

Departmental Disclosure Statement

Electoral Amendment Bill
2013 No 149

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

26 August 2013

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Part One: General Policy Statement

The New Zealand electoral system has a very high level of integrity. However, minor changes to the legal framework are required to help continuously improve the efficiency and integrity of elections in light of lessons learnt from previous elections, evolving technology and changing social expectations.

The Justice and Electoral Committee's Inquiry into the 2011 General Election recommended changes to the Electoral Act 1993.

The Electoral Amendment Bill implements those recommendations that can be realistically implemented by the Electoral Commission in time for the 2014 General Election.

The amendments will improve services to voters, candidates and parties. In particular:

- a. efficiency will be improved by allowing greater use of technology
- b. the integrity of elections will be improved through simplifying and clarifying the law, and making the law more internally consistent.

The greater use of technology will make administrative tasks easier and more efficient for parties, candidates, voters and the Electoral Commission.

The Bill provides for full online enrolment using Electronic Identity Verification. This will allow new and existing electors to enrol or update their details online using the RealMe service. Paper based methods of enrolment will continue to be available.

Greater use of EasyVote cards will simplify and speed up vote issuing and reduce special votes. This will also improve the accuracy and efficiency of the scrutiny of the rolls.

The integrity of elections will be enhanced through amendments that simplify, rationalise and make transparent the provisions that regulate electioneering, disclosure of contributions and loans and the filing of election expenses.

Other minor amendments will ensure that recent changes to the Local Electoral Act 2001 are reflected in the Electoral Act.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<ul style="list-style-type: none">Electoral Commission. (April 2012.) <i>Report of the Electoral Commission on the 2011 General Election and Referendum</i>. Provided in accordance with section 8(1) of the Electoral Act 1993. http://www.elections.org.nz/events/past-events-0/2011-general-election/reports-and-surveys-2011-general-election/electoral-0Report of the Justice and Electoral Committee. (April 2013.) <i>Inquiry into the 2011 General Election</i>. Scott Simpson, Chairperson. Presented to the House of Representatives. http://www.parliament.nz/en-nz/pb/sc/documents/reports/50DBSCH_SCR5837_1/inquiry-into-the-2011-general-election-i7aThe Government. (July 2013) <i>Government Response to the Report of the Justice and Electoral Committee on its Inquiry into the 2011 General Election</i> http://www.beehive.govt.nz/sites/all/files/Government%20response%20to%20JE%20Committee%20Inquiry%20into%20the%202011%20General%20Election%20(2).pdf	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
<p>A Regulatory Impact Statement (RIS) was not prepared at the policy approval stage.</p> <p>A RIS was not required for most of the proposals, which are either suitable for inclusion in a Statutes Amendment Bill or have no or minor impacts on businesses, individuals or not-for-profit entities.</p> <p>A RIS was required for the proposal to make loans to parties subject to similar disclosure rules as donations (clause 50 of the Bill), but was not able to be prepared in the time available. The Cabinet paper included some advice on the impacts, costs and benefits of that proposal.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
Further information about the disclosure rules for loans to parties is discussed in Appendix One.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>(a) The overall potential size of the efficiency benefits resulting from the Bill's amendments has not been estimated.</p> <p>Many of the amendments will improve efficiency by clarifying the law, and allow greater use of technology which will make administrative tasks easier.</p> <p>The majority of the amendments have no or only minor cost implications and the Electoral Commission expects to be able to implement the amendments without the need for any additional funding.</p> <p>Further details of the costs and benefits to the Crown of two specific areas of amendment, namely the online enrolment (clauses 16-23 of the Bill) and EasyVote Card (clauses 24-28 and 31-34 of the Bill) changes, are included in Appendix One.</p>	
2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>(a) Some of the Bill's amendments aim to increase levels of compliance with the current law, and other changes impose new obligations on parties and candidates. Overall these changes will have only minor impacts on costs. It is difficult to estimate the degree to which individual electoral participants may try to circumvent these requirements, however overall the Ministry expects general compliance with the legislation.</p> <p>(b) The Electoral Commission will make all electoral participants aware of the new requirements resulting from the Bill, largely through existing means. The Ministry expects general compliance with the legislation by candidates and parties (as currently occurs).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The only international obligations identified by the Ministry are contained in the United Nations Universal Declaration of Human Rights (primarily Article 21) and the International Covenant on Civil and Political Rights (primarily Article 25). The Ministry formed a view internally that the Bill is consistent with these obligations. No further steps were taken.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Principle 1: Active Protection:

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| <ul style="list-style-type: none">• Analysis of the proposals included consideration of how different groups are, or would be, impacted. The Ministry formed a view that Māori candidates, parties and voters would not be disadvantaged by the Bill. |
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Principle 4: Duty to Consult:

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| <ul style="list-style-type: none">• The Justice and Electoral Committee provided all New Zealanders, including Māori, with the right to submit orally on their proposals or submit in writing.• Te Puni Kōkiri has been consulted on the draft Bill. |
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon a Bill's introduction. Any such advice, or reports, will be accessible on the Ministry's website at:

http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/ .

