

Departmental Disclosure Statement

Electoral Amendment Bill

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.

31 August 2016

Contents

Contents.....2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information4

Part Three: Testing of Legislative Content.....6

Part Four: Significant Legislative Features9

Part One: General Policy Statement

This Bill makes a number of minor changes to the Electoral Act 1993 that will rationalise and clarify the law, help improve services to voters, and assist with the smooth delivery of elections.

After each election, the Justice and Electoral Committee (the Committee) conducts an inquiry into that election. This is done in order to continually improve the efficiency and integrity of elections in light of lessons learned and changing voter expectations.

This Bill follows the Committee's Inquiry into the 2014 General Election (the Committee Inquiry). It primarily implements those recommendations that can feasibly be in place in time for preparation for the 2017 General Election.

In particular, the Bill helps ensure a timely count of votes in light of the increasing number of people voting in advance. The Electoral Commission will be able to start counting advance votes earlier on election day and will have more flexibility in how it is done.

The Electoral Commission will also be able to make certain forms more user friendly. The Electoral Act 1993 will continue to prescribe the purpose of those forms and the information required. Ballot papers will remain prescribed.

The Bill also amends the Electoral Act 1993 to remove references in the Act to the historical separation of services between the former Electoral Commission, the Electoral Enrolment Centre, and the Chief Electoral Office.

Another change is the introduction of a new rule to prohibit electioneering inside advance voting places, and close to their entrances.

The Bill makes a number of other changes. One, which was not considered as part of the Committee Inquiry, will clarify the prohibition on making false statements to influence voters on election day or the 2 days prior, so that this offence relates only to actions taken in that period.

Some of the changes made by this Bill will also involve amendments to the Electoral Regulations 1996.

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">• <i>Report of the Electoral Commission on the 2014 General Election</i>, Electoral Commission, April 2015. Provided in accordance with section 8(1) of the Electoral Act 1993. http://www.elections.org.nz/events/2014-general-election/election-results-and-reporting/electoral-commission-report-2014-general• <i>Inquiry into the 2014 General Election</i>, Justice and Electoral Committee, Jacqui Dean, Chairperson, April 2016. Presented to the House of Representatives. https://www.parliament.nz/en/pb/sc/reports/document/51DBSCH_SCR68922_1/inquiry-into-the-2014-general-election-i7a• <i>Government Response to the Report of the Justice and Electoral Committee on its Inquiry into the 2014 General Election</i>, The Government, July 2016. https://www.parliament.nz/resource/mi-NZ/51DBHOH_PAP69610_1/02921cf2963ded147880623a124d816b7b084125	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A Regulatory Impact Statement (RIS) was not required for most of the proposals, which have no or minor impacts on businesses, individuals or not-for-profit entities.</p> <p>A RIS was required for:</p> <ul style="list-style-type: none">• the proposal to prohibit electioneering within, and in the immediate vicinity of, advance voting places, and• the proposal to amend the prohibition on making false statements to influence voters on election day or the 2 days prior, in order to ensure its scope is appropriately limited. <p>This RIS is available at: http://justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements/</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?	NO
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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?	NO
(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 by allowing greater use of technology which will make administrative tasks easier.</p> <p>The majority of the amendments have no or only minor cost implications as they only involve small modifications to current practice. The Electoral Commission expects to be able to implement the amendments without the need for any additional funding.</p> <p>Further information about the costs and benefits of two specific areas of amendment – namely the proposal to prohibit electioneering within, and in the immediate vicinity of, advance voting places, and the proposal to amend s199A of the Act – is included in the RIS for these issues.</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, 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. On the whole, the Ministry expects general compliance with the legislation by candidates and parties (as currently occurs).</p> <p>Further information about the expected level of compliance for the proposal to prohibit electioneering within, and in the immediate vicinity of, advance voting places is included in the RIS for this issue.</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, the right to participate in government and in free elections) and the International Covenant on Civil and Political Rights (primarily Article 25, the right to political participation). 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:

- Analysis of the proposals included consideration of how different groups are, or would be, impacted. The Ministry formed an internal view that Māori candidates, parties and voters would not be disadvantaged by the Bill.

Principle 4: Duty to Consult:

- The Justice and Electoral Committee provided all New Zealanders, including Māori, with the right to submit orally on their proposals or submit in writing.

