

There have been many amendments to the legislation enabling Māori wards, with controversy surrounding referendums that took place during the 2025 local government elections. Part II of this article considers the political context and history of Māori wards, then assesses the impacts of these changes on Māori representation in local government. Part III sets out an introduction to te Tiriti and the arguments put forward by Matike Mai Aotearoa, the Independent Working Group on constitutional transformation, in their report *He Whakaaro Here Whakaumu Mō Aotearoa*. This will provide the context for Parts IV, V and VI.

Part IV assesses Māori wards in terms of the rangatiratanga sphere outlined by Matike Mai Aotearoa. It sets out the confusing characterisations of tino rangatiratanga, which have impacted previous analyses of Māori wards. Part V considers Māori wards within the relational sphere as described by Matike Mai Aotearoa, applying the same arguments from Part IV. Part VI considers the kāwanatanga sphere articulated by Matike Mai Aotearoa. First, it sets out the relationship between local government and te Tiriti. It then assesses the impacts of formal and substantive conceptions of equality on the consideration of Māori wards. Finally, it considers the limitations of the effectiveness of representation that Māori wards provide.

Part VII considers alternative solutions to the problems Māori wards fail to address. It analyses Ngāi Tahu representation on Canterbury Regional Council and the Independent Māori Statutory Board as local solutions, and the suggestions of mandatory Māori wards and 50/50 representation on local authorities as national solutions.

II POLITICAL CONTEXT

Māori wards and constituencies aim to increase Māori representation on local authorities. They allow Māori to more effectively participate and contribute to local decision-making, affecting their lives in positive ways. Local authorities are not obliged to create Māori wards in their constituency but can establish them through a representation review. Reviews occur every six years and require local authorities to reassess their representation structures and consider views from their communities.² The Bay of Plenty Regional Council was the first to create Māori wards, through the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001. All local authorities are now able to establish Māori wards through the Local Electoral Act 2001.³ Both territorial and regional councils can create dedicated Māori representation; territorial authorities use the term "Māori

2 Local Electoral Act 2001, ss 19H- 19I.

3 Section 19Z.

wards",⁴ whereas regional councils use the term "Māori constituencies",⁵ although the functions of both are the same.⁶ Māori voters who are enrolled on the Māori electoral roll vote in Māori wards.⁷

From enactment in 2002 until 2021 legislative changes, s 19ZA of the Local Electoral Act hindered the establishment of Māori wards. This section stated that a binding poll of the territorial authority or regional council's electors would determine whether Māori wards could be established for the next two triennial general elections. A petition with five per cent of the constituency's electors would trigger a binding poll.⁸ Local authorities could also trigger polls themselves.⁹ If a poll determined that Māori wards would not be established, local authorities could not consider the issue again until the next representation review.¹⁰ The poll provisions were a significant barrier to local authorities establishing Māori wards. Of the 16 local authorities that held a poll between 2002 and 2018, only Wairoa District Council successfully established a Māori ward.¹¹ Eight polls were elector-initiated, and eight were initiated by local authorities.¹² Overall, only three councils had established Māori wards before the 2021 changes. Alongside Wairoa District Council, Waikato Regional Council successfully introduced Māori wards as no poll was demanded after the council resolution and the Bay of Plenty Regional Council had already established wards before the Local Electoral Act was amended.¹³

In February 2021, the Labour Government successfully passed the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021, removing the capacity for a petition to trigger a binding poll. Local authorities were also able to consider whether to establish Māori wards for the 2022 election, separate to the six-year representation review and even if that local authority had attempted to establish a Māori ward within the last six years.¹⁴ 32 councils established Māori wards

4 Section 19Z(1).

5 Section 19Z(2).

6 For the purposes of this article, the term "Māori wards" refers to both Māori wards and Māori constituencies.

7 Local Electoral Act, s 24A.

8 Section 19ZB.

9 Section 19ZD.

10 Sections 19H(2)(b) and 19I(2)(b).

11 Department of Internal Affairs, *Proactive release of policy briefings relating to reinstating the Māori wards poll provisions* (9 May 2014) at 12.

12 At 12.

13 At 12.

14 Local Electoral Act, sch 1 cl 2.

for the 2022 elections, with 14 more councils resolving to establish Māori wards for the 2025 elections.¹⁵ The change in legislation successfully encouraged the establishment of Māori wards.

The 2022 local elections proved favourable for Māori wards and Māori representation. In their 2022 elected members survey, Local Government New Zealand (LGNZ) found that Māori representation had increased from 13.5 per cent in 2019 to 21.6 per cent in 2022.¹⁶ 27 per cent of elected Māori members were elected to Māori wards. In addition to this, there was increased representation in Māori youth, first-time Māori councillors, wāhine Māori and Māori who identify as LGBTQ+, which is largely attributed to the increases in local authorities with Māori wards.¹⁷ The representation in these groups was also higher for Māori than compared to the general representation of these groups, indicating greater diversity within Māori representation.¹⁸ Māori representation has increased markedly through the freedom of local authorities to establish Māori wards.

The 2023 coalition government between National, New Zealand First and ACT introduced many laws and policies that influence the application of te Tiriti o Waitangi: repealing s 7AA of the Oranga Tamariki Act 1989, introducing the Principles of the Treaty of Waitangi Bill 2024, disestablishing Te Aka Whai Ora, removing the use of te reo Māori in the public sector and reinstating poll provisions for Māori wards. The parties campaigned on a promise to reinstate the poll provisions and require all local authorities who established wards without referendums to hold them.¹⁹ In May 2024, the Waitangi Tribunal heard an urgent inquiry about the proposed legislative changes to the Māori ward poll provisions. They concluded that there were "breaches of the Treaty principles of partnership ... equity, mutual benefit, and options" through the process undertaken and substantive changes made.²⁰ Despite this, Parliament passed the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024 on 30 July 2024, amending the Local Electoral Act under urgency and despite a very short consultation period. Per sch 3 cl 39(2), local authorities who established Māori wards through the 2021 legislation without a poll were required to hold a poll in the 2025 elections to maintain their Māori wards.²¹ If local authorities chose not to hold a poll, they

15 Department of Internal Affairs, above n 11, at 12.

16 Local Government New Zealand *Elected Members' Census 2022* (Local Government New Zealand, November 2023) at 12.

17 At 5.

18 At 5.

19 New Zealand National Party & New Zealand First *Coalition Agreement*, at 10; and New Zealand National Party & ACT New Zealand *Coalition Agreement* at 9.

