

Departmental Disclosure Statement

Local Electoral (Māori Wards and Māori Constituencies) 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 Department of Internal Affairs.

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

29 January 2021

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Part One: General Policy Statement

This Bill amends the Local Electoral Act 2001.

The policy objectives of the Bill are to:

- align the treatment of Māori wards and Māori constituencies with the treatment of general wards and general constituencies as much as possible; and
- remove all mechanisms for binding polls to be held on whether Māori wards or Māori constituencies will be established; and
- provide local authorities with an opportunity to make decisions on Māori wards and Māori constituencies, in light of these changes, in time for the 2022 local elections.

At present, the Local Electoral Act 2001 provides that if a local authority resolves to establish wards or constituencies for electors on the Māori electoral roll, a local referendum (a **poll**) on whether Māori wards or Māori constituencies should be established must be held if at least 5% of the electors of the city, district, or region demand one. These polls have proved to be an almost insurmountable barrier to improving Māori representation in local government and, in some cases, a deterrent to local authorities considering establishing Māori wards or Māori constituencies.

There is no equivalent provision for elector-demanded polls in the process for creating general wards and general constituencies. Therefore, the removal of the poll provision is consistent with the Crown's obligations under te Tiriti o Waitangi/the Treaty of Waitangi and aims to strengthen the Māori–Crown relationship at a local level by removing barriers to Māori participation in local elections.

To achieve these policy objectives, the Bill—

- repeals the provisions in the Local Electoral Act 2001 that relate to polls on the establishment of Māori wards and Māori constituencies; and
- prohibits binding local authority-initiated polls on whether to establish Māori wards or Māori constituencies (while retaining the right of local authorities to initiate non-binding polls to gauge public sentiment); and
- establishes a transition period ending on 21 May 2021 in which any local authority may, regardless of any previous decisions or previous poll outcomes, resolve to establish Māori wards or Māori constituencies for the 2022 local elections.

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
Report of the Justice Committee on the Inquiry into the 2017 General Election and 2016 Local Elections (December 2019). https://www.parliament.nz/en/pb/sc/reports/document/SCR_93429/inquiry-into-the-2017-general-election-and-2016-local-elections .	

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
The Department of Internal Affairs (the Department) was the authorising agency for the regulatory impact summary dated 8 December 2020: https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index	

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
As agreed in consultation with the Treasury, the regulatory impact summary was assessed internally by the Department's Regulatory Impact Analysis Quality Assurance Panel and determined to partially meet the quality assurance criteria.	

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
Analysis of the costs and benefits of the proposals given effect by the Bill is set out in the regulatory impact summary linked under question 2.3.	

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?

The policies given effect to by the Bill support New Zealand's international rights obligations, including:

- The United Nations Declaration on the Rights of Indigenous Peoples; and
- The International Convention on the Elimination of All Forms of Racial Discrimination.

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 principles of te Tiriti o Waitangi/the Treaty of Waitangi were considered during the development of the Bill. The proposed changes are consistent with the Crown's obligations:

- under Ko te Tuarua/Article 2, which provides the right for Māori to make decisions over resources or taonga they wish to retain;
- under Ko te Tuatoru/Article 3, which provides for equal rights for Māori and non-Māori; and
- to ensure that the partnership under te Tiriti/the Treaty is reflected in the Crown's delegated powers to local government.

In the preparation of the policy, the Department consulted a number of government agencies including Te Puni Kōkiri and Te Arawhiti. No issues were raised.

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

The Department understands the Ministry of Justice has provided its advice to the Attorney-General.

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

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

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)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

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?	NO
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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 Department consulted on the draft Bill with local government sector representatives from:</p> <ul style="list-style-type: none">• Local Government New Zealand; and• New Zealand Society of Local Government Managers. <p>The Department also discussed the proposed changes with the chief executives (or their delegates) of the following local authorities that have current processes underway under the Māori ward provisions in the Local Electoral Act:</p> <ul style="list-style-type: none">• Far North District Council;• Gisborne District Council;• Hawke's Bay Regional Council;• Kaipara District Council;• New Plymouth District Council;• Northland Regional Council;• Ōpōtiki District Council;• Ruapehu District Council;• South Taranaki District Council;• Taupo District Council;• Tauranga City Council; and• Whangarei District Council.	

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?	YES
<p>Clause 7 of the Bill repeals the sections of the Local Electoral Act 2001 that provide for polls which may countermand a local authority's decision to establish Māori wards. Under the Act, the outcome of a poll is binding on the local authority for the next two triennial elections. Repealing this provision means that five local authorities who were prevented by a poll from establishing Māori wards for the 2019 and 2022 local elections would be able to reconsider establishing Māori wards for the 2022 local elections. The right for these local authorities to reconsider establishing Māori wards is affirmed by Schedule 1 of the Bill (at clause 2).</p> <p>Schedule 1 of the Bill provides (at clause 4) that a valid demand for a poll on Māori wards must be disregarded on the date the amendment Act comes into force, even if the poll demand was received before the amendment Act commences. This retrospective effect is necessary to ensure that the Bill's policy intent, to remove all mechanisms for binding polls to be held on whether Māori wards will be established, can be achieved including where poll processes may be underway when the amendment Act commences.</p> <p>Schedule 1 of the Bill) further provides (at clause 5) that the resolution of a local authority to hold a binding poll on Māori wards has no effect. The ability for local authorities to hold a non-binding poll on Māori wards remains.</p> <p>The <i>Legislation Guidelines</i> state that legislation should have prospective, not retrospective effect. However, if retrospectivity is intended, this must be stated in the legislation and be capable of justification. The Legislation Design and Advisory Committee has noted that the policy proposal takes into account the matters raised by the <i>Legislation Guidelines</i> and that Parliament has the necessary information to make informed decisions.</p>	

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
<p>The Bill does not create or amend decision-making powers to make determinations about a person's rights protected or recognised by the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.</p> <p>However, the Local Electoral Act 2001 describes electors' "right to demand" an immediate poll to countermand the local authority's decision to establish Māori wards. The Bill proposes to repeal this provision.</p>	

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
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