

Departmental Disclosure Statement

Constitution 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.

21 July 2025.

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Part One: General Policy Statement

The Constitution Amendment Bill (the **Bill**) amends the Constitution Act 1986 (the **Constitution Act**) to improve the resilience of the mechanisms that provide for the continuity of executive government and the transition of power following an election.

Section 6 of the Constitution Act requires all Ministers of the Crown to be members of Parliament (**MPs**). Under the Electoral Act 1993, all MPs vacate their office at the close of polling day for a general election. The Constitution Act provides that Ministers of the Crown can continue to hold office for 28 days after ceasing to be an MP (the **28-day rule**). This supports the continuity of executive government following an election and upholds the constitutional principle that the Governor-General must always have advisers.

The Bill amends section 6 of the Constitution Act to remove the 28-day rule. The Bill creates a new rule whereby Ministers of the Crown remain in office until election processes are completed and new MPs are appointed.

The new rule addresses the situation where there is a delay to the return of the writ following a general election and the 28-day rule for ministerial tenure expires before the writ is returned and new MPs are appointed, leaving the Governor-General without advisers – a constitutionally untenable outcome. The return of the writ may be delayed if polling is adjourned (for example, due to an extreme weather event) or if there is a judicial recount. A national recount of the party vote will not delay the return of the writ, but it will delay the declaration of list MPs for several weeks.

The Bill provides that the caretaker government will continue until the Electoral Commission declares the elected list candidates. In effect, this means that the election results have been finalised and new MPs have been appointed. This process will be more resilient to delays in the election results and ensures continuity of executive government.

The Bill also amends section 8 of the Constitution Act, which provides for the tenure of Parliamentary Under-Secretaries, to mirror the changes to section 6. This will ensure consistency between the tenure of Parliamentary Under-Secretaries and Ministers.

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>Inquiry into the 2023 General Election</i>, Justice Committee, November 2024 (accessible at https://selectcommittees.parliament.nz/view/SelectCommitteeReport/018d1b6b-7d22-4a67-3620-08dd01d456de).</p> <p><i>Report of the Electoral Commission on the 2023 General Election</i>, Electoral Commission, May 2024 (accessible at https://elections.nz/assets/2023-General-Election/Report-on-the-2023-General-Election.pdf).</p> <p><i>Final Report: Our recommendations for a fairer, clearer, and more accessible electoral system</i>, Independent Electoral Review, November 2023 (accessible at https://www.justice.govt.nz/assets/Documents/Publications/Independent-Electoral-Review-Final-Report-November-2023.pdf).</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?	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?	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?
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New Zealand's international obligations were considered during the policy development phase of the Bill. The proposal does not engage New Zealand's international obligations and is therefore consistent.
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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 policy in the Bill for consistency with the rights and interests of Māori protected by the Treaty of Waitangi. The proposals in the Bill are consistent with the principles of the Treaty of Waitangi.

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 provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available upon introduction of a Bill. Such advice, or report, will be accessible on the Ministry of Justice website at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/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)?	NO
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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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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?	NO
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No public consultation has been undertaken. The policy has been informed by public consultation undertaken through the Justice Committee's Inquiry into the 2023 General Election and the Independent Electoral Review.

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 Ministry of Justice has consulted the Electoral Commission, Cabinet Office, and Crown Law Office on the proposal in this 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
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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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