20 Waitangi Tribunal *The Māori Wards and Constituencies Urgent Inquiry Report* (Wai 3365, 2024) at 2.

21 Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024, sch 1 cl 39(2).

were required to disestablish their ward provisions if already in place,²² or rescind their decisions to create Māori wards if not yet implemented.²³ Under sch 1 cls 11(2) and 29(1), local authorities had until 6 September 2024 to decide whether to hold a poll, disestablish or rescind their Māori wards. For all future establishments of Māori wards, the previous poll provisions apply, as amendments to the Local Electoral Act will come into force on 12 October 2025.²⁴

There has been much controversy around the 2024 legislative changes. Kaipara District Council voted to disestablish its Māori ward, a decision which was supported by the High Court after proceedings were brought by Te Rūnanga o Ngāti Whātua.²⁵ Upper Hutt City Council decided to rescind its decision to establish Māori wards in 2025.²⁶ All other local authorities that had Māori wards or were planning on introducing them in 2025 voted to hold a binding poll to determine the outcome.²⁷

The result of the October 2025 local government elections, which included the Māori wards poll, saw 24 local authorities removing their Māori wards, and 18 local authorities keeping them.²⁸ The new legislation has caused a decrease in the number of Māori wards and therefore Māori representation on local authorities.

This sets up the political context, background and history of Māori wards in local government. It provides the foundations for the following analysis in the remainder of this article. The current controversy provides important reasons to consider Māori wards from a theoretical perspective, as it is necessary to consider from a constitutional perspective why local authorities are defending their Māori wards. However, this article will not focus on the political issue of poll requirements. Regardless of whether poll provisions are in place, the underlying value of Māori wards in upholding te Tiriti still should be assessed. This report will consider whether Māori wards as a concept uphold te Tiriti, separate to the issue of poll provisions.

III TE TIRITI O WAITANGI

This article assesses Māori wards against te Tiriti o Waitangi, the Māori text. This is consistent with recent literature, which determines that the words in te reo Māori are most important to ascertain

22 Schedule 1 cl 11(2)(b).

23 Schedule 1 cl 29(1)(b).

24 Sections 2(2) and 7.

25 *Te Rūnanga o Ngāti Whātua v Kaipara District Council* [2024] NZHC 3889.

26 Upper Hutt City Council "Māori Wards" *Upper Hutt City Council* (online ed, 1 September 2023).

27 See Anna Murray "Māori wards deadline: Most councils stand firm, express frustration" *INews* (online ed, 6 September 2024).

28 See Pokere Paewai "Final results confirm axeing of more than half of Māori wards" *RNZ* (online ed, 21 October 2025).

what rangatira understood when signing te Tiriti.²⁹ This article does not directly assess the principles of te Tiriti. Instead, it opts for a textual analysis. Assessing Māori wards against Crown-imposed principles would reinforce Westminster structures of government and skew results, as treaty principles are not an accurate reflection of what rangatira signed in 1840.³⁰ They are a way to compromise between the two texts, to the disproportionate benefit of the Crown.³¹ Although not directly legally enforceable, the text of te Tiriti is the foundational document of Aotearoa New Zealand, and is therefore an important constitutional basis for analysis of Māori wards in local government.³²

Te Tiriti gives kāwanatanga to the Crown while reaffirming Māori tino rangatiratanga. These concepts are reconciled through the idea that each authority operates within its own sphere of influence, with te Tiriti as its grounding premise. The Waitangi Tribunal in *He Whakaputanga me te Tiriti: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* concluded:³³

The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.

This idea was expanded on further by Matike Mai Aotearoa, the Independent Working Group on Constitutional Transformation, in their report *He Whakaaro Here Whakaumu Mō Aotearoa*. They labelled the two spheres identified by the Waitangi Tribunal as the kāwanatanga sphere and the rangatiratanga sphere.³⁴ In the kāwanatanga sphere, the Crown is able to exercise authority over its own people, in accordance with its traditions and practices such as Westminster government and parliamentary sovereignty.³⁵ In the rangatiratanga sphere, rangatira have authority to lead hapū in their tino rangatiratanga, in accordance with tikanga Māori.³⁶ Both spheres source their authority from their own systems and traditions, and neither sphere is subordinate or dominant.³⁷ Matike Mai

29 Waitangi Tribunal, above n 1, at 526.

30 Carwyn Jones "Tāwhaki and Te Tiriti: A Principled Approach to the Constitutional Future of the Treaty of Waitangi" (2013) 25 NZULR 703 at 712.

31 At 713.

32 See Waitangi Tribunal, above n 1, at 5.

33 At 529.

34 *He Whakaaro Here Whakaumu Mō Aotearoa: The Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation* (Matike Mai Aotearoa, January 2016) [Matike Mai report] at 9.

35 At 9.

36 At 9.

37 At 77.

Aotearoa also labelled a third sphere the relational sphere, where both the rangatiratanga and kāwanatanga spheres come together to make joint decisions.³⁸ The Tiriti relationship will operate within this sphere. This article uses the framework of the three spheres to assess Māori wards in local government.

IV RANGATIRATANGA SPHERE

A Description

Article 2 of te Tiriti o Waitangi reaffirms that Māori exercise tino rangatiratanga over their lands and taonga.³⁹ Tino rangatiratanga can be described as self-determination, full chieftainship or sovereignty, but as a Māori concept it has principles not easily conveyed through English.⁴⁰ Matike Mai Aotearoa asserts that the concept of mana is intrinsic to the understanding of tino rangatiratanga.⁴¹

The relationship between tikanga and mana, between the constitution and the authority to make political decisions, was both symbiotic and essential to the maintenance of "law and order". It ensured the smooth functioning of every polity and provided the stability needed to promote harmonious relationships or to restore them when they were disrupted by conflict.

Tino rangatiratanga is informed by tikanga Māori, and "rangatiratanga without tikanga as law is a contradiction in terms".⁴² Rangatiratanga was understood within a system based in collective identity and values such as whanaungatanga and whakapapa. Moana Jackson explained:⁴³

Rangatiratanga in a sense was the power given to certain people to lead the nation, to be the law-makers and the law-givers. This law-making power of the Iwi and the authority of those entrusted with exercising it came from ancestors and could not therefore be transferred or ceded to another.