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>(a) Clause 35 amends an offence under section 197(g) of the Act. There are a number of exemptions to the general prohibition on electioneering on election day. This amendment narrows one of those so that only party rosettes worn by scrutineers inside polling stations will now be exempt.</p> <p>Clauses 40, 42, 43, 47 and 49 amend various offence sections of the Act for failing to file election expense and donation returns. In each case filing a return 15 working days after the deadline required in the Act becomes a corrupt practice (which is a harsher penalty than the current summary offence). This will remove the current perverse incentive to refuse to file a return, rather than file one that is false (which is also a corrupt practice).</p> <p>Clause 50 also creates some new offences relating to the disclosure of party loans. These reflect the current offences relating to disclosure of party donations.</p> <p>(b) Clause 51 clarifies that the High Court has the power to order a reallocation of list seats in the event of a successful electorate seat petition. At present the Act is unclear about this.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice is the responsible department for the Electoral Act 1993, and has led the policy development of the Bill. Internal consultation occurred.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Two of the changes introduced by the Bill amend provisions relating to the collection and use of personal information when enrolling to vote and voting. These two proposals are:</p> <ul style="list-style-type: none"> making the full online enrolment service available (clauses 16-23) – people will be required to supply personal information online to allow them to enrol or update enrolment details; and expanding the use of EasyVote cards (clauses 24-28 and 31-34) - election officials will be able to more easily verify voters' personal details to assist the voter to vote and to complete the scrutiny of the rolls. <p>The amendments that create disclosure rules for party loans to reflect those current rules for disclosure of party donations will lead to greater disclosure of people who loan parties money for the purposes of electioneering.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
<p>The Privacy Commissioner was not consulted on the development of the Bill. The Electoral Commission will, however, be consulting with the Privacy Commissioner prior to implementation on the details of EasyVote and the online enrolment changes to ascertain if there are any privacy implications and, if so, how to address these.</p> <p>The Electoral Commission will not implement any new services for the 2014 General Election unless it is satisfied that the integrity of the electoral system, including its privacy protections, will be maintained.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Bill implements a number of changes to the Electoral Act 1993 (the Act) as a result of the Justice and Electoral Committee's report: <i>Inquiry into the 2011 General Election</i>.</p> <p>The Committee received public submissions on the issues and proposals covered in its Inquiry, and these have been taken into account both in the Committee's final report and in the policy decisions subsequently made by Government.</p> <p>The Electoral Commission was an adviser to the Inquiry and has also been consulted on the practical implications of the details of the Bill during each stage of its development. The Electoral Commission is comfortable with the Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Two new services to be enabled by the Bill are currently being developed and tested by the Electoral Commission to ensure they will provide an efficient and secure service. These two proposals are: making the full online enrolment service available; and expanding the use of EasyVote cards. This involves risk assessments, business process modelling, security and integrity testing and simulated trials of the new services. Business cases for online enrolment and electronic roll scrutiny have been prepared. A business case for the EasyVote card amendments is being finalised.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
Clauses 6 and 7 of the Bill introduce a one off fee of \$500 to register a political party. This fee is not significant as it amounts to a one off cost of, at most, \$1 per financial member (registered political parties must have 500 financial members).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
<p>Clause 35 amends section 197(g) of the Act. There are a number of exemptions to the general prohibition on electioneering on election day. This amendment narrows one of those so that only party rosettes worn by scrutineers inside polling stations will now be exempt. This section is a reverse onus offence.</p> <p>Clauses 40, 42, 43, 47 and 49 amend the various offence sections of the Act for failing to file election expense and donation returns. Strict liability offences are created for filing a return 15 working days after the deadline required in the Act to remove the current perverse incentive to refuse to file a return.</p> <p>Clause 50 also creates some new strict liability/reverse onus offences relating to the disclosure of party loans. These reflect the current offences relating to disclosure party donations.</p> <p>For each of the new strict liability/reverse onus offences, the Ministry believes that placing such an onus onto the defendant is justifiable where the defendant is voluntarily involved in a regulated activity. Candidates and parties are voluntary participants in the electoral process, which is a regulated activity. Upon entering into an election, candidates and party secretaries are aware of the regulatory framework and are expected to act with due diligence. In addition, in each case the Ministry believes the candidate or party secretary are best placed to establish absence of fault. The new offences are also consistent with other current offences in the Electoral Act.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers affecting individuals

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Two

Extent of impact analysis available

Question 2.4 - further information about loans provisions (clause 50)

Currently, there is limited disclosure of party loans made to fund political campaigns. The Bill addresses situations where party loans are subsequently forgiven and become donations by applying similar disclosure rules for party loans as currently apply to donations.

The amendments are expected to have only minor operational implications as political parties are already required to keep proper records of all donations received. The amendments will require current recording procedures for donations to be extended to loans received. All the information required to be recorded should already be held by parties as part of the loan arrangements. Returns can be made using largely existing mechanisms. Parties will be required to file an annual return of loans alongside their current donations return. This means they do not have to incur additional costs associated with developing separate new reporting processes.

These provisions may mean that some people or organisations are less likely to provide loans to parties. The size of this behavioural effect, and the associated potential for a party to suffer a loss of financial assistance, is difficult to estimate. Party donation returns filed in 2012 revealed only two instances of loans being used to fund election campaigns which were subsequently forgiven.

Question 2.5(a) - further information about the size of the potential costs and benefits of specific amendments contained in the Bill

The costs of the EasyVote amendments (clauses 24-28 and 31-34), if implemented for the 2014 General Election, are estimated at \$0.240 million.

It is anticipated there will be ongoing savings with the EasyVote amendments. The amendments will simplify and speed up vote issuing, reduce the number of special votes that have to be cast, and improve the accuracy and efficiency of the scrutiny of the rolls. Forecast savings for the 2014 General Election on its own due to the EasyVote amendments are estimated at up to \$0.900 million in total.

The costs of the online enrolment amendments (clauses 16-23), if implemented for the 2014 General election are estimated at \$0.400 million.

Online enrolment is not expected to generate cost savings in the short term. Depending on the uptake of online enrolment there are expected to be longer term savings in the time taken and cost of processing enrolment applications. It is expected to potentially improve the enrolment levels of younger voters who are most familiar with online environments.