

# Departmental Disclosure Statement

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Local Government Electoral Legislation Bill
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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.

13 June 2022

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## Part One: General Policy Statement

This is an omnibus Bill introduced under Standing Order 267(1)(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy).

The single broad policy and purpose of the Bill is to improve the processes by which individuals and communities are represented through, and can participate in, local government elections. The policy proposals include—

- providing local authorities (councils) with a revised process for deciding their representation arrangements that makes the consideration of specific Māori representation a fundamental step in that process:
- changing the current restriction on the number of councillors on Auckland Council:
- simplifying the process for unitary authorities to adjust local board boundaries:
- updating the processes for when an election result is tied:
- enabling all candidates to submit electronic nominations.

This Bill amends the following Acts:

- Local Electoral Act 2001:
- Local Government Act 2002:
- Local Government (Auckland Council) Act 2009.

It also makes minor and consequential amendments to the Local Electoral Regulations 2001 and the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001 for consistency with the changes made to the Local Electoral Act 2001.

### Māori representation in local government

Māori have been historically under-represented in local government. Since 2002, territorial authorities have been able to create Māori wards, and regional councils have been able to create Māori constituencies, that enable electors on the Māori electoral roll to have specific representation. However, for many years these provisions were under-utilised. On 2 March 2021, the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 removed the binding poll provisions that had been a barrier to improved Māori representation at the local level. That Bill was announced as the first of 2 stages of legislative change and was intended as a temporary measure to enable more councils to establish Māori wards for the 2022 local elections.

This Bill gives effect to the second stage of legislative change. It amends the Local Electoral Act 2001 to provide a local electoral regulatory system that encourages equitable representation for Māori in local government and guarantees that councils will consider it regularly. The Bill changes the process councils follow every 6 years to determine their representation arrangements, making consideration of specific Māori representation the first step of this process. This strategic policy decision by councils will be informed by consultation with the community, including the Māori community, and followed by detailed decisions about the total number of councillors, Māori and general ward boundaries and names, and community boards.

The Bill also provides that binding polls cannot be held on any matters considered by councils in their representation reviews.

### Changing current restriction on number of councillors on Auckland Council

The Local Government (Auckland Council) Act 2009 sets the number of councillors on Auckland Council at 20 (not including the mayor). This is inconsistent with the Local

Electoral Act 2001, which sets councils' membership at between 5 and 29 councillors (not including the mayor). The current restriction on the number of councillors affects Auckland Council's ability to provide effective representation for all its growing communities and to provide specific Māori representation without diminishing the representation of other communities.

This Bill amends the Local Government (Auckland Council) Act 2009 to change the restriction on the number of councillors to align the council membership limits for the Auckland Council with the limits that apply to other councils under the Local Electoral Act 2001.

### **Simplifying process to change local board boundaries**

Unitary authorities (including Auckland Council) must currently follow a complex reorganisation process to change their local board arrangements (including the number of boards and their boundaries). The reorganisation process can take several years and has steps that are not relevant to local board areas. This process must be followed for even minor adjustments to local board boundaries.

This Bill provides 2 new alternatives for unitary authorities to review and amend local board boundaries in response to population changes. The first alternative simplifies the current reorganisation process (which is provided in Schedule 3 of the Local Government Act 2002) for reorganisations that only involve local board area changes. The second alternative enables unitary authorities to adjust local board boundaries during their representation reviews under the Local Electoral Act 2001. The Bill enables regulations to be made regarding the permissible size of the adjustments made this way, which are proposed to be minor. This method is intended to support unitary authorities to promote future representation arrangements where local board area and ward boundaries are consistent with each other.

### **Updating process when election results are tied**

In the current process for judicial recounts in local authority elections, candidates cannot seek a judicial recount until a winner has been determined by lot, often through a coin toss. This can result in candidates assuming office based on the result of the coin toss before another candidate is declared elected after the judicial recount. Communities can also be left without representation while recounts are taking place.

The current sequencing of recounts and lot draws can lead to unnecessary confusion for communities and diminishes the mana of candidates. This Bill introduces a mandatory recount when election results are tied and allows changes to the sequence of council meetings after recounts. Amendments to Schedule 7 of the Local Government Act 2002 will enable urgent council business to still be conducted by candidates who are not affected by a recount. The Bill also introduces an alternative to a coin toss if an election is still tied after a judicial recount. In that case, a candidate may withdraw from the contest if they do not want the final result to be decided by lot.