Article 2 reaffirmed He Whakaputanga o te Rangatira o Niu Tīreni, which also asserted sovereignty and mana of hapū.⁴⁴ Tino rangatiratanga is sourced in tikanga, rather than these documents themselves.⁴⁵ Rangatiratanga therefore exists independent of te Tiriti and Crown kāwanatanga. Dame Mira Szászy defined this as implied in "the very essence of being, of law, of the

38 At 9.

39 Joe Williams *Laws of New Zealand* Treaty of Waitangi at [10].

40 At [10].

41 Matike Mai report, above n 34, at 42.

42 At 43.

43 Moana Jackson "Changing Realities, Unchanging Truths" (1994) 10 AJLS 115 at 121.

44 Waitangi Tribunal, above n 1, at 459.

45 Matike Mai report, above n 34, at 42.

eternal right to be, to live, to exist, to occupy the land".⁴⁶ Te Tiriti merely reaffirmed hapū rangatiratanga while allowing a Pākehā government to exercise kāwanatanga.⁴⁷ Tino rangatiratanga was not lost through the signing of te Tiriti: "No matter how powerful leaders were, they could not give away the authority which had been handed down from ancestors in trust for the future".⁴⁸ Māori did not cede sovereignty in 1840.⁴⁹ Rooted in tikanga, rangatiratanga therefore exists beyond the institutions of Pākehā governance. True tino rangatiratanga does not exist when it is subordinate to Parliament's sovereignty.⁵⁰ Local government is well placed to support the exercise of tino rangatiratanga: "given the geographic dynamic of hapū, it makes sense that local tino rangatiratanga should lie at the heart of local government".⁵¹

B Analysis

The obligations that come from tino rangatiratanga are often misunderstood within the local government context. Some believe tino rangatiratanga can be achieved through dedicated or increased Māori representation in decision-making capacities. The Waitangi Tribunal, in *The Māori Wards and Constituencies Urgent Inquiry Report*, concluded that "increased representation at the local government level can be seen in an analogous way as upholding the exercise of tino rangatiratanga guaranteed in article 2 of the treaty".⁵² The Tribunal ultimately misunderstands the nature of tino rangatiratanga rights reaffirmed by art 2. Increased Māori representation in a continuing Pākehā-centric local government system is not Māori self-determination. Although increased representation is beneficial to increase Māori perspectives in local government, this in itself does not uphold tino rangatiratanga.

Likewise, the Tribunal's argument that art 2 "includes the right to participate in local and central government decision-making" fails to uphold tino rangatiratanga for similar reasons.⁵³ If government decision-making is made through Pākehā processes, it is not underpinned by tikanga despite increased participation. The Justice Select Committee presents a similar perspective in its report on the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill 2024, a view that also misunderstands tino rangatiratanga obligations. They define tino rangatiratanga

46 At 34.

47 At 9.

48 Jackson, above n 43, at 119.

49 Waitangi Tribunal, above n 1, at 529.

50 Jackson, above n 43, at 127.

51 Heather Came "Critical Tiriti Analysis of He Mata whāriki, he matawhānui: Review into the Future of Local Government in Aotearoa" (2023) 20 Sites 27 at 31.

52 Waitangi Tribunal, above n 20, at 17.

53 At 16.

as the "right to participate in any political and decision-making process that affects Māori".⁵⁴ Mere participation in processes that are still Pākehā are not an expression of tino rangatiratanga, as Māori do not have absolute sovereignty to make decisions in any way they see fit and in accordance with tikanga.

Moana Jackson has commented on the tendency for tino rangatiratanga to be read down, asserting:⁵⁵

In confronting the truth of rangatiratanga the Courts, the Legislature, and the Waitangi Tribunal have acted as new-age missionaries, redefining rangatiratanga to make it chaste, inoffensive, and subordinate to the imposed law which it once completely rejected.

The concept of tino rangatiratanga is a threat to the authority of parliamentary sovereignty. Therefore, rangatiratanga is interpreted in a way that ensures consistency with the current governing structures. Furthermore, the Waitangi Tribunal has limited jurisdiction to consider claims. Under s 6(1) of the Treaty of Waitangi Act 1975, the Tribunal can only consider claims of inconsistency with principles of the treaty rather than the text. The principles are based on a "compromise" between Crown sovereignty and tino rangatiratanga.⁵⁶ The Tribunal can only consider tino rangatiratanga "within the parameters" of its jurisdiction.⁵⁷ This explains, without excusing, the reading down of tino rangatiratanga.

Māori wards, as a process for representation founded on Pākehā values, ideas, structures and history will always be inherently inconsistent with tikanga and therefore tino rangatiratanga. Catherine Iorns Magallanes has argued that "the philosophical and structural underpinnings of the system are not necessarily consistent with other aspects of Māori self-determination", and are therefore inappropriate to be described as tino rangatiratanga.⁵⁸ However, Anthony Wicks claims this is "overstated", and that it is "simply unavoidable" to rely on non-Māori governance concepts.⁵⁹ This criticism can be disregarded, as it limits different forward-thinking understandings of tino rangatiratanga such as those from Matike Mai Aotearoa. Wicks also believes Māori seats are an important symbol that "still form a very important part of self determination for Māori",⁶⁰ whereas

54 Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill 2024 (46-2) (select committee report) at 8.

55 Jackson, above n 43, at 123.

56 Jones, above n 30, at 713.

57 At 714.

58 Catherine Iorns Magallanes "Dedicated Parliamentary Seats for Indigenous Peoples: Political Representation as an Element of Indigenous Self-Determination" (2003) 10 E LAW 39 at [3].

59 Anthony Wicks "The Treaty and the Seats" (2008) 1 NZLSJ 381 at 400 and 401.

60 At 400.

Iorns Magallanes describes them as symbolic but not effective.⁶¹ However, Māori wards are not a symbol for tino rangatiratanga; they are merely a symbol of continuing participation in a Westminster system. Māori wards are not a symbol of hapū control and authority over their taonga, as the structure continues to be bound by Westminster systems of government.⁶²

Aside from the fact that the structure of local government is inconsistent with tikanga and tino rangatiratanga, a small number of Māori ward councillors are not able to exercise tino rangatiratanga, as they never have a majority vote on local authority decisions. Will Kymlicka found when a minority or disadvantaged group only has one or two representatives on decision-making bodies, their perspectives are likely to be excluded and ignored.⁶³ Even with full decision-making powers on local authorities, Māori ward councillors will never have sovereignty over outcomes through the local government process, as they do not get the final say on decisions that impact them. The inability of Māori ward councillors to have the final say over whether their ward is retained is in itself an example of this. This is not a true exercise of tino rangatiratanga as Māori ward councillors must rely on the support of other councillors for their perspectives and ideas to be influential.

