

# 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.

23 June 2022

## Contents

Contents.....	2
Part One: General Policy Statement .....	3
Part Two: Background Material and Policy Information .....	4
Part Three: Testing of Legislative Content.....	5
Part Four: Significant Legislative Features .....	8

## Part One: General Policy Statement

The Electoral Amendment Bill (the Bill) makes a number of changes to the Electoral Act 1993 (the Act) to support the delivery of, and participation in, elections.

The Bill amends the political donations framework to increase public confidence in the funding of political parties, and to maintain trust in New Zealand's electoral system.

The substantial changes to the donations' framework include:

- lowering the public disclosure threshold for donations and contributions to political parties from \$15,000 to \$5,000;
- amending the reporting requirements for donations by reducing the threshold from \$30,000 to \$20,000, and requiring disclosure of donations above this threshold within 10 working days only within a general election year:
- requiring parties to report donations under \$1,500 that are not made anonymously;
- requiring a return of party donations to specify the total amount of all donations received in money and the total amount of all donations received other than in money;
- requiring parties to disclose their financial statements; and
- requiring candidate to publicly report on loans received to support their campaign.

Together these changes will increase transparency about the donations received by parties and their overall financial position, while minimising the additional compliance burden on parties.

Currently New Zealand citizens who are living overseas must have been in New Zealand within the last three years to be eligible to vote, and permanent residents must have been in New Zealand within the past 12 months. The Bill extends the eligibility period for overseas voters to six years for citizens and four years for permanent residents in response to voters being prevented from returning to New Zealand due to the COVID-19 travel restrictions.

This is a temporary measure for the 2023 General Election. Any permanent changes to the eligibility criteria may be considered by the Independent Review of electoral law, due to report back by the end of 2023.

The Bill clarifies when the regulated period starts if polling day is changed. The regulated period is the (usually) three-month period before an election where expenditure limits and disclosure rules apply. The Act does not contemplate a change in polling day once the regulated period has started, as occurred in the lead up to the 2020 General Election.

The Act provides for a period of nine weeks before an election where some election signs and billboards can be erected without the needing to comply with certain Transport Authority or Council restrictions. The Bill amends the election advertising rules in the event of a change in election date, and provides a grace period for candidates and parties to remove election signage if the election date is changed.

The Bill also makes a number of minor and technical changes to ensure that the Act is fit for purpose.

## 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>
The following reports are relevant to the policy to be given effect by this Bill: <ul style="list-style-type: none"><li>- Report of the Electoral Commission on the 2020 General Election and referendums, Electoral Commission, May 2021, which can be found <a href="#">here</a>;</li><li>- Inquiry into the 2020 General Election and Referendums - Interim report of the Justice Committee, December 2021, which can be found <a href="#">here</a></li><li>- Inquiry into the 2017 General Election and 2016 Local Elections, which can be found <a href="#">here</a></li></ul>	

### 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>
<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>N/A</b>

### 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>
The Ministry of Justice provided two regulatory impact statements to inform the policy decisions in the Bill: <ul style="list-style-type: none"><li>- Electoral Amendment Bill – changes to political donations settings, 5 April 2022; and</li><li>- Temporary change to eligibility criteria for overseas voters for the 2023 General Election, 5 April 2022.</li></ul> Both statements can be found <a href="#">here</a> .	
<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>

The Regulatory Impact Statements did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Team based in the Treasury.

Both Regulatory Impact Statements were assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel.

- *The Electoral Amendment Bill – changes to political donations settings* statement was determined to partially meet the quality assurance criteria.
- *The Temporary change to eligibility criteria for overseas voters for the 2023 General Election* statement was determined to partially meet the quality assurance criteria.

<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>
--	-----------

**Extent of impact analysis available**

<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>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

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

The proposals relating to political donations and loans are intended to increase transparency around the funding of political parties and candidates. The benefits of increased transparency will be impacted if parties and candidates do not comply with the new requirements.

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
--

New Zealand's international obligations were considered during the policy development phase of the Bill.

The Bill extends overseas voter eligibility, so citizens and permanent residents are not disenfranchised because of COVID-19 travel restrictions. This is consistent with the rights set out in the International Covenant on Civil and Political Rights.

### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
---

The Crown has obligations to protect the rights affirmed to Māori under Te Tiriti o Waitangi when considering any reform to the electoral system, such as actively protecting the right of Māori to equitably participate in all aspects of the electoral process and exercise tino rangatiratanga individually and collectively.

We have undertaken Treaty analysis on this issue by reviewing important resources like Waitangi Tribunal reports to mitigate the lack of consultation, such as the Wai 431 Report on the Māori electoral option and Wai 2870 Report on Prisoner voting.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>YES</b>
---	------------

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

<b>3.4. Does this Bill create, amend, or remove:</b>	
--	--

<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
--	------------

<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
---	-----------

The Bill creates the following offences:

- failure to keep proper records of candidate loans (clause 10, new section 214BA);
- failure to file a return of candidate loans, or filing a false return (clause 15, new section 214 GC);
- failure to keep proper records of party loans (clause 17, new section 214I(4));
- failure to send to the Electoral Commission an annual financial statement or sending an annual financial statement late to the Electoral Commission (clause 27, new section 210J).

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The new offences were discussed with the Offences and Penalty Vetting team at the Ministry of Justice.	

## 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>YES</b>
<p>Currently section 210 of the Act requires party secretaries to file a party donation return that sets out donations exceeding \$15,000. The name, address, and amount of donation is required to be included in the return. Clause 4 of the Bill amends section 210 by lowering the threshold to \$5,000, so more personal information will be included in the donation return. Clause 4 does not amend the information that is required to be the return.</p> <p>Clause 10 inserts new section 214B, which requires candidates to keep proper records of all loans they enter into in order to support their campaign. Clause 17 inserts new section 214I(3) to require candidates to retain records relating to their loan.</p> <p>Clause 15 inserts new section 214GA, which requires candidates to file a return of candidate loans with the Electoral Commission. The return includes details about loans entered into that support their campaign, such as the name and address of the lender.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Office of the Privacy Commissioner was consulted on the Bill.	

## 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>
The Ministry led a public and targeted engagement process on reforms to the donations and loans framework, and on the proposal to require parties to prepare and disclose annual financial statements.	

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>The Ministry engaged external accountancy advisors to support the early development the changes to the political donations and loans framework.</p> <p>The Ministry consulted with party secretaries about proposed changes to the political donations reporting rules.</p> <p>The Electoral Commission was consulted on the policy and the draft Bill.</p>	

## 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>
--	-----------

### 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>
--	-----------

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
---	-----------

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

The Bill includes two new strict liability offences:

- filing financial statements after the late period, or failing to file financial statements with the Electoral Commission, without reasonable excuse; and
- guilty of a corrupt practice if they, without reasonable excuse, file a return after the late period or fails to file a return.

These offences are punishable with a term of imprisonment not exceeding two years. The two new offences are consistent with existing offences in the Electoral Act, which reflects the nature of the offending and its impact on voter trust and electoral integrity.

### 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>
---	-----------

### 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>
--	-----------

### **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>
---	-----------

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
--	-----------

### **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>
--	-----------