

# Departmental Disclosure Statement

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Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment 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; and
- 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.

15 May 2024

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## Part One: General Policy Statement

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

The single broad policy of the Bill is to enable local electors to take part in their local elections and decisions about their local electoral arrangements. The policy proposals include—

- reinstating polls on Māori wards and Māori constituencies; and
- requiring councils to hold a binding poll at the 2025 local elections if they established Māori wards or Māori constituencies since 2020 and did not hold a poll; and
- adjusting the statutory time frames for local elections to give more time for the postal delivery of voting papers.

This Bill amends the following Acts:

- Local Electoral Act 2001; and
- Local Government Electoral Legislation Act 2023.

This Bill also makes amendments to the Local Electoral Regulations 2001 as a result of changes to the time frames for local elections.

The Bill gives effect to the Coalition Government's commitment to reinstating the right to a local referendum on the establishment or ongoing use of Māori wards and Māori constituencies. This includes requiring a poll, at the next local body elections, on any Māori wards and Māori constituencies established without a poll.

### **Reinstating polls on Māori wards and Māori constituencies**

Under the Local Electoral Act 2001, Māori wards and Māori constituencies are an opt-in provision for councils that allows them to decide whether specific members will be elected only by people on the Māori electoral roll.

Before February 2021, councils were required to hold a binding poll on whether to establish Māori wards or Māori constituencies if a petition of at least 5% of the people on the council's electoral roll requested it. Polls could also be initiated by councils. The result of the poll was binding on a council for 2 local government terms.

In 2021, the mechanism for binding polls on the establishment of Māori wards and Māori constituencies (initiated by either the council itself or by a petition of electors) was removed.

This Bill reinstates the poll policy settings as they were before 2021, including the following:

- the threshold for petitioning the council (5% of electors on the council's roll at the last local elections);
- the eligibility to vote (any person on the electoral roll for that council);
- the percentage required to bind the council to the outcome (simple majority);
- the binding length (2 local government terms).

This Bill also removes the requirement, due to come into effect after the 2025 local elections, for councils to consider Māori wards or Māori constituencies every 6 years

during their representation reviews if they have not established Māori wards or Māori constituencies.

### **Requiring poll to be held if one has not been held previously**

This Bill also requires councils to hold a poll at the 2025 local elections if they established Māori wards or Māori constituencies, since 2020, without a poll. The outcome of the poll will take effect at the 2028 local elections.

This Bill allows councils who have resolved to establish Māori wards or Māori constituencies for the 2025 local elections to rescind their resolution. If they take this option, these councils will not be required to hold a poll at the 2025 local elections.

Councils who had Māori wards or Māori constituencies for the first time at the 2022 local elections will also be able to resolve to disestablish their Māori wards or Māori constituencies for the 2025 local elections. If they take this option, these councils will not be required to hold a poll at the 2025 local elections either.

### **Postal delivery of voting papers to electors**

Under the Local Electoral Act 2001, there is a 22 and a half day voting period for postal voting in local elections. Under the Local Electoral Regulations 2001, all postal voting papers must be delivered in the first 6 days of the voting period.

New Zealand Post (**NZ Post**) is the main delivery provider for local election voting papers. While booth voting is an option for councils, all councils have used postal voting since 1995.

NZ Post will not be able to deliver voting papers inside the statutory time frames for the 2025 and future local elections. This is because letter volumes have reduced significantly since the Local Electoral Act 2001 was passed, while courier demand has increased. This has led to a reduction in staff and postal infrastructure.

Failing to deliver voting papers in time creates a risk that some voters will not have a reasonable opportunity to cast their vote.

This Bill extends the delivery period for voting papers from 6 days to 14 days. The voting period is also extended by 10 days to a total of 32 and a half days. These changes will enable all eligible voters to receive their voting papers in a timely manner so that they are able to vote in their local elections.

This Bill also fixes some minor administrative problems with the local electoral timeframe. These include—

- providing more time to print and assemble voting documents; and
- changing the day voting documents are sent so any errors can be fixed before the weekend.