C Conclusion

Contrary to the Waitangi Tribunal and Justice Committee findings, Māori wards do not support tino rangatiratanga. Despite this, Māori wards can still be an effective mechanism to uphold other aspects of te Tiriti o Waitangi if they support the kāwanatanga or relational spheres, which this article will proceed to analyse.

V RELATIONAL SPHERE

Matike Mai Aotearoa named the space where Māori and non-Māori "work together as equals" as the relational sphere.⁶⁴ This sphere would be where both Māori and non-Māori work to find solutions to disagreements in a collective manner.⁶⁵ Each party would be able to choose their own form of representation within the relational sphere, and neither tino rangatiratanga nor kāwanatanga would be subordinate. Tikanga is the source of jurisdiction of this relational sphere, as it informed the original signing of te Tiriti o Waitangi. He Whakaputanga is authority and precedent for a joint sphere of decision-making: "as He Whakaputanga suggested, the sphere could in fact be understood [to] be a

61 Iorns Magallanes, above n 58, at 13.

62 Although in the central government context, the dialogue between Wicks and Iorns Magallanes can be applied to local government, as the same tension between tino rangatiratanga and parliamentary sovereignty exists, and structures of local Māori wards and central Māori seats are conceptually similar.

63 Will Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford Academic, Oxford, 1996) at 147.

64 Matike Mai report, above n 34, at 9.

65 At 9.

new site of power where Māori and the Crown could make joint decisions".⁶⁶ Matike Mai Aotearoa considered different forms of a potential relational sphere but chose not to decide on one form. Instead, six indicative models were suggested and considered. Two relational spheres had a joint deliberative body; one had regional assemblies made up of iwi/hapū and Crown representatives; and one had a mandated set of relationships with iwi/hapū and the Crown, and a unitary assembly of broader representation.⁶⁷ One model suggested only having the relational sphere, while another had no relational sphere provisions at all.⁶⁸ What the relational sphere may look like in the future will change as the tino rangatiratanga sphere increases in influence and relationships between the Crown and Māori change.

However, it is clear that Māori wards do not fit within the relational sphere, whatever form this sphere may take. As discussed in the tino rangatiratanga section of this article, Māori wards reinforce Westminster systems of power. They do not encourage Māori and non-Māori to solve problems together as equals. Māori wards do not support a "conciliatory and consensual democracy" as they are contained within a majority rules Westminster system.⁶⁹ The system of Māori wards is also not based on tikanga.

VI KĀWANATANGA SPHERE

A Description

Article 1 of te Tiriti o Waitangi grants kāwanatanga to the Crown. Derived from a transliteration of "governor", kāwanatanga gives the Crown rights to governorship over British settlers in New Zealand.⁷⁰ The giving of kāwanatanga extended Aotearoa's constitutional arrangements as asserted in He Whakaputanga to allow for the Crown's governorship.⁷¹ Kāwanatanga was created in addition to Māori assertions of tino rangatiratanga. Kāwanatanga is therefore always considered in relation to tino rangatiratanga.

The relationship of local government to te Tiriti is uncertain and often debated. The key issue is whether local government is a direct treaty partner. Local government has a statutory jurisdiction that was created after the signing of te Tiriti, through the New Zealand Constitution Act 1852 and now found in the Local Government Act 2002. The 1852 Act enabled the creation of municipal corporations. These entities created regulations and bylaws that could be overturned by central

66 At 49.

67 At 10.

68 At 10.

69 At 9.

70 Williams, above n 39, at [9].

71 Matike Mai report, above n 34, at 49.

government.⁷² The Local Government Act now provides for a "democratic and effective local government that recognises the diversity of New Zealand communities".⁷³ Although local government sources its authority from central government, it has a separate identity. The Waitangi Tribunal found this meant local government is not a direct treaty partner.⁷⁴ Te Tiriti was signed by the Crown, and local government cannot be characterised as being part of the Crown. The Future for Local Government (FFLG) review found that "some perceive local government as just an arm or agent of central government, even though local government has separate accountability to its communities and to Parliament".⁷⁵

However, central government will breach its treaty obligations if a local authority acts inconsistently with the treaty, as local government is a delegation of the Crown's authority.⁷⁶ The Crown must ensure that local government's actions are consistent with te Tiriti. Local authorities can therefore be seen as agents of kāwanatanga, as they perform "roles and functions enshrined in legislation that give practical exercise of Te Tiriti o Waitangi at place".⁷⁷

Although not direct treaty partners, central government have created Tiriti-like legal obligations on local government to ensure the Crown's obligations are met. One key example is the Resource Management Act 1991. Under s 8, local authorities are required as "persons exercising functions and powers" under the Act to "take into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi)". Per sch 1 cl 3(1)(d), the local authority must "consult ... the tangata whenua of the area who may be so affected" during the preparation of a proposed policy statement or plan. More broadly, the Local Government Act 2002 states that local authorities must facilitate participation by Māori to respect Crown obligations to te Tiriti, and maintain and improve opportunities for Māori to contribute to local decision-making.⁷⁸ Māori must also contribute to decision-making processes and are a community special interest group.⁷⁹ Under the Local Electoral Act, local authorities must also implement fair and effective representation for individuals and communities, which implicitly includes Māori communities.⁸⁰ These provisions create an obligation for local authorities to act in a manner consistent with te Tiriti, but do not make them direct partners. The FFLG review found that

72 New Zealand Constitution Act 1852 (UK) 15 & 16 Vict c 72, s 70.

73 Local Government Act 2002, s 3.

74 Waitangi Tribunal *Tauranga Moana 1886-2006: Report on the Post-Raupatu Claims* (Wai 215, 2010) at 475.

75 Review into the Future for Local Government *He piki tūranga, he piki kōtuku* (June 2023) at 27.

76 Waitangi Tribunal, above n 74, at 22.

77 Review into the Future for Local Government, above n 75, at 65.

78 Local Government Act, s 4.

79 Section 81.

80 Local Electoral Act 2001, s 4.

the "core requirements in the [Local Government Act] fall well short of a Tiriti-based partnership".⁸¹ Furthermore, it found that many local governments want to take on the role of treaty partner and see the benefits in doing so.⁸² Local authorities can act as de facto rather than direct treaty partners.