### **Enabling all candidates to submit electronic nominations**

The Bill amends the Local Electoral Act 2001 to clarify that all persons may submit their nomination documents in a manner other than in writing that has the consent of the electoral officer.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<p>Following the public consultation from July to August 2021, the Department of Internal Affairs (the Department) prepared a summary of submissions that was employed in the development of the policy changes in this Bill relating to representation reviews. The summary of submissions is available at <a href="https://www.dia.govt.nz/diawebsite.nsf/Files/Maori-wards-consultation/\$file/Summary-of-submissions.pdf">https://www.dia.govt.nz/diawebsite.nsf/Files/Maori-wards-consultation/\$file/Summary-of-submissions.pdf</a></p> <p>The report of the Justice Committee into the 2017 General Election and 2016 Local Elections presented submissions that highlighted issues with Māori ward and Māori constituency processes. The report also recommended amendments to allow the receipt of electronic nomination forms. The report is available at <a href="https://www.parliament.nz/resource/en-NZ/SCR_93429/5dd1d57eeba54f36bf9f4da96dba12c073ed7ad8">https://www.parliament.nz/resource/en-NZ/SCR_93429/5dd1d57eeba54f36bf9f4da96dba12c073ed7ad8</a></p>	

### Relevant international treaties

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

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>Regulatory impact statements were prepared for three policy changes proposed in this Bill:</p> <ul style="list-style-type: none"> <li>• Providing local authorities (“councils”) with a revised process for deciding their representation arrangements that makes the consideration of specific Māori representation a fundamental step in that process;</li> <li>• Removing the restriction on the number of councillors on Auckland Council; and</li> <li>• Updating the process when an election is tied.</li> </ul> <p>These regulatory impact statements were assessed as meeting the quality assurance criteria.</p> <p>Two of the policy proposals were exempt from the requirement to provide a regulatory impact statement on the grounds that they have no or only minor impacts on businesses individuals, and non-for-profit entities. These include:</p> <ul style="list-style-type: none"> <li>• Simplifying the process for unitary authorities to adjust local board boundaries; and</li> <li>• Enabling all candidates to submit electronic nominations.</li> </ul> <p>The regulatory impact statements below include an interim statement on the Māori wards and Māori wards constituencies processes proposals prepared before the July to August 2021 public consultation.</p> <p><b>Regulatory Impact Statements</b></p> <p>Four regulatory impact statements were prepared by the Department of Internal Affairs and are available on the Department’s website:  <a href="https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index">https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index</a></p> <ul style="list-style-type: none"> <li>• Improving the mechanism for establishing Māori wards and constituencies at local government (June 2021)</li> <li>• Improving the mechanisms for Māori electoral representation at local government (November 2021)</li> <li>• Changes to recount provisions for local elections (October 2021)</li> <li>• Proposal to remove membership requirement on Auckland Council (October 2021)</li> </ul>	
<b>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?</b>	<b>NO</b>
<p>The Treasury advised that it was appropriate for the Department of Internal Affairs’ internal Regulatory Impact Analysis panel to undertake quality assurance.</p>	
<b>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?</b>	<b>NO</b>
<h3>Extent of impact analysis available</h3>	
<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Analysis of the size of the potential costs and benefits is available in the regulatory impact statements linked on the page above.</p> <p><b>Summary</b></p> <p>The changes proposed by this Bill will not impose any costs on the Crown. Small costs could be imposed on local authorities through:</p> <ul style="list-style-type: none"> <li>• Increased engagement requirements – for 43 local authorities that do not already have specific Māori representation and will need to engage with their communities about Māori representation during their next representation reviews. Costs for each council will vary due to local demographics and distinct engagement processes.</li> <li>• More judicial recounts increasing local authorities' insurance premiums due to the introduction of mandatory recounts on a tied result.</li> </ul>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## 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 Department considered New Zealand’s international agreements that relate to the rights of indigenous peoples.

New Zealand has committed to “take concrete measures to ensure the implementation and promotion” of the UN Declaration on the Rights of Indigenous Peoples (the Declaration). By encouraging improved Māori representation in local government and Māori participation in decision-making, this bill supports New Zealand’s international obligations and commitment to the Declaration.

