

Departmental Disclosure Statement

Electoral (Māori Electoral Option) Legislation 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 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.

5 May 2022.

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Part One: General Policy Statement

This is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than one Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The single broad policy implemented by the amendments in this Bill is to facilitate the more effective operation of the Māori representation models that apply to the electoral processes for Parliament and local authorities. This is primarily being done by the introduction of a continuous option model to enable Māori to change electoral rolls between the general and Māori rolls whenever they wish.

The Bill replaces the current four (4) month option period for the Māori electoral option, which is notified by the Minister of Justice and enables Māori to change between the Māori and general electoral rolls in the year of the census (or the following year where the census and general election are in the same year), with a continuous option model. The continuous option model gives Māori the option of changing from the Māori electoral roll to the general electoral roll or from the general electoral roll to the Māori electoral roll at any time and without restriction as to the number of times they can choose to exercise the option. The Bill clarifies that the option may also be exercised by special vote under the Electoral Act 1993.

The only exception to being able to move between electoral rolls is for the period of a parliamentary by-election for an electorate in which an elector resides, except when local elections are being held at the same time.

The number of electors on the Māori electoral roll are important for the setting of electorate boundaries and determining the number of Māori seats under the Electoral Act 1993. They are also important for the representation reviews carried out by local authorities which involve Māori wards or constituencies under the Local Electoral Act 2001.

Under the Electoral Act, the Electoral Commission is now required to provide information to the Government Statistician for the purposes of calculating the Māori Electoral Population and General Electoral Population as soon as possible after the counting day for those population figures. The counting day definition seeks to replicate the current approach of counting the population figures as at the end of the four-month notice period by providing that the population figures are counted as at the day of the census, except where the general election and census are in the same year, in which case 1 April in the following year applies.

There are related changes to the Local Electoral Act 2001 and the Bay of Plenty Regional Council (Māori Constituencies Empowering) Act 2001. The first change is to provide that the Māori Electoral Population calculated for the purposes of the representation reviews under those Acts is done so simply as at the day of the census. The second change is to provide that Māori who change rolls during the election period can be considered special voters for local elections. These changes ensure the effective operation of the representation review process under those Acts.

<https://www.treasury.govt.nz/publications/guide/disclosure-statements-government-legislation-technical-guide-departments-html#section-8>

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 Electoral Commission on the 2020 General Election and referendums” by the Electoral Commission dated 11 May 2021 (p 56) available from the Electoral Commission at Report-of-the-Electoral-Commission-on-the-2020-General-Election-and-referendums.pdf (elections.nz) .	

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?	YES
“Timing and frequency of the Māori Electoral Option” by the Ministry of Justice dated 11 November 2021. A copy of the RIS will be made available for public access on the Ministry of Justice website and the Treasury RIA website.	

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
The Regulatory Impact Statement did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Team based in the Treasury. The Regulatory Impact Statement was assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. It was determined to 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

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

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

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 Ministry of Justice analysed the Bill and did not identify any international 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?

Targeted engagement with Māori groups, academics and individuals supported the removal of barriers to the exercise of the Māori electoral option. The Crown is under a Treaty obligation to actively protect Māori citizenship rights and, in particular, existing Māori rights to political representation conferred under the Electoral Act 1993.

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 Crown Law Office has provided advice to the Attorney-General. 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/>.

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

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
There has been targeted engagement with Māori groups, academics and individuals seeking their views on the timing and frequency of the Māori Electoral Option. This engagement occurred between late-June 2021 and mid-August 2021. A range of engagement methods were used, including focus groups, meetings and written submissions. The majority of people engaged with supported voters of Māori descent being able to change between the General electoral roll and the Māori electoral roll at any time. The majority expressed the view that the current system of a four month option period aligned with the census disenfranchises Māori from exercising their choice, is unduly restrictive, actively discourages Māori electoral participation and has the potential to undermine trust and confidence in the electoral system.	

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 was consulted on the policy and the draft Bill.	

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?	NO

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?	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

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

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

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?	YES
The Bill contains clauses (4 and 5) which impact on the matters set out in section 268(1)(c) of the Electoral Act (the definition of “General electoral population” in section 3(1) and section 35). These matters are included as “reserved provisions” under section 268(1) for which any amendment requires passage by 75% approval of all members of the House or by referendum (s268(2)).	