Article 3 of te Tiriti guarantees Māori all rights and privileges of British subjects. The Waitangi Tribunal characterised art 3 obligations as *ōritetanga*,⁸³ which translates to equality or equal opportunity.⁸⁴ *Ōritetanga* includes the right for tangata Māori to be actively involved as British subjects, which "extends to voting rights in both local and central government elections".⁸⁵ Therefore, *ōritetanga* concerns the rights of Māori to actively participate in Westminster democracy. The Waitangi Tribunal found that Māori are "entitled to equal rights when they participate in democratic election processes".⁸⁶ This creates a right for Māori and an obligation on the Crown within the *kāwanatanga* sphere to be accountable for those rights.

Numerous debates consider whether *ōritetanga* should be given a formal or a substantive interpretation. Formal equality treats everyone the same, and would result in Māori getting the same opportunity to vote in local elections as non-Māori.⁸⁷ Substantive equality is about "treating people equally [which] may require treating them differently".⁸⁸ Substantive equality is also described as equity.⁸⁹ In the context of Māori wards, substantive equality would require equal outcomes through Māori representation, not just an equal opportunity to vote.⁹⁰

It is sometimes argued that art 3 did not explicitly promise separate representation, that Māori seats are a form of discrimination and that partnership does not require Māori wards.⁹¹ This

81 Review into the Future for Local Government, above n 75, at 74.

82 At 71.

83 This article will use the phrase *ōritetanga* to indicate the rights and obligations associated with art 3 of te Tiriti, despite the phrase not being used in the Tiriti text itself.

84 Waitangi Tribunal, above n 20, at 16.

85 At 16.

86 At 16.

87 At 19.

88 At 19.

89 At 19.

90 Wicks, above n 59, at 387.

91 For example, see Philip Joseph *The Maori seats in Parliament* (New Zealand Business Roundtable, 2008); and Jeremy Sparrow "The Truth About the Maori Seats" (LLB (Hons) Dissertation, University of Otago, 2012).

perspective considers that art 3 is about the ability of Māori to participate through standard voting in ordinary local government elections and anything beyond this right is undemocratic.

However, a more persuasive argument is that art 3 should be interpreted as guaranteeing Māori the right to substantive equality, which is manifested through Māori representation on local authorities. The Waitangi Tribunal found that the principle of equity, an "obligation to act fairly between Māori and non-Māori", derives from art 3.⁹² This obligation of fairness requires more than equal voting opportunities. Furthermore, Iris Marion Young argues that differentiated citizenship is important for all people to participate fully in society.⁹³ Applied to the Tiriti context, this shows that equality in substance is required to uphold kāwanatanga obligations. Anthony Wicks argues that because of the principle of partnership, substantive equality is the only possible interpretation of art 3 ōritetanga.⁹⁴ Will Kymlicka has similarly said "true equality requires not identical treatment, but rather differential treatment in order to accommodate differential needs".⁹⁵

A substantive interpretation of equality is also consistent with democracy. Will Kymlicka argues:⁹⁶

... group representation is not inherently illiberal or undemocratic. It is a plausible extension of our existing democratic traditions, and there may be some circumstances where it is the most appropriate way to ensure an adequate voice for minority interests and perspectives.

Therefore, art 3 is best interpreted as providing for substantive rather than formal equality.

B Analysis

As a minority group as well as a treaty partner, voting in general elections without Māori wards will not support Māori representation. The majority can override Māori perspectives, which was seen before the 2021 changes to the poll provisions and will likely continue in the local authorities that voted to remove their Māori wards in 2025. Article 3 rights to substantive equality are not upheld through general voting processes. Māori wards address this problem by allowing Māori on the Māori electoral roll to vote in separate but equal elections. This allows Māori voices to be heard, as they will get effective representation through Māori wards. The Waitangi Tribunal supported this, finding that "Māori wards and constituencies can be considered a means to achieve equity of representation for

92 Waitangi Tribunal, above n 20, at 19.

93 Iris Marion Young "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship" (1989) 2 Ethics 250, at 258.

94 Wicks, above n 59, at 392.

95 Kymlicka, above n 63, at 113.

96 At 151.

Māori at the local government level".⁹⁷ Furthermore, Anthony Wicks has argued, although in the central government context, that Māori seats do not create an advantage for Māori.⁹⁸ Māori wards therefore uphold art 3 ōritetanga as they provide the right balance of substantive equality without over-prioritising Māori rights.

Māori wards provide representation that is separate but democratic and justified by te Tiriti. As the Waitangi Tribunal said in *Tauranga Moana 1886–2006: Report on the Post Raupatu Claims*, "Māori have been enfranchised, while non-Māori have not been disenfranchised" by the creation of Māori wards in local government.⁹⁹ The increased representation during the 2021–2024 period of Māori wards further supports a substantive interpretation of equality. As discussed in Part II, Māori representation increased from 13.5 per cent in 2019 to 21.6 per cent in 2022. Intersection of representation also increased, with more Māori youth, first-time Māori councillors, wāhine Māori and Māori who identify as LGBTQ+ being elected. It must be reaffirmed that Māori wards *as a concept* support art 3 through increased representation. Limits on the procedure to introduce Māori wards, such as the 2024 re-introduced poll provisions, will restrict the ability of Māori wards to successfully create representation.

C Limitations

Despite increasing the number of Māori councillors on local authorities, Māori wards create some limitations on the effectiveness of representation. Māori ward councillors do not necessarily need to be a representative of the mana whenua in that area, there are no requirements for Māori ward councillors to have any understanding of te ao Māori, Māori wards fail to represent Māori as diverse and unique communities, the electoral bounds of wards do not accurately reflect understandings of kaitiakitanga and constituencies with small Māori populations are not provided for through Māori wards. This section will consider each of these factors in turn.