### 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 Department considered the principles of te Tiriti o Waitangi/the Treaty of Waitangi during the development of this Bill. This Bill supports the Crown’s obligations under:

- Ko te Tuarua/Article 2, which provides the right for Māori to make decisions over their resources and taonga. This Bill encourages increased representation for Māori at the local level where important decisions are made about the way resources and taonga are governed.
- Ko te Tuatoru/Article 3, which provides for equal rights for Māori and non-Māori. By encouraging increased Māori representation, this Bill supports more Māori to have their interests represented at the local level.

### 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

Upon the introduction of the Bill, the advice provided to the Attorney-General by the Ministry of Justice will be available 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)?

YES

The Bill proposes that the District Court Judge who has undertaken a mandatory judicial recount following a tied election must make an order that the local authority is to meet the costs of, and incidental to the recount, unless the Judge considers that it would be unreasonable for the local authority to bear those costs. The purpose of this is to avoid these costs falling on candidates who are not in a position to cause or refuse the recount.

## Privacy issues

<b>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?</b>	<b>NO</b>
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## External consultation

<b>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?</b>	<b>YES</b>
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### **Public consultation**

In developing the policy proposals on Māori representation, the Department ran a public consultation on six aspects of Māori ward and Māori constituency processes. Consultation was open between July and August 2021. A consultation document was prepared with questions regarding the following topics:

- The requirements for councils to consider ward systems;
- The timing of decisions;
- Opportunities for public input;
- Decision-making rights and the role of the Local Government Commission;
- How and when wards can be discontinued; and
- The types of polls that councils can hold.

The Department wrote to approximately 350 individuals and organisations that were identified as having an interest in the consultation. These contacts were invited to make a submission and the Department welcomed invitations to discuss the issues with officials. The Department employed Te Arawhiti's Māori engagement framework and sought feedback on a draft engagement plan. The Department received 56 written submissions and held ten hui as part of the consultation. This includes submissions from 42 local government organisations (including local authorities, Taituarā—Local Government Professionals Aotearoa, Local Government New Zealand, and Auckland Council local boards). 5 submissions were received from Iwi/Māori organisations.

The Department prepared a summary of submissions which can be accessed at <https://www.dia.govt.nz/maori-wards>. This public consultation informed the advice the Department provided to the Minister of Local Government.

### **Policy development consultation**

Auckland Council was consulted on the development of the policies related to removing the restriction on the number of councillors on its governing body and changes to the local board reorganisation process. In developing the remaining policy proposals in this Bill (i.e., the changes relating to recount procedures and electronic nominations), the Department consulted sector experts, including Taituarā—Local Government Professionals Aotearoa, Local Government New Zealand, and the two companies that are contracted by the majority of local authorities to provide services related to local elections, Electionz.com and Independent Election Services Ltd. The result of these consultations was general support for the proposals in this Bill.

### **Consultation on the draft Bill**

Cabinet authorised targeted consultation on draft copies of the Bill with local government sector representatives to test the workability of the proposals. Draft copies of the Bill were circulated to Taituarā—Local Government Professionals Aotearoa and Local Government New Zealand, and officials from the Local Government Commission. Additionally:

- Auckland Council officials were consulted on the clauses of the Bill concerning local board reorganisation and the removal of the restriction of the number of councillors on the council's governing body.
- The chief executives of three local authorities who experienced judicial recount applications after the 2019 local government elections (Queenstown-Lakes District Council, Wellington City Council, and Whakatāne District Council) were consulted on the clause of the Bill that amends the processes council chief executives must follow for the first meeting of a council after an election if the election is subject to a judicial recount.

### 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**

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>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?</b>	<b>NO</b>
The Local Electoral Act 2001 currently provides for a local authority to hold a binding referendum on most matters regarding the local authority's operations. This Bill proposes that only non-binding polls may be held on any matters that are considered during a local authority's representation review.	

### Powers to make delegated legislation

<b>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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
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This Bill enables regulations to be made relating to the maximum size (of a population being transferred between local board areas) of a local board reorganisation that can be made as part of a representation review. Reorganisations beyond the limit prescribed in regulations will have to follow the new but simplified local authority reorganisation process for local boards.	
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### Any other unusual provisions or features

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