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 at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/
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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)?	NO
<p>(a) Offences</p> <p>Clause 94 amends section 197(1)(g) of the Act. That section imposes a general prohibition on electioneering on election day and outlines a number of exemptions to the offence. One such exemption is the display of electioneering material on a political party's national, regional or campaign headquarters (not being mobile headquarters). Clause 94 extends this exemption to a Member of Parliament's out-of-Parliament offices as well. This section is a reverse onus offence.</p> <p>Clause 94 further creates a new offence, whereby any person who does anything prohibited in an Advance Voting Place or buffer zone will be in contravention of the Act and punishable by fine (subject to exemptions in sections 197A (3), (4) and (5)). Prohibited activities are provided for by section 197A(2) (inserted by clause 95). The proposed section 197(2B) provides an exception for inadvertent and immediately ceased exhibition of any name, statement, emblem, slogan, or logo within an Advance Voting Place and mirrors the exception contained in section 197(2) (which pertains solely to election day).</p> <p>Section 199A of the Electoral Act 1993 makes it an offence to publish false statements to influence voters. Clause 97 amends section 199A and has the effect of narrowing the scope of the offence to only cover material first published or actively republished on Election Day or the two preceding days. This excludes material which was published prior to the three day period but remained passively accessible.</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.	

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, but only make minor changes to current processes and have no significant privacy impacts. These proposals are:</p> <ul style="list-style-type: none"> • Enable the Electoral Commission, where appropriate, to use new methods of providing information to electors, in addition to post (clauses 20 and 31); and • Allow electoral officials to use an online electronic roll look up and roll mark off function in voting places to enable real-time checking of voters' enrolment status in polling places (clause 79). 	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
The Privacy Commissioner was not consulted on the development of the Bill as these changes in effect only make minor changes to current processes from a privacy perspective.	

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 Act as a result of the Justice and Electoral Committee's report: <i>Inquiry into the 2014 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 provided information 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
The Electoral Commission has been involved in developing the Bill to ensure the administrative processes are practical and workable.	

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
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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?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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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 94 amends section 197(1)(g) of the Act. That section imposes a general prohibition on electioneering on election day and outlines a number of exemptions to the offence. One such exemption is the display of electioneering material on a political party's national, regional or campaign headquarters (not being mobile headquarters). Clause 94 extends this exemption to a Member of Parliament's out-of-Parliament offices as well. Whilst this section is a reverse onus offence, clause 94 merely extends an existing exemption, and as such does not widen the scope of the strict liability concerned.</p> <p>Clauses 94 and 95 provide a prohibition similar to electioneering at polling places during election day to Advanced Voting Places and their buffer zones. The new section 197A contains similar exemptions to those outlined in the current section 197 and is similarly a reverse onus offence.</p> <p>In both of these cases, the Ministry believes that generally strict liability/reverse onus offences are appropriate as placing such an onus onto the defendant is justifiable where the defendant is voluntarily involved in a regulated activity. Generally candidates, parties and party activists are voluntary participants in the electoral process, which is a regulated activity. Upon entering into an election, candidates, parties and party activists are, or should be, aware of the regulatory framework and are expected to act with due diligence. In addition, in each case the Ministry believes the candidate parties and party activists are best placed to establish absence of fault. The severity of the strict liability is reduced as section 197(2) provides that it is a defence to electioneering of the kind envisioned in section 197(1)(g) if it was inadvertent and was stopped when the defendant was notified by an electoral official.</p> <p>With regards to the new offence related to Advanced Voting Places, the strict liability imposed is small and proportionate as the offence only applies within and very close to AVPs; the prohibited behaviour will be permissible more than 10 metres away. The small zone of the offences' applicability means the concerned behaviour is only restricted to extreme cases, such as where that behaviour might interfere with voters. The new offence is also consistent with current offences in the section 197 of Electoral Act.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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
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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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill amends one power to make delegated legislation. Clause 104 amends the power in section 267A to make regulations relating to advertisements of a specific kind by changing the power's application period from 2 months to 9 weeks. This change is intended to provide clarity by "Saturday-ising" the date from which electoral billboards can be erected so that the Electoral Act and Electoral Regulations are aligned with local council rules and bylaws.	

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
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