The treaty was signed by representatives of the Crown and rangatira who were the voice of their hapū. The Crown has now recognised that its treaty obligations extend to hapū that did not sign, and to Māori generally.¹⁰⁰ Māori wards do not support the relationship between the Crown through local government and specific mana whenua groups. Instead, an elected Māori ward councillor can whakapapa to any iwi or to none at all. A person of any background or ethnicity can stand for a Māori ward, as long as "two or more electors" from the Māori roll nominate them.¹⁰¹ Any New Zealand citizen who is a parliamentary elector is qualified to be nominated for any subdivision including Māori

97 Waitangi Tribunal, above n 20, at 19.

98 Wicks, above n 59, at 391.

99 Waitangi Tribunal, above n 74, at 487.

100 See for example Ngāti Tūwharetoa Claims Settlement Act 2018, s 9(1).

101 Local Electoral Act, s 26.

wards, as long as they are not subject to s 58 qualifications.¹⁰² Allowing non-Māori to stand in the Māori electorate supports democracy and does not undermine the principle of equal votes.¹⁰³ This highlights the principle that all qualified persons should have a reasonable and equal opportunity to accept nomination as a candidate.¹⁰⁴ Despite in one sense being democratic, the lack of a requirement to be tangata whenua to run in a Māori ward shows inherent flaws with Māori wards to provide effective Māori representation. In practice, it is unlikely that a non-Māori person would be successfully elected to a Māori ward, as they would need the majority support of Māori voters. Thus far, no non-Māori have run for a Māori ward. However, the lack of legal mechanisms to ensure only Māori are represented in Māori wards highlights the inherent flaws of Māori wards to uphold the Tiriti relationship between Māori and the Crown.

Furthermore, Māori who do not whakapapa to the whenua of the constituency they are in are able to run for a Māori ward. In constituencies where there are more mana whenua living on their ancestral land, it is potentially less likely that a non-mana whenua representative could be elected, but it is more possible for non-mana whenua Māori ward councillors to be elected in more urban areas. This highlights further flaws in the structure of Māori wards, as non-mana whenua representatives will not necessarily ensure that the relationship between the Crown and specific mana whenua groups is honoured. In order to support representation consistent with te Tiriti, local authorities must create relationships with mana whenua in their constituency in addition to relationships with Māori generally. Māori wards are not a substitute for meaningful, ongoing relationships with mana whenua, and therefore do not accommodate relationships between the Crown and specific mana whenua.

The lack of requirement for mana whenua representatives to be elected also results in a potential lack of understanding of te ao Māori in the Māori ward councillor. There are no requirements for a Māori ward councillor to have an understanding of te ao Māori, let alone understand the specific tikanga of a mana whenua group in the local authority's constituency. Although this supports democracy by allowing anyone to stand for office, it shows that Māori wards are not effectively designed to bring Māori voices, experience and expertise to the decision-making table. However, in practice, it is likely that all Māori ward councillors will have an understanding or expertise in te ao Māori; voters on the Māori roll are likely to value a candidate with a strong understanding of te ao Māori. Although politically useful, having te ao Māori expertise is not a legal requirement to be elected as a Māori ward councillor. A formal requirement for candidates to have Māori whakapapa or to be experts in tikanga or te ao Māori would perhaps be unnecessary, let alone difficult to enforce. However, the legal ability for a person with no knowledge of te ao Māori to be voted to represent a

102 Section 25.

103 Janine Hayward "Mandatory Māori wards in local government: Active Crown protection of Māori Treaty rights" (2011) 63 Political Science 186 at 201.

104 Local Electoral Act, s 4(1)(b)(iii).

Māori ward shows the system of Māori wards is not fit to provide effective substantive equality through representation.

Furthermore, a small number of elected Māori ward councillors cannot represent all diverse opinions and understandings of tikanga that exist in te ao Māori. The structure of Māori wards fails to consider diversity within Māori communities. There is no single Māori voice that can be represented by a few Māori ward councillors. Within one constituency, there are often multiple mana whenua groups with kaitiakitanga obligations, for example in the Auckland area. A small number of Māori ward councillors could not effectively represent the different and sometimes competing interests between different hapū and iwi. All Māori have a right to have their voices heard through varied representation, which Māori wards do not effectively support.

One mana whenua group can also hold kaitiakitanga over multiple local government constituencies, so their representation is not consistent throughout each entity. For example, Ngāpuhi extends into the Far North District Council, Whangārei District Council and Northland Regional Council areas.¹⁰⁵ A mana whenua group may be represented through Māori wards in one constituency, but not at all in another, despite exercising kaitiakitanga in both constituencies. The boundaries of local authorities do not support effective representation of all iwi and hapū in local government's exercise of kāwanatanga.

Constituencies with small Māori populations do not get the opportunity to establish any Māori wards, even if the local iwi or hapū within the constituency are signatories to te Tiriti. This occurs when the percentage of Māori enrolled on the Māori roll is too low to form a seat. The number of voters on the Māori roll must be high enough proportionately to form the percentage of one seat compared to the other seats.¹⁰⁶ Both territorial and regional councils, including West Coast, Waimakariri, Selwyn, Mackenzie and Queenstown Lakes are unable to adopt Māori wards because of their small Māori electoral roll population.¹⁰⁷ This provision ensures each vote on the Māori roll does not have more influence than votes on the general roll. It is democratically important to ensure that voting on the Māori roll does not increase the power of a vote. However, it is also important that Māori are effectively represented in the kāwanatanga sphere, regardless of their size relative to the overall voter base. This highlights the inherent flaws of Māori wards as a mechanism to increase effective representation within the kāwanatanga sphere.

105 Te Puni Kōkiri "Te Tai Tokerau: Ngāpuhi" <www.tkm.govt.nz>.

106 See Local Electoral Act, sch 1 cls 2 and 4.

107 Dani Lucas "Partnering or prohibiting? The road to improving Māori wards and constituencies" in Jeffrey McNeill and Christine Cheyne (eds) *Candidates, voters and voting in New Zealand's 2022 local government elections* (Tītipounamu Press, Palmerston North, 2023) 55 at 59.

D Conclusion

Despite not being a direct treaty partner, local government is part of the *kāwanatanga* sphere and has Tiriti-like obligations through legislation. Article 3 creates rights for all Māori to substantive equality, which is created through representation. Despite some limitations on the effectiveness of representation, overall art 3 obligations are upheld through Māori wards in local government. Māori wards are a useful mechanism to increase representation of Māori within the *kāwanatanga* sphere.

VII ALTERNATIVES

This section considers other potential representation structures for local authorities that may better address te Tiriti o Waitangi. The alternatives aim to both address the limitations of representation through Māori wards and consider the tino rangatiratanga sphere. The suggested solutions can generally be categorised as local solutions and national solutions.

