

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.

17 July 2019

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Part One: General Policy Statement

This Bill makes several changes to the Electoral Act 1993 and the Electoral Regulations 1996 to—

- improve enrolment and voting processes to better enfranchise voters; and
- uphold the integrity of the electoral system by ensuring that elections are conducted efficiently and securely; and
- support the effective conduct of future elections.

Election day enrolment

The Bill amends the Electoral Act 1993 (the **Act**) to allow New Zealand-based electors to apply to enrol, or to update their enrolment details, on election day, and for that application to be processed for the purpose of qualifying the elector's vote in that election. This will enfranchise more eligible electors, as their vote will be counted provided that their enrolment application is received on election day.

The Bill also extends the latest date for the return of the writ to 60 days after its issue. This change is necessary to support the Electoral Commission to manage the introduction of enrolment on election day and provide more time to process the increased numbers of enrolment and update forms before the official count commences.

Expanding range of premises that can be used as voting places

The Bill removes the prohibition on designating any licensed premises under the Sale and Supply of Alcohol Act 2012 as a voting place. This will enable the Electoral Commission to designate any premises, or part of any premises, such as supermarkets (off-licenses) and conference centres, community clubs, and sports facilities (on-licenses), as voting places. As these places are often centrally located, in highly visible and high-traffic areas, with good parking and disabled access, they are desirable locations for voting places.

The Bill amends the Act to allow the Electoral Commission to conduct the preliminary count of ballot papers in a designated place away from the voting place where that is necessary. Currently, any premises used as a voting place on election day also need to be able to be made secure and private so the preliminary count can be conducted at the same location. This prevents places such as malls and supermarkets being used as election-day voting place. The Bill will change this, allowing a nearby secure space to be appointed for the counting of votes from that voting place instead. This will enable continuity of voting places between the advance voting period and election day.

Improving vote issuing and return processes

The Bill amends the Act to allow an ordinary vote to be issued to any voter who can be found on an electronic roll at the time at which they go into a voting place. This will enable best use of electronic technology in future elections by enabling any voter whose name can be marked off the electronic roll to be issued with an ordinary ballot paper, including those who have enrolled after writ day.

The Bill also clarifies that a special vote declaration can be treated as an application to enrol or update an elector's enrolment details. The enrolment form and special vote declaration form largely contain the same information and so the change will enable (but not require) the Commission, in future, to approve the special vote form to also be an enrolment form.

The Electoral Commission is working towards beginning to implement these changes for the 2023 general election.

Updating provisions for managing polling day disruption to conduct of general election

The Bill updates the provisions of the Act that provide for managing polling disruptions. This includes—

- empowering the Electoral Commission to respond broadly to a wide range of polling disruptions that either prevent voters from voting, or risk the overall administration of the election:
- broadening the definition of the types of events that could allow the use of the provisions for managing polling disruptions:
- empowering the Electoral Commission to utilise or adapt existing voting processes in the Act where there is a polling disruption:
- modernising the existing power to adjourn polling due to a disruption on polling day:
- restricting the release of the preliminary vote count where a polling disruption delays the close of polling.

The purpose of these changes is to improve current provisions by ensuring a more flexible and pragmatic response to polling disruptions. These changes will help to maintain the integrity and conduct of elections where polling disruptions occur.

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
<p><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</p> <p><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</p> <p><i>Report of the Electoral Commission on the 2017 General Election</i>, Electoral Commission, April 2018. Provided in accordance with section 8(1) of the Electoral Act 1993. https://www.elections.org.nz/events/2017-general-election/reports-statistics/electoral-commission-report-2017-general-election</p>	

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>Regulatory impact statements were prepared for:</p> <ul style="list-style-type: none"> • Enabling election day enrolment; Ministry of Justice; 15 March 2019. • Updating the provisions in the Electoral Act 1993 for managing polling disruptions; Ministry of Justice; 17 July 2019 <p>These will be published at:</p> <p>https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements; and</p> <p>http://www.treasury.govt.nz/publications/informationreleases/ris</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Regulatory Impact Statements did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury.</p> <p>The Regulatory Impact Statements were assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. Both were determined to meet the quality assurance criteria.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The Regulatory Impact Statements contain discussions of the costs and benefits of the policy proposals.	

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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 Ministry of Justice has not identified any obligations that conflict with the policies contained in the Bill.

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?

The Ministry of Justice analysed the Bill and did not identify any inconsistency with the rights and interests of Māori protected by the Treaty of Waitangi. The Regulatory Impact Statements contain discussion of the Treaty of Waitangi implications of the policy proposals.
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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
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Advice has been provided to the Attorney-General by the Crown Law Office. This advice will be available on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Clause 17 inserts new section 195C. This section provides that a person commits an offence and is guilty of a corrupt practice who, before the close of the poll at all polling places, intentionally releases information about/discloses the result of a preliminary count of votes conducted at a polling place with the intention of influencing voters/the final result (where the Electoral Commission has not decided to release the results).

This provision is similar to an existing offence provision in section 174G(2) of the Act in respect of the disclosure of information about the results of a count of early votes.

Section 224 of the Act specifies the maximum penalty for a corrupt practice.

The purpose of this offence is to support the change introduced by the Bill to prohibit the release of the preliminary vote count until the close of polling at all polling places unless the Electoral Commission considers the release is unlikely to influence voters. This is to avoid the release of information influencing voting in areas affected by a polling disruption and, therefore, ensure the integrity of election processes and results.

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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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
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Three 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 make only minor changes to current processes and have no significant privacy impacts. These proposals are to enable:

- an application made on election day to enrol, or to update enrolment details, to be able to be processed for the purpose of qualifying that person to vote in that election (clauses 4, 7, and 9);
- any voter who can be electronically marked off the electoral roll to be issued an ordinary ballot paper (clauses 6 and 10); and
- a special vote declaration to be treated as an application to enrol or update an elector's enrolment details (clauses 5 and 15).

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
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The Privacy Commissioner was not consulted on the development of the Bill as these changes, in effect, only make minor changes to current processes. and do not result in any new implications for privacy.

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
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The Electoral Commission was consulted on the policy and the draft Bill.

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?	NO
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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?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

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

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?	NO
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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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