## 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>Because of time constraints the Department of Internal Affairs (the Department) has not undertaken public consultation on this Bill. The Department previously consulted with the public on Māori wards from July to August 2021 for the Local Government Electoral Legislation Act 2023.</p> <p>A summary of submissions prepared by the Department 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>	

### 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 two policy changes proposed in this Bill:</p> <ul style="list-style-type: none"><li>• Restoring petitions and binding polls on local authority (council) resolutions to establish Māori wards; and</li><li>• Extending the delivery period for voting documents and the voting period for local elections.</li></ul> <p>The first of these regulatory impact statements was assessed as partially meeting the quality assessment criteria while the second one was assessed as meeting the quality assessment criteria.</p> <p><b>Regulatory Impact Statements</b></p> <p>The two regulatory impact statements prepared by the Department of Internal Affairs are available on the Department's website:</p> <p><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>• Binding polls on the establishment of Māori wards (March 2024); and</li><li>• Changing timelines to enable local elections to be delivered (February 2024)</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>
The Treasury advised that it was appropriate for the Department of Internal Affairs' internal Regulatory Impact Analysis panel to undertake quality assurance.	

<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>
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### 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>
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<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>
Analysis of the size of the potential costs and benefits is available in the regulatory impact statements linked above.	

<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?**

By ratifying international covenants and conventions on human rights, New Zealand committed to take steps to give effect to the rights contained in those instruments and to the principle of non-regression (to avoid conduct that may weaken existing human rights protections).

##### The International Covenant on Civil and Political Rights

New Zealand has ratified this Covenant. Article 25 recognises and protects the right of every citizen to take part in the conduct of public affairs and Article 26 enshrines a right of equality before the law. The United Nations Human Rights Committee has previously raised concerns about the representation of Māori in local government and asked New Zealand to take steps to address this. The Māori wards provisions in this Bill could be considered regression in this area.

##### The International Convention on the Elimination of All Forms of Racial Discrimination

New Zealand has ratified this Convention. In New Zealand's 2021 report to the Committee on the Elimination of Racial Discrimination the report provided the amendments to Māori ward provisions as an example of New Zealand progressing article 5 of this convention. This Bill could be considered regression.

##### The United Nations Declaration on the Rights of Indigenous People

This is an aspirational document that does not create legal obligations for supporting nations. While New Zealand has indicated its support of this declaration it is not obliged by anything contained within and is only bound by domestic frameworks.

### 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?**

Due to timeframes and confidentiality requirements, Treaty of Waitangi partners have not been consulted during the policy development process. The Treaty of Waitangi impact analysis was not as detailed or as thorough as would be expected for a Bill of this nature.

The Local Government Act 2002 requires local authorities to establish and maintain processes to provide opportunities for Māori to contribute to local government decision-making regardless of the frameworks governing the establishment of Māori wards or Māori constituencies.

Māori wards and Māori constituencies are one means of fulfilling council obligations to ensure Māori participation in local decision-making. They are not the only way for councils to achieve this. Local authorities will still need to ensure that they understand Māori rights and interests. There are many ways to achieve this, including through engaging with iwi and hapū.

## 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>
<p>An assessment against the New Zealand Bill of Rights Act 1990 (the Act) is in progress. Once the assessment is complete the advice will be available on the Ministry of Justice's website:</p> <ul style="list-style-type: none"> <li><a href="#">Compliance reports - New Zealand Ministry of Justice</a></li> </ul>	

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

## 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>The electoral roll that is available for inspection will close earlier by a few days overall. This is to enable a longer period for voting papers to be sent out and to provide for a longer period of voting.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
<p>Closing the electoral roll earlier will not have a material impact on any personal information already publicly available.</p>	

## 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>
<p>Due to the time constraints of the Bill, consultation with the local government sector was very limited. Local Government New Zealand, Taituarā, election service providers, and NZ Post (and their business division Datam) were consulted on the proposed changes to election timeframes and were supportive of the changes. Due to tight timeframes, there was no public consultation or consultation with iwi and Māori on reinstating polls on the establishment of Māori wards and Māori constituencies.</p>	

## 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>NO</b>
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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?	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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