A Local Solutions

Local solutions focus on the individual relationship between a local authority and the *mana whenua* group or groups within the electorate. Local solutions have been used both in addition to, and in replacement of, Māori wards. Examples of local solutions include Tiriti-based appointments on the Canterbury Regional Council (Environment Canterbury), and the Independent Māori Statutory Board which provides advice to Auckland Council. Despite potential inconsistencies across the country, local authorities are best placed to make decisions for their communities, as they "are embedded in communities and have a deep understanding of the local impact of systemic issues and broader policy decisions".¹⁰⁸ No local solutions have supported authentic tino rangatiratanga, although there is potential for this in the future. Solutions could be put in place to ensure local authorities work in conjunction with *iwi* to make decisions together on a true partnership basis. Localised structures can be specifically designed to support art 3 *ōritetanga* obligations of representation and substantive equality.

Māori wards cannot be characterised as a local solution, as the same structure is applied nationwide, despite being created through individual council resolutions. Although the number of Māori ward councillors is adaptable based on the population of voters on the Māori roll, local authorities do not have flexibility to determine how Māori wards might apply. Despite choosing to establish a ward initially, flexibility is limited to the statutory framework once a ward is in place. Enacting other forms of Māori representation may allow local authorities to be more Tiriti-consistent. Local solutions to representation on Canterbury Regional Council and Auckland Council are analysed below, as examples of potentially more Tiriti-consistent solutions.

¹⁰⁸ Review into the Future for Local Government, above n 75, at 24.

1 *Ngāi Tahu representation*

The Canterbury Regional Council (Ngāi Tahu Representation) Act 2022 created Ngāi Tahu iwi representation on Canterbury Regional Council. National and ACT agreed to repeal this Act in their 2024 Coalition Agreement.¹⁰⁹ The Hon Simeon Brown, Minister for Local Government at the time, asked the council to bring forward a local Bill to repeal the Act, but the Council voted to maintain its Ngāi Tahu representation.¹¹⁰ It is unclear how the Government now intends to repeal the Act.¹¹¹ The 2022 legislation enabled Te Rūnanga o Ngāi Tahu to appoint two mana whenua representatives,¹¹² who have all "functions, powers, responsibilities, rights, indemnities, and duties [of local councillors] irrespective of whether they are elected or appointed".¹¹³ New Ngāi Tahu councillors are appointed every three years in line with the local general election.¹¹⁴

These Tiriti-based appointments were created to support the specific relationship Ngāi Tahu has with the Canterbury region. Ngāi Tahu have tino rangatiratanga and obligations as kaitiaki within the Council's constituency. As Canterbury Regional Council stated, "having separate Māori constituencies would not adequately recognise Ngāi Tahu as mana whenua for the region".¹¹⁵ It is clear that the Crown's treaty obligations through Canterbury Regional Council are owed to Ngāi Tahu, not other iwi. Therefore, appointments based in te Tiriti will more directly engage rights and obligations compared to Māori wards. Non-Māori or non-mana whenua representatives cannot be elected to represent Ngāi Tahu. Mana whenua-based appointments ensure Ngāi Tahu-specific tikanga is considered, as councillors are chosen by Te Rūnanga for their expertise in tikanga, in addition to other factors. As direct representatives of Te Rūnanga, Ngāi Tahu councillors can more accurately represent diversity of opinion within Te Rūnanga than Māori ward-elected councillors would.

Furthermore, although Ngāi Tahu voters in Canterbury Regional Council do not get to vote for the Ngāi Tahu councillors, they still have the opportunity to actively participate in local government elections generally.¹¹⁶ There are substantively equal outcomes as Ngāi Tahu get specific representation. Iwi-based appointments allow Ngāi Tahu to exercise tino rangatiratanga within its

109 New Zealand National Party and ACT New Zealand *Coalition Agreement* (2023) at 9.

110 Environment Canterbury "Council backs its local Ngāi Tahu Representation Act" (press release, 28 August 2024).

111 See Radio New Zealand "Local Government Minister 'committed' to removing iwi representation from Canterbury Regional Council" (30 August 2024) <www.rnz.co.nz>.

112 Canterbury Regional Council (Ngāi Tahu Representation) Act 2022, s 7(4).

113 Section 7(7).

114 Section 8(1)(b).

115 Environment Canterbury "Direct Ngāi Tahu representation" (23 January 2024) <www.ecan.govt.nz>.

116 Canterbury Regional Council (Ngāi Tahu Representation) Act, s 8(1)(b).

internal processes, as the iwi determines how to appoint representatives.¹¹⁷ However, there are only two Ngāi Tahu councillors alongside 14 other councillors, so the Ngāi Tahu councillors do not have complete authority over Council decisions.

Additionally, the council structure is still based in the Westminster legal tradition, so this solution does not fit within the rangatiratanga sphere. Although Ngāi Tahu councillors support ōritetanga in the particular locality of Canterbury Regional Council with one iwi, this approach is unlikely to be successful in other parts of the country where there are multiple iwi with mana whenua claims in one local electorate. Ngāi Tahu representation on Canterbury Regional Council supports the Crown's obligations of ōritetanga under the kāwanatanga sphere.

2 *Houkura (Independent Māori Statutory Board)*

Houkura is an independent statutory board that advises Auckland Council on issues relating to Māori and te Tiriti o Waitangi.¹¹⁸ Although there are similar representative boards in other parts of the country, such as te Tatau o te Arawa which provides advice to the Rotorua Lakes Council, this article focuses on the Auckland board as an example. The Board consists of seven mana whenua representatives from Ngāti Wai, Ngāti Whātua, Waiohua-Tāmaki, Marutūāhu and Waikato, and two mātāwaka representatives.¹¹⁹ This reflects the many mana whenua groups with kaitiakitanga within the Auckland Council constituency, as well as the many urban Māori living outside of their ancestral whenua. Members are selected by a statutory selection body which represents these mana whenua groups.¹²⁰

The Board has no decision-making authority and was created in place of Māori wards. The Board resolves some of the representation limitations Māori wards create. Similar to the Canterbury Regional Council iwi appointments, the Board accommodates for the special relationship between the Crown and specific signatories of te Tiriti, and it also considers mātāwaka perspectives. It ensures the Council has a clear understanding of Māori perspectives in decision-making and provides for diversity of Māori perspectives through representation for multiple iwi. However, support for ōritetanga is limited, as the structure does not ensure Māori can vote for Māori representation on Auckland Council itself. As the Board only has an advisory role, tino rangatiratanga is not engaged. Like Canterbury Regional Council, the Board solution is unlikely to successfully uphold te Tiriti in other parts of the country as it is a structure unique to Auckland's diversity. Furthermore, as a separate advisory board that can only consider issues relating to Māori, it does not have the same level of influence or

117 See Te Rūnanga o Ngāi Tahu "Ngāi Tahu Councillors to join Environment Canterbury" (press release, 10 October 2022).

118 Local Government (Auckland Council) Act 2009, s 3.

119 Houkura "Māori Profile" <www.houkura.nz>.

120 Maria Bargh "Challenges on the path to Treaty-based Local Government relationships" (2021) 16 NZJSSO 70 at 81.

contribution that Māori wards or direct iwi representation can provide. For this reason, the Board is relatively uncontroversial compared to Māori wards and Ngāi Tahu representation. Houkura therefore resolves some issues Māori wards have in relation to kāwanatanga and representation, but the advisory-only nature of the Board creates other concerns.

These localised solutions, although not suitable for adoption nationwide, resolve some issues in relation to kāwanatanga obligations, but do not address tino rangatiratanga. They may be a useful resource to uphold kāwanatanga obligations within the Crown sphere in addition to other mechanisms that support tino rangatiratanga.

B National Solutions

Nationwide solutions could include mandatory Māori wards and 50/50 representation on local authorities. These approaches are potentially easier to implement as they could provide a consistent approach to treaty obligations for local authorities and Māori, which may reduce inequities between Māori in different constituencies. However, a nationwide solution would not address the unique nature of each locality, which should be taken into account in order to recognise specific treaty rights and obligations.

1 Mandatory Māori wards

Janine Hayward, before the 2021 poll amendments, argued for Māori wards to be mandatory in all local authorities.¹²¹ She suggested mandatory Māori wards would ensure the Crown upheld their duty of active protection by increasing the number of Māori elected and recognising them as a community group of interest.¹²² Creating mandatory Māori wards would merely reinforce the same issues analysed in Parts IV, V and VI, but would ensure an increase in the number of Māori representatives in local government across the nation. Although mandatory Māori wards would increase representation, they would not support tino rangatiratanga. This would further support the representation of ōritetanga rights through substantive equality. Given the current Government's policy about Māori wards and separate Māori representation, it is unlikely Māori wards will become mandatory.

2 50/50 representation

Māori representation advocate Andrew Judd has often argued that the current structure of Māori wards, although a good start, is not enough to effectively uphold te Tiriti. He argues for 50 per cent Māori representation on local authorities: "if you're talking true Treaty obligations then it would be

121 Hayward, above n 103, at 187.

122 At 189.

50-50 representation around the table".¹²³ There has been other suggestions of 50/50 representation. The He Puapua report briefly suggested a partnership model with 50/50 rangatiratanga and kāwanatanga representation,¹²⁴ and the Waitangi Tribunal suggested a 50/50 co-governance body to ensure Tiriti-compliant freshwater policy and management.¹²⁵ Although the form that 50/50 representation on local authorities would take is unclear, it would address some issues with representation in the kāwanatanga sphere. Increased numbers of Māori ward councillors would more easily represent the diversity within Māori perspectives. Māori perspectives from different iwi would be more effectively considered. However, it would still not directly address the Tiriti relationship between the Crown and mana whenua groups, as 50 per cent Māori representation on local authorities would still not provide specific representation provisions for mana whenua.

Engagement and representation of the kaitiakitanga of specific iwi is essential to upholding kāwanatanga obligations locally. Through a democratic lens, allowing 50 per cent Māori wards would create Māori overrepresentation, as a smaller constituency of Māori could vote in the same number of representatives. Substantive equality does not support overrepresentation in the kāwanatanga sphere, which is founded on democracy. Even with 50 per cent Māori wards and 50 per cent general wards, tino rangatiratanga would still not be recognised, without change to the structures of local government. Although tikanga could be incorporated to a greater extent, equal Māori participation in a Pākehā structure does not support tino rangatiratanga. This alternative may fit in the relational sphere if the Westminster local government structure was changed. The suggestion of 50 per cent Māori wards on local authorities supports kāwanatanga at the expense of tino rangatiratanga, despite resolving some issues with representation.

National solutions have potential to better support obligations within the kāwanatanga sphere, but do not accurately address tino rangatiratanga. There are other potential solutions that could be considered, such as other forms of co-governance models, but these are beyond the scope of this article.

C Conclusion on Alternatives

Current solutions, both local and national, try to address tino rangatiratanga but fail to think beyond the kāwanatanga sphere. A clearer understanding of what each sphere entails is required from policymakers, to prevent confusion about how these solutions are upholding and interacting with te Tiriti and the spheres articulated by Matike Mai Aotearoa.

123 Bennion Law "Brief of Evidence of Andrew Judd" A011 Waitangi Tribunal *The Māori Wards and Constituencies Urgent Inquiry* (Wai 3365, 2024) at 5.

124 Claire Charters and others *He Puapua: Report of the Working Group on a plan to realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand* (Te Puni Kōkiri, November 2019) at 47.

125 Waitangi Tribunal *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 560.

VIII CONCLUSION

Māori wards in local government are a limited tool to uphold te Tiriti o Waitangi. This article considers Māori wards through the Matike Mai Aotearoa lens of the rangatiratanga, relational and kāwanatanga spheres. Māori wards do not fit within the rangatiratanga sphere, despite claims from the Waitangi Tribunal, the Justice Committee and some academics. They also do not support the relational sphere for similar reasons. However, Māori wards do fit within the kāwanatanga sphere, as an expression of art 3 rights to substantive equality and representation in voting. Although there are some limitations on the effectiveness of the representation that Māori wards provide, overall, they are a benefit to the Tiriti relationship which the government should support. Other local mechanisms, such as Ngāi Tahu representation on Canterbury Regional Council, and the Independent Māori Statutory Board, may resolve some aspects of effectiveness of representation, but sit firmly within the kāwanatanga sphere as they do not support tino rangatiratanga. Similarly, national solutions such as mandatory Māori wards and 50/50 representation address some kāwanatanga concerns, but fail to adequately address tino rangatiratanga.

The constitutional positioning of Māori wards is important given the context of the recent legislative changes which have made it more difficult to establish wards in the first instance, decreasing representation. Although not a perfect solution to the issue of Māori representation in local government, Māori wards should be continued and supported in order for them to yield the benefits they provide. Despite not upholding te Tiriti in the rangatiratanga sphere, Māori wards are an appropriate starting point to supporting kāwanatanga